

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

Provisional findings report

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Glossary

Summary

1. On 7 August 2019, the Competition and Markets Authority (CMA) referred the completed acquisitions by Heinrich Bauer Verlag KG (trading as Bauer Media Group (Bauer)), through subsidiaries, of:
 - (a) From Celador Entertainment Limited (Celador), 16 local radio stations and associated local FM radio licences (the Celador Acquisition);
 - (b) From Lincs FM Group Limited (Lincs), nine local radio stations and associated local FM radio licences, an interest in an additional local radio station and associated licences, and interests in the Lincolnshire and Suffolk digital multiplexes (the Lincs Acquisition);
 - (c) From Wireless Group Limited (Wireless), 12 local radio stations and associated local FM radio licences, as well as digital multiplexes in Stoke, Swansea and Bradford (the Wireless Acquired Business) (the Wireless Acquisition); and
 - (d) The entire issued share capital of UKRD Group Limited (UKRD) and all of UKRD's assets, namely ten local radio stations and the associated local FM radio licences, interests in local multiplexes, and UKRD's 50% interest in First Radio Sales Limited (FRS) (the UKRD Acquisition);

(together the Acquisitions) for an in-depth (phase 2) merger inquiry. Celador, Lincs, the Wireless Acquired Business and UKRD are collectively referred to as the Acquired Businesses and each is an Acquired Business.
2. The CMA is required by our terms of reference (see Appendix A) to address the following questions:
 - (a) whether the Acquisitions each constitute a relevant merger situation; and
 - (b) if so, whether the Acquisitions, together or in isolation, have resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.
3. Bauer is a multi-media company with interests in print, radio, television and digital operations. In the UK Bauer owns and operates a portfolio of commercial radio stations that broadcast locally and nationally under brands including Kiss, Absolute, Magic, Hits and Greatest Hits (although many of its local stations retain their own individual listener-facing identity).
4. Prior to the Acquisitions: Celador owned and operated local commercial radio stations, mainly in the South and East of England; Lincs interests in radio

broadcasting were largely in the Lincolnshire / South Yorkshire area, as well as a 40% interest in Ipswich 102 FM; Wireless operated 32 national and local radio stations across the UK and Ireland – most of its local radio businesses were included in the Wireless Acquisition (but it retains ownership of its national radio stations, some local stations, and a 50% share in FRS which were not included in the Wireless Acquisition); the UKRD Acquisition included its ten local radio stations. Various digital multiplexes were also acquired by Bauer from these businesses. Throughout these provisional findings we refer to Bauer and the Acquired Businesses collectively as ‘the Parties’.

5. Commercial analogue and DAB broadcasting services are regulated and licensed by Ofcom. Revenue for commercial radio stations comes largely from local and national advertising and associated sponsorship and promotion. Commercial radio revenues in the UK were £572 million in 2018. Commercial radio listening has been growing in recent years with national commercial stations increasing their share while local station audiences have declined. Ofcom has recently relaxed localness regulations for local radio, allowing radio groups to make savings and share most of their programming over larger areas. There has been considerable industry consolidation since 2007. Global Media & Entertainment Limited (Global) is the largest commercial radio group in the UK, operating under the brands Capital, Heart and Smooth, and various other stations. It accounts for 49.4% (including Communicorp)¹ of commercial radio listening hours. Bauer (including the Acquired Businesses)² has a 37.7% share, while Wireless has 6.9% and others account for 6%.³
6. Smaller advertisers and regional or, more commonly, local advertising campaigns are typically booked directly by the advertiser with a radio station, usually via the station’s local sales team. We refer to this as ‘local advertising’. However, major advertisers, whose requirements include the ability to reach consumers across a wide geographic area, are typically represented by a media buying agency. Media buying agencies do not normally negotiate directly with local stations for this ‘national advertising’, due in part to the complexity this would involve. Instead, they contact either a national radio group’s own sales house⁴ or a third-party sales house, who offer a network of radio stations to these agencies. The main media buying groups (who may

¹ Communicorp UK (Communicorp), although independently owned, operates seven regional stations as part of Global’s Capital, Heart and Smooth networks under a brand and content licensing arrangement. Communicorp also own one local station, XS Manchester.

² The Acquired Businesses continue to be operated separately from Bauer in accordance with the CMA’s initial enforcement orders.

³ Source: Bauer based on RAJAR listening data for Q3 2019. ‘Wireless’ refers to the Wireless national stations (and those local stations that were not acquired by Bauer).

⁴ ie Bauer and Global, and also Wireless and GTN (who provide traffic bulletins to radio stations in exchange for advertising airtime).

own several agencies) negotiate terms, usually annually, with the radio station's sales houses. We refer to this as 'contracted advertising'.

7. FRS is a sales house that sells national advertising, sponsorship and promotion and digital campaigns on behalf of independent local radio stations. As at 19 September 2019 it represented 118 local radio stations across the UK.⁵ FRS is jointly owned by Bauer (following its acquisition of UKRD) and Wireless.

The Acquisitions

8. Bauer completed the Acquisitions between 31 January 2019 and 31 March 2019. In January and February 2019, Bauer sold three radio stations which it had acquired as part of the Acquisitions to Nation Broadcasting Limited (Nation). Bauer explained that it sold these stations immediately in order to avoid any competition concerns because of geographic overlaps with Bauer stations.
9. Bauer told us that its core rationale for the Acquisitions was to integrate the stations from the Acquired Businesses into the Bauer station network, while enhancing their appeal to listeners and therefore advertising customers. It said this would in turn enable Bauer to compete more effectively with Global. Bauer submitted that Global (with Communicorp) wins a disproportionate share of national advertising revenue. Bauer said it expected the four Acquisitions to immediately increase its national share of commercial listening, and that it considered this necessary to increase its share of national radio advertising revenue. In addition, it said that the Acquisitions would allow it to significantly increase its reach in areas, like the south of England, where its reach had been considerably lower than Global's. It also planned to increase the audiences for the stations forming part of the Acquired Businesses.⁶
10. It said that it completed the Acquisitions in very close succession, [REDACTED].
11. Bauer has also submitted that it aims to represent and sell inventory of radio stations currently represented by FRS (and not acquired by Bauer), which would help it further increase its share of commercial listening.

⁵ FRS website as at 19 September 2019. Data provided by UKRD shows that as at 26 September 2019 FRS represented 107 local stations. This is following the loss of Quidem and Connect stations which are now represented by Global and JACK, which is a national station.

⁶ Bauer also said that its strategy included launches of new stations (such as Country Hits and Scala) [REDACTED].

12. We provisionally concluded that each of the Acquisitions is a separate relevant merger situation.
13. In our provisional findings, we focussed our assessment on the effect of the Acquisitions on the advertisers' side of the market, and not on radio listeners. This is because, while the Acquisitions could impact on local radio listeners' range of choice, radio listeners can turn to national commercial stations, and also BBC national and local radio stations which do not carry advertising but account for around 51% of radio listening in the UK.⁷ Also, Ofcom's licensing requirements include a requirement to protect the interests of listeners.⁸ Further, insofar as the Acquisitions may reduce competition and choice in regard to local radio stations, the analysis of competition for local advertising can act as a proxy for assessing this effect.

The counterfactual

14. The assessment of the effects of a merger and the application of the SLC test involves a comparison of the prospects for competition with the merger against the counterfactual, which is the competitive situation we would expect to apply absent the merger.⁹ Against this framework, and in light of the Parties' submissions, we considered the most likely future situation of Bauer, each of the Acquired Businesses, and FRS in the absence of the Acquisitions.¹⁰
15. We provisionally concluded that it is appropriate to assess the competitive effects of the Acquisitions by considering them together against a counterfactual of none of the Acquisitions having gone ahead, rather than assessing them individually or sequentially. This is because Bauer viewed the Acquisitions as part of an 'overarching strategy', [X].
16. Our approach, employing a counterfactual of none of the Acquisitions having gone ahead, enables us to properly consider the impact of a series of parallel completed transactions involving the same purchaser, and carried out as part of a common acquisition strategy designed to achieve a cumulative impact on competition in a market. This approach avoids an artificial and speculative exercise of considering the Acquisitions individually or sequentially, which would result in the cumulative effect of the Acquisitions on the relevant

⁷ [Media nations: UK 2019](#), Ofcom, Figure 4.8.

⁸ Ofcom's statutory duties include ensuring that: a wide range of high-quality radio programmes are provided, appealing to a range of tastes and interests; and television and radio services are provided by a range of different organisations. From [Ofcom website](#).

⁹ CMA Merger Assessment Guidelines, [CC2 Revised](#), paragraph 4.3.1.

¹⁰ [CC2 Revised](#), paragraph 4.3.6.

markets not being adequately assessed. Our approach also enables us to consider the impact of the Acquisitions without importing into our assessment any spurious claims to accurate prediction or foresight¹¹ and means that it is not necessary to engage in undue speculation in the counterfactual by attempting to assess every potential hypothetical permutation of the four Acquisitions.

17. We considered the future of the Acquired Businesses absent the Acquisitions. In each case, we provisionally concluded that the most likely counterfactual is the pre-merger conditions, ie for the foreseeable future, each of them would have continued to operate in the market as they did pre-Acquisitions.
18. We next considered what would have happened to FRS absent the Acquisitions. Bauer told us that FRS would be expected to exit the market. It said that the Acquired Businesses would have been likely to be sold relatively quickly in the absence of the Acquisitions, and that likely purchasers would have then taken representation away from FRS. Bauer also argued that even if this had not happened FRS would have ceased to be profitable in the short to medium term, due to station loss, and that it could not compete effectively for national advertising, and so would have exited the market.
19. FRS has lost some of its client stations, and [X] % of its listener reach from 2015 to 2018, and [X] % of its revenue from 2016 to 2018. We note that some radio stations may seek representation elsewhere: Quidem has agreed a representation deal with Global, and [X] with Bauer. We were told that FRS stations achieve a far lower share of national advertising revenues than their share of radio listening. In part, FRS is disadvantaged because of its relatively small size and its stations are of disparate identity and limited geographic coverage, meaning it is relatively less attractive to national advertisers compared to Bauer and Global.
20. Most of FRS' costs are fixed and so any substantial decline in turnover would mean it would likely rapidly become loss-making. However, we noted that FRS is currently profitable, and its pricing is stable. Most of FRS' client stations, apart from the Acquired Businesses, are small, so there would be no substantial impact on FRS' profitability if individual stations did leave.

¹¹ [CC2 Revised](#), paragraph 4.3.6: [...] 'the [CMA] will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary for the [CMA] to make finely balanced judgements about what is and what is not the counterfactual.'

21. As set out in paragraph 17, we considered that the Acquired Businesses would not have been sold immediately in the counterfactual. As such they would have continued to use FRS as their national advertising representative for the foreseeable future. Therefore, we do not consider that FRS is a failing firm.¹² At least in the foreseeable future of the counterfactual, we considered that FRS would have remained active providing national advertising sales representation to radio stations.
22. We therefore provisionally concluded that absent the Acquisitions, the most likely counterfactual is that FRS would continue as an independent business owned by UKRD and Wireless, operating on the same basis as pre-merger.
23. Notwithstanding the provisional conclusion on the FRS counterfactual, in light of the evidence we had received, we also considered whether, over a longer period, FRS would have continued to operate absent the Acquisitions.
24. In the longer term, we acknowledge that FRS' position is potentially vulnerable due to the following specific factors:
- local radio is in decline as national commercial radio is taking share from it;
 - because FRS is achieving a share of national advertising revenues substantially below FRS' stations share of listening, more radio stations may contemplate seeking representation from Bauer or Global;
 - because of Ofcom's decisions to relax localness requirements (which appear in part to be motivated by a desire to help local radio stations maintain their viability), it is now much easier and more cost effective for independent stations to enter into brand and content licencing (BCL) agreements (ie take a brand identity and programming from another operator); and
 - there is a process of mutually reinforcing interaction between station exits and declining advertising revenues. A loss of significant scale is likely to make FRS less attractive to advertisers and so increase the likelihood of further stations choosing to leave.
25. Consequently, there is a prospect of FRS ultimately becoming unprofitable. While the speed and extent to which this might happen is unpredictable, it seems likely that one or more of the Acquired Businesses would have been sold and removed from FRS representation at some point within the next few

¹² See [CC2 Revised](#) paragraphs 4.3.8-4.3.18.

years. Because FRS' profitability is dependent on maintaining a scale of turnover (as the potential for cost-savings in proportion to scale appears limited) it is likely it would no longer be economically viable to continue in the longer term. While the timing of closure is uncertain, we provisionally concluded that the most likely longer-term position for FRS is that it would have exited the market at some point, after the foreseeable counterfactual period but within, at most, ten years.

Competitive effects of the Acquisitions

26. To evaluate the competitive effects of the Acquisitions, we first defined the relevant markets in which we are considering these effects. We then assessed the possible competitive effects of the Acquisitions with reference to four theories of harm,¹³ which we address in turn:
- (a) horizontal unilateral effects in the supply of representation for national advertising to independent radio stations;
 - (b) horizontal unilateral effects in the supply of national advertising;
 - (c) vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house; and
 - (d) horizontal unilateral effects in the supply of local radio advertising.

Market definition

27. We have assessed the effects of the Acquisitions with regard to the following relevant markets:
- (a) The supply of radio advertising in:
 - (i) Local markets (corresponding to the transmission areas of analogue radio stations by individual transmitters or combinations of transmitters and also combinations of co-owned stations); and
 - (ii) The national market; and
 - (b) The supply of representation for national advertising to radio stations in the UK.
28. Bauer told us that radio advertising is part of a wider audio advertising market, and that radio was in competition with a variety of other media for advertising

¹³ As set out in our [issues statement](#) and [issues statement addendum](#).

revenues, and in particular that radio is competing heavily for advertising spend with digital platforms such as Facebook and Google.

29. We found that while there is widespread use of alternatives to radio advertising, customers do not see other forms of advertising as close alternatives. We also found evidence of advertisers moving spending to other forms of media, particularly digital, but we have not received evidence that this is in response to pricing changes which would indicate that they are in the same market.
30. There was little direct evidence of a competitive constraint, sufficient to mean that non-radio advertising should be included in the same market. Therefore, we provisionally concluded that the product market is radio advertising. Nonetheless we recognised that non-radio advertising can form an out-of-market constraint, given that it is a readily available and widely used alternative to radio advertising. We have therefore taken account of this out-of-market constraint within our competitive assessments and given it appropriate weight where relevant.

Horizontal unilateral effects in the supply of representation for national advertising to independent radio stations

31. This theory of harm relates to the possibility that the Acquisitions could result in an SLC in the representation for national advertising to independent radio stations, due to (1) the possibility of the Acquisitions together leading to FRS being weakened or becoming economically unviable due to the loss of a large proportion of its customer base (ie those stations acquired by Bauer), and (2) Bauer acquiring a 50% share in FRS as part of the UKRD Acquisition and therefore the ability to exercise material influence over FRS.
32. At the moment, FRS is the only sales house providing independent radio stations (ie those without a brand and content licensing agreement with a large radio group) with representation to national advertisers and media buying agencies. Together, the stations forming part of the Acquired Businesses currently account for the majority of FRS' business: [X] % of its revenue and [X] % of its retained commission. Our analysis is that FRS would be significantly loss-making without the commission revenue it receives from these businesses. We have not identified significant scope for cost-saving. Therefore, we expect that FRS would be closed by its owners Bauer and Wireless post-Acquisitions.
33. Independent radio stations would then no longer be able to secure representation from their currently preferred option of FRS and would instead only have the options of seeking representation from Bauer or Global. No

other potential suppliers are apparent. We have also discounted any possibility of entry by a new entity representing independent radio stations, given that it would face the same business challenge as FRS post the acquisitions.

34. Bauer has stated that it 'intends to directly represent those third-party stations currently represented by FRS and has every incentive to do so'.¹⁴ Bauer previously represented Orion between 2014 and 2016. It said that it had demonstrated to itself and to the market that it was a good third-party sales house through representing Orion. It has also entered into an agreement to represent [X]. We consider that Bauer does not face significant barriers to offering representation to independent stations. It told us that the stations would be represented alongside its own stations as part of its Hits Radio Network, which would provide a more compelling offer by virtue of the additional share. It also said that it was important to Bauer to secure representation of these independents rather than letting rivals represent them. This indicates a strong incentive for Bauer to seek to represent FRS stations. We consider that this incentive would also apply absent the Acquisitions. Independent radio stations appear open to representation from Bauer, but with some reservations.
35. Therefore, we consider that Bauer is an actual or potential competitor to FRS, and that it would have been a more active competitor to FRS in the absence of the Acquisitions.
36. We heard from Global that it was only interested in representing stations who would enter into a brand and content licencing agreement with it, and then only in areas where its brands were not already present. However, many of the independent stations told us they would be unwilling to do this as it would mean surrendering their own identity and programming. Therefore, for many independent FRS stations, Global is unlikely to be an attractive or possible option.
37. In consequence, the main remaining representation option for some stations would be Bauer. The risk arises that the terms of representation or quality of service offered could deteriorate in the absence of competition from alternatives.
38. We also considered the consequences of the UKRD Acquisition alone. This Acquisition gives Bauer a 50% shareholding in and material influence over FRS. Bauer may be able to take advantage of this to further its intention to

¹⁴ [Bauer response to phase 1 decision](#), paragraph 8.7.

represent independent radio stations currently represented by FRS. As a result, Bauer would have the ability to materially influence, and impede, FRS' corporate and strategic decision-making, ultimately weaken FRS and eliminate it as an independent competitor in the market.

39. By removing the principal route of choice for independent radio stations to sell advertising slots to purchasers of national advertising, the Acquisitions would reduce the number of separate options for independent stations from three to two. Furthermore, one of the remaining options, Global, appears more limited because it is unlikely to wish to serve some stations and other stations are unlikely to want to accept its branding and content conditions. In consequence, customers for representation, ie independent radio stations, could be harmed through higher commission rates and/or the worsening of other terms. We consider the impact to be substantial for the following reasons: the independent radio stations told us that revenues from national advertising are very important to their financial health; the existing preferred option of suppliers is removed; the number of possible suppliers falls from three to two; all the residual-FRS independent stations could be affected; and because this will apply to stations across the UK.
40. Subject to any countervailing factors, we therefore provisionally concluded that the Acquisitions, as a result of each of Bauer's acquisition of the ability to exercise material influence over FRS and its acquisition of a large proportion of FRS' customers, have resulted, or may be expected to result, in an SLC in the market for supply of representation for national advertising to independent radio stations in the UK.
41. Because we expect that FRS would have eventually exited the market absent the Acquisitions (see paragraph 25), the SLC provisionally identified in paragraph 40 is expected to apply for a period of up to ten years.

Horizontal unilateral effects in the supply of national advertising

42. We considered whether the Acquisitions would result in a lessening of competition in the supply of national advertising, arising as a result of the loss of competition between Bauer and FRS.
43. Bauer submitted that FRS was at best a fringe player in the supply of national advertising due to its limited audience share, reach and geographic coverage, and that it is used by media buying agencies in situations where Bauer or Global cannot act as a substitute, such as to reach particular geographic audiences covered by FRS stations.

44. On the basis of evidence, including the views of media buying agencies, price and sales comparisons and Bauer's internal documents, we provisionally found that FRS imposes only a limited constraint on Bauer in respect of national advertising. While FRS told us it viewed Bauer as one of its major competitors, third-party views (including media buying agencies and advertisers who used FRS) and other evidence did not tend to support this. We found no evidence of substitution between them based on pricing, and no significant concerns were expressed by media buying agencies or advertisers.
45. We provisionally concluded that the Acquisitions have not created and may not be expected to create an SLC in the provision of national advertising.

Vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house

46. We also considered whether, if FRS exited the market, Bauer might have the ability and incentive to foreclose (ie refuse to represent) independent radio stations for national and contracted advertising, and if so whether this would result in SLCs in local advertising markets.
47. We considered the balance of incentives for Bauer to foreclose the residual FRS stations. The potential benefits include: the diversion of national advertising from the residual FRS stations to Bauer; the diversion of local advertising from them to Bauer; and the savings in cost for representing advertising for the residual FRS stations. The costs of foreclosure include the foregone commission on national advertising if Bauer did represent the residual FRS stations, and the foregone incremental benefit that Bauer might achieve in renegotiating national advertising deals and gaining additional advertising based on the additional listener share and coverage it would have from also representing the residual FRS stations. Bauer also told us foreclosure could risk its rivals buying these stations.
48. We reviewed Bauer's estimates of the costs and benefits of a foreclosure strategy and undertook our own analysis. There are large margins of uncertainty in the quantification of substantive parts of this evaluation, but we found that the range of potential costs of foreclosure and the potential benefits are likely to be broadly similar. However, significant parts of the benefits of representation (ie the commission stream from representing advertising) are likely to be more certain and immediate compared to uncertain and speculative benefits from foreclosing the independent residual FRS stations as a whole. This indicates that Bauer would be unlikely to have the incentive to engage in total foreclosure of the residual FRS radio stations as a whole.

49. Therefore, we provisionally concluded that the Acquisitions have not created and may not be expected to create an SLC through the total foreclosure of the residual FRS stations.

Horizontal unilateral effects in the supply of local radio advertising

50. This theory of harm relates to the possibility that the Acquisitions may result in an SLC because of a loss of competition in local radio advertising between radio stations in local areas where the Parties overlap. Following on from areas of concern identified in the CMA's phase 1 investigation,¹⁵ we examined three local areas:
- (a) In the West Midlands with regard to the overlaps between Wireless's Signal 107 and Bauer's Free Radio FM (Birmingham & Black Country) and Free Radio FM (Shropshire), especially in Wolverhampton and Shropshire;
 - (b) In Yorkshire with regard to the overlaps between Lincs' Trax FM, Dearne FM, and Rother FM and Bauer's Hallam FM; and
 - (c) In the West of England with regard to the overlaps between Celador's Sam FM and The Breeze (South West) and Bauer's Kiss West.
51. Horizontal unilateral effects are more likely when the merging parties are close competitors. To assess how closely the Parties' local radio stations compete in the local areas of potential concern, we considered the following:
- (a) Their shares of supply both in terms of listener hours and local advertising revenue.
 - (b) Geographic coverage, particularly the extent to which radio stations' geographic broadcast areas overlap.
 - (c) Whether there are other relevant differences between the stations' offerings, for example in terms of demographics, local content and pricing.
 - (d) Whether local advertisers regarded these stations as being close alternatives, including considering evidence of past switching.
 - (e) The availability and importance of competitors; both alternative radio stations and local non-radio advertising options.

¹⁵ CMA, [Decisions to refer](#), 30 August 2019.

Overlaps in the West Midlands

52. In the West Midlands, we have considered a potential loss of competition between Bauer's Free Radio FM and Wireless's Signal 107. In particular, we considered the overlap of the Parties' transmitters in Shropshire and Wolverhampton.
53. Regarding the Parties' overlapping transmitters in the Wolverhampton area, we provisionally found that:
- (a) The Parties' broadcast areas mostly overlap and their transmitters are the only radio options for local advertisers wishing to specifically target the Wolverhampton area. The other radio options that cover Wolverhampton also cover a far larger regional area. Both Parties' options are used by local advertisers to a similar extent, indicating that these are both credible options for local advertisers.
 - (b) Given that the other evidence suggests there are not substantial differences between the Parties' stations, it is likely, despite some differences in their offering, that they would be alternatives for customers.
 - (c) While there is evidence of non-radio alternatives for advertisers, we do not consider these are likely to be sufficient to constrain the Parties.
 - (d) A small number of local advertisers expressed concern about the Wireless Acquisition. While slightly more local advertisers were unconcerned, these were advertisers that used parts of the Parties' stations other than Wolverhampton.
 - (e) Moreover, even if the constraint the Parties impose on each other is limited, given that these are the only two radio options for advertisers wishing to specifically target the Wolverhampton area, elimination of that constraint is sufficient to raise concerns because following the Acquisitions the only alternative to the Parties would be to switch to a different form of advertising.
54. Subject to any countervailing factors, we provisionally concluded that the Wireless Acquisition has resulted, or may be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.
55. In terms of the Parties' overlap in Shropshire, we found that many of the features of competition are similar to those in the Wolverhampton area and that competition may be reduced as a result of the Wireless Acquisition. In particular, the Parties' offerings in Shropshire overlap significantly and are the only radio options for customers wishing to specifically target the area.

However, although there may be some lessening of competition, we considered that competition between the Parties in Shropshire is likely to be more limited than in the Wolverhampton area because of the limited use of the combination of Signal 107's Shrewsbury and Telford transmitters in comparison to Free Radio (Shropshire) and the absence of any concerns relating to Shropshire from local advertisers.

56. We provisionally found that the Wireless Acquisition has not created nor may it be expected to create an SLC in the supply of local advertising in the Shropshire area.

Overlaps in Yorkshire

57. In Yorkshire, we have considered a potential loss of competition between Bauer's Hallam FM and Lincs' Trax FM, Dearne FM and Rother FM. In particular, we considered the overlap between the combination of the Lincs stations and Hallam FM.
58. We found that there is limited competition between these options because of the limited use of the Lincs Stations; differences in their offerings; low levels of customer concern and switching; and other competitive constraints from radio and non-radio options.
59. We provisionally found that the Lincs Acquisition has not creates nor may it be expected to create an SLC in the supply of local advertising in Yorkshire.

Overlaps in West of England

60. Kiss West covers a large area across South Wales and South West England (in Somerset, Avon, Wiltshire), whereas Sam FM serves the Bristol area alone, and The Breeze covers Bristol, Weston-Super-Mare, Bath and Warminster areas.
61. We found that competition between Bauer's Kiss West and the Celador stations is limited due to Kiss West's larger broadcast area limiting it as a local option, differences in listener demographics, low levels of customer concern and other competitive constraints from radio and non-radio options.
62. We provisionally found that the Celador Acquisition has not created nor may it be expected to create an SLC in the supply of local advertising in the West of England.

Countervailing factors

63. We considered whether entry and expansion could provide relevant constraints in relation to our theories of harm. Given the likely small scale of opportunities for representation following the loss of the stations forming part of the Acquired Businesses, we do not see that there is any likelihood of a new entrant into representation for national advertising to independent radio stations being able to operate profitably.
64. We also considered whether large-scale new entry into radio broadcasting could allow the entrant to establish itself as a significant competitor in national radio advertising, and so be able to offer representation services to other stations. However, in the absence of new FM licences or national multiplex capacity, and because of limited availability of local multiplex capacity (and that we have not seen indications that digital-only stations are likely to attract significant listenership in the short-term), we do not consider this to be likely.
65. Because of limited unused capacity on the Wolverhampton multiplex we found that new entry by a digital music station in the Wolverhampton area to challenge Signal 107 and Free Radio FM was unlikely to be possible.
66. We provisionally concluded that there were no countervailing factors that would prevent the provisionally identified SLCs from arising.

Provisional conclusions

67. We provisionally concluded that the Acquisitions, as a result of each of Bauer's acquisition of the ability to exercise material influence over FRS and its acquisition of a large proportion of FRS' customers, have resulted, or may be expected to result, in an SLC in the market for the supply of representation for national advertising to independent radio stations in the UK.
68. Because we expect that FRS would have eventually exited the market absent the Acquisitions (see paragraph 25), the SLC provisionally identified in paragraph 67 is expected to apply for a period of up to ten years.
69. In addition, we provisionally concluded that the Wireless Acquisition has resulted, or may be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.

Provisional findings

1. The Reference

- 1.1 On 7 August 2019, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisitions by Heinrich Bauer Verlag KG (trading as Bauer Media Group (Bauer)) through subsidiaries, of:
- (e) From Celador Entertainment Limited (Celador), 16 local radio stations and associated local FM radio licences (the Celador Acquisition);
 - (f) From Lincs FM Group Limited (Lincs), nine local radio stations and associated local FM radio licences, an interest in an additional local radio station and associated licences, and interests in the Lincolnshire and Suffolk digital multiplexes (the Lincs Acquisition);
 - (g) From The Wireless Group Limited (Wireless), 12 local radio stations and associated local FM radio licences, as well as digital multiplexes in Stoke, Swansea and Bradford (the Wireless Acquisition); and
 - (h) The entire issued share capital of UKRD Group Limited (UKRD) and all of UKRD's assets, namely ten local radio stations and the associated local FM radio licences, interests in local multiplexes, and UKRD's 50% interest in First Radio Sales Limited (FRS) (the UKRD Acquisition);
- (together the Acquisitions) for further investigation and report by a group of CMA panel members (the Group).
- 1.2 The terms of reference are set out in Appendix A and the conduct of inquiry is set out in Appendix B.
- 1.3 In exercise of its duty under section 35(1) of the Act, the Group must decide:
- (c) whether the Acquisitions each constitute a relevant merger situation; and
 - (d) if so, whether the Acquisitions, together or in isolation, have resulted, or may be expected to result, in an SLC within any market or markets in the United Kingdom for goods or services.
- 1.4 This document, together with its appendices and glossary, constitutes our provisional findings. Further information, including a non-commercially

sensitive version of the Parties' responses to the phase 1 decision and the issues statement, can be found on our inquiry webpage.¹⁶

- 1.5 Throughout this document we refer to Bauer and the Acquired Businesses collectively as 'the Parties'.

2. Industry background

Introduction

- 2.1 This section addresses the background to radio broadcasting, concentrating on commercial radio. It sets out the technologies for analogue and digital broadcasting, and categorises the different types of broadcaster: commercial, the BBC, and community radio. It outlines trends in radio listening, including the distribution of listening to different broadcaster types and the growth in digital listening. It then describes the regulation and licensing regime, and looks at the structure of commercial broadcasting and consolidation in the industry. It then sets out how advertising on commercial radio occurs.

Broadcast technologies

- 2.2 Radio services are broadcast on two principal terrestrial platforms: analogue (AM/FM) and Digital Audio Broadcasting (DAB). Radio programming is also broadcast over the internet (IP or internet protocol, commonly known as 'online' listening) and via digital television distribution systems.
- 2.3 Analogue services are transmitted via a network of transmission sites across the UK with each station utilising a sub-set of this network. These transmission sites are generally owned by a third party with whom the station must negotiate and pay for network access.
- 2.4 DAB is a digital transmission system whereby one or more analogue audio streams are converted to a digital format and then combined into a single digital stream. This process is called multiplexing. The multiplexed signal is then conveyed to the transmitter sites where it is converted into a digitally encoded frequency. This technology increases the number of stations potentially available to the listener and decreases the bandwidth resource requirement in any given area. A DAB radio is required to receive and decode the multiplexed signal and split out the individual stations. DAB+ is another version of DAB that can carry more stations using less capacity to achieve an equivalent technical quality. The number of radio channels that can be

¹⁶ Bauer Media Group merger inquiry [webpage](#).

transmitted on a given multiplex depends in part on the type of channel and hence the capacity allocated to each channel transmitted (eg a music station typically requires greater capacity than a talk station).

- 2.5 Many services broadcast digitally whether on DAB or by internet (online- IP services) are a 'simulcast' of the analogue service, particularly local services. Online-only radio services are unregulated, but their listenership is currently limited, although the large radio groups have launched a number of IP-only stations. The number of digital-only radio stations in the UK is growing, particularly at a national level, as radio station operators look at new ways to reach audiences.¹⁷
- 2.6 The Government has stated that it is committed to a digital future for radio.¹⁸ However, no radio station told us that it thought a switchover to a digital-only service is likely in the near future.

Types of provider

- 2.7 Radio services in the UK are provided by three distinct types of provider: the BBC, commercial radio providers and not for profit community radio operators. Services are provided on a national, regional or local basis by both the BBC and the commercial radio sector, but community radio only operates locally.
- 2.8 The means of funding and the regulatory framework differ across these three groups. Commercial radio's primary source of revenue is advertising, including sponsorship and promotions. The BBC's primary source of revenue is the licence fee, and community radio is funded mainly through a mixture of advertising revenue and grants.
- 2.9 Table 1 shows the number of analogue radio services as at March 2019.

Table 1: Analogue radio services March 2019

	<i>AM</i>	<i>FM</i>	<i>AM/FM total</i>
Local commercial	50	235	285
UK-wide commercial	2	1	3
BBC – UK wide	1	4	5
BBC local and Nations	26	46	46*
Community radio	11	270	281

Source: [Ofcom, Media Nations UK 2019](#) Figure 4.13.

* BBC local and nations AM radio are also broadcast on FM

¹⁷ Eg Bauer operates 14 digital-only stations on local or national DAB multiplexes, including Scala and Kisstory.

¹⁸ The Government has recently initiated a joint review with the radio industry to explore whether the conditions are right for a switchover, or whether further progress needs to be made. Ofcom told us that any switchover will be a matter for Government.

- 2.10 The BBC provides UK-wide, national and regional/local radio through a combination of AM and FM services. All of the BBC's national analogue services are simulcast on digital platforms, and the BBC also has six stations that are available on digital only.
- 2.11 As of March 2019, there were 285 local analogue commercial radio stations in the UK, of which 235 were broadcasting on FM and 50 on AM bands.¹⁹ There were three UK-wide analogue stations (talkSPORT and Absolute Radio on AM, and Classic FM), which also broadcast on digital,²⁰ and 40 UK-wide commercial digital stations with 447 services broadcast on local DAB multiplexes,²¹ many of which are a simulcast version of the analogue station.²²
- 2.12 Not for profit community radio stations typically cover a small geographical area with a radius of up to five kilometres and generally on an analogue platform. There are 281 community radio stations on air.²³

Radio listening and revenues

- 2.13 UK radio key listening metrics from Ofcom²⁴ are shown in Table 2.

Table 2: UK radio industry: key metrics

	Q1 2014	Q1 2015	Q1 2016	Q1 2017	Q1 2018	Q1 2019
Weekly reach of radio (% of population)	90.3%	89.3%	89.3%	89.3%	90.2%	89.4%
Average weekly hours per listener	21.5	21.3	21.0	21.2	20.8	20.9
BBC share of listening (%)	54.9%	54.4%	54.1%	52.8%	51.9%	51.4%
DAB digital radio take-up (adults) (%)	47.9%	49.0%	55.7%	57.9%	63.7%	66.5%
Digital radio listening share (%)	36.6%	39.6%	44.1%	47.2%	50.9%	56.0%

Source: [Ofcom, Media Nations UK 2019](#) Figure 4.1 (based on RAJAR data)

- 2.14 The overall reach for radio has remained high, with nearly 90% of the population listening to radio each week,²⁵ and the time spent listening has declined only slightly since 2013. The average radio listener spent 20 hours 54 minutes listening to radio in an average week in Q1 2019.

¹⁹ [Ofcom, Media Nations UK 2019](#).

²⁰ These stations are also available in England, Scotland and Wales on either the Digital One multiplex or Sound One (national Multiplex).

²¹ [Ofcom Communication Markets Report 2019](#).

²² In total there are 337 stations broadcasting on DAB. Of these, 31 are UK-wide commercial services and 11 are BBC UK-wide stations, source: [Ofcom Digital Radio report 2017](#). Bauer told us some stations are broadcast across a number of local areas to create a quasi-national station.

²³ [Ofcom, Media Nations UK 2019](#).

²⁴ [Ofcom, Media Nations UK 2019](#).

²⁵ 89.4% - [Ofcom, Media Nations UK 2019](#).

- 2.15 Listening on digital equipment (eg DAB and via internet, for example to smart speakers and mobile devices) now accounts for a greater share of listening than analogue radios. In Q1 2019 this increased to 56%, from 51% a year previously (See Table 2). For the national commercial stations, 83% of all listening is through digital platforms. This is up from 62% in 2015, likely to be driven by increases in the number of national commercial stations available on digital. DAB is by far the main digital platform (40.4% share of all listening hours overall), but the largest growth is in listening online, which grew by 20% between Q4 2018 and Q1 2019.²⁶
- 2.16 As shown in Table 2, while BBC radio accounts for the majority of radio listening (51.4%),²⁷ commercial radio's share and volume of listening are increasing. National commercial listening is growing while local commercial radio listening is in decline.²⁸
- 2.17 Commercial radio revenues are shown in Table 3. Commercial radio revenues were £572 million in 2018, similar to the previous year and substantially up from the unusually low levels achieved in 2013. In 2018, an 11% decline in local advertising was offset by a 5% increase in national advertising, a 7% increase in sponsorship and 18% growth in other relevant turnover (such as revenue from on-air competitions). National advertising revenues (in real terms) increased from £294 million in 2017 to £301 million in 2018, whereas local radio advertising revenue had decreased from £143 million to £129 million.²⁹ This was despite growth in music streaming and increase in listening to podcasts especially among 15-24 age group. Since 2010, revenues in real terms have increased by 7%, but local revenues have fallen by 20% while national revenues have increased by 21%.

Table 3: Commercial radio revenues

<i>£m constant prices adjusted for CPI</i>									
<i>Year</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Commercial sponsorship	109.2	104.0	108.3	101.6	99.5	100.6	107.3	103.3	107.5
Local commercial	161.0	148.0	153.2	151.5	144.0	139.8	141.6	143.2	128.5
National commercial	249.5	249.0	244.3	222.9	276.4	282.8	289.1	294.2	301.4
Total commercial	535.2	517.9	523.7	495.6	542.2	549.0	565.1	570.6	571.7

Source: Ofcom, [Communications Market Report – interactive data](#).

²⁶ Ofcom, [Media Nations UK 2019](#) page 83.

²⁷ As well as recorded commercial radio, a small share of listening is accounted for by 'other stations', including stations not measured on RAJAR such as international stations, community radio and commercial stations that do not subscribe to RAJAR.

²⁸ See Ofcom, [Communications Market Report 2017](#) s3.1.1., [Ofcom, Media Nations UK 2019](#).

²⁹ Ofcom, [Communications Market Report 2019](#). Figures are adjusted for CPI at 2018 prices.

Regulation and licensing

- 2.18 Commercial analogue and DAB broadcasting services are regulated by Ofcom in accordance with conditions set out in a broadcasting licence.³⁰ A commercial radio licence allows a station to broadcast to a specific licensed area (the Measured Coverage Area (MCA)) in accordance with a specified format. In practice and for marketing purposes the area within which an adequately audible signal is heard, the Total Survey Area (TSA), will be larger.³¹
- 2.19 Licences are awarded for a set period of time. Local analogue radio licences are awarded for up to 12 years, after which they are re-advertised.³² However, if an analogue station also broadcasts on DAB, the licence can be renewed automatically.³³ Local licences may also be renewed automatically for 12 years and then a further 7 years if they broadcast on a relevant local multiplex.³⁴ Ofcom told us that it does not plan at this time to advertise any new national or local analogue licences for commercial radio.³⁵
- 2.20 The output of every commercial radio station is regulated by a one-page Format document, which is part of the licence. This encapsulates the overall 'character of the service' a station is obliged to deliver as a condition of its licence, and also sets out the station's minimum hours of locally originated programming and its local news requirements. We were told that Format documents currently tend to be broadly written and are no longer as prescriptive as they once were.³⁶ Ofcom can consent to changes to the character of licensed services, but Ofcom must carry out a public consultation if it believes that the proposed change would 'substantially alter the [station's] character of service.'³⁷
- 2.21 DAB broadcasting requires a Digital Sound Programme licence, although these do not have content requirements. Separate licences are also required to operate multiplex services. There are currently three national, six regional

³⁰ Issued by Ofcom under the Broadcasting Acts 1990 and 1996 and Communications Act 2003.

³¹ The quality of analogue radio reception progressively degrades the further it is from the relevant transmitter as the signal strength decreases and it encounters interference from other radio signals.

³² It is very rare for licences to be surrendered, and if a station is under financial pressure it is likely to be sold to a different owner. Bauer said it was aware of only a single case of a surrendered licence since 2010, and because since that time Ofcom has further simplified station Formats, this has further reduced the likelihood of a licence handback.

³³ Sections 104A and 104B, Broadcasting Act 1990.

³⁴ When licences that are not to be renewed automatically reach the end of their term, they are generally pre-advertised to assess likely demand. If the incumbent licensee is the only entity to declare an interest, then a 'fast-track' re-award process is implemented.

³⁵ See [Summary of Hearing with Ofcom](#), 11 September 2019.

³⁶ See [Summary of Hearing with Ofcom](#), 11 September 2019.

³⁷ Section 106ZA Broadcasting Act 1990.

and 57 local multiplex licences. On average a DAB multiplex can have up to ten stations and a DAB+ multiplex can have up to 20 stations.³⁸ Multiplex licences are for an initial duration of 12 years, with a right to renew generally for a further 12 years. Ofcom told us that it intends to roll out small-scale local multiplexes (for small-scale DAB) once the necessary legislation has been approved.³⁹ Ofcom does not determine which stations should be carried on a multiplex; it is for the multiplex operator to contract with individual service providers.

- 2.22 Licensees are required to notify Ofcom of proposed changes of control relating to the licence. When control of an analogue radio licence changes Ofcom must carry out a review of the effects or likely effects of the change. Ofcom explained it has no power to block the change of ownership, but it can protect aspects of content currently broadcast, if it is not already specified in the Format document. However, Ofcom explained that in practice this measure is rarely used, in part this is because Formats are very broadly defined.⁴⁰
- 2.23 Ofcom has a duty to secure that local commercial radio stations provide an appropriate level of programmes including local material and, where such programmes are included in the service, that a suitable proportion of them are locally made.⁴¹ The extent of licence requirements in relation to locally made programmes depends on the licensed Format of the station. Local content can include local news, local information, comment, outside broadcasts, charity involvement, airplay for local musicians, local arts and culture and sports coverage. Regulatory requirements in relation to localness were relaxed in 2010. Ofcom's localness guidelines were also changed to allow FM local stations to co-locate and request to share all of their programming within areas approved by Ofcom, effectively allowing them to come together to become larger, more viable stations. For example, Global's Heart-branded services are broadcast in 33 licensed areas. Existing regional analogue stations were allowed to share all of their programming (with all local programming requirements removed), in return for providing a version of their programmed service on a national DAB multiplex.⁴² In late 2018 the amount

³⁸ Potentially more depending on the programme services carried and the type of content they broadcast. Bauer told us that a single multiplex can carry both DAB and DAB+ services.

³⁹ See [Summary of Hearing with Ofcom](#), 11 September 2019.

⁴⁰ See [Summary of Hearing with Ofcom](#), 11 September 2019.

⁴¹ Section 314, Communications Act 2003. Section 314 defines 'local material' as *material which is of particular interest to those living or working within (or within part of) the area or locality for which the service is provided or to particular communities living or working within that area or locality (or a part of it)*.

⁴² Ofcom considered that such a development could bring competition and choice in national services, a greater range and diversity of content for consumers, and the potential for new investment in programming. When carried on national DAB, these stations' local content would become less of a defining characteristic.

of local programming required under a local licence was reduced again from 7 to 3 hours a day on weekdays with no requirement at weekends.⁴³ In addition, changes were made that enable more programming to be shared between stations and the consolidation of studios into fewer hubs.⁴⁴

2.24 Bauer told us that Ofcom's deregulation of radio recognises the explicit challenges faced by local commercial radio stations, in particular the increased competition for listeners and advertisers and the shift in listening away from local to national radio services. It said that the deregulation is intended to assist in safeguarding their long-term viability, by allowing local stations to reduce the amount of local programming they air, broadening the definition of 'local', and allowing local stations to replace local programming with (higher quality) nationally networked programming.⁴⁵

2.25 Bauer referred to an Ofcom consultation document from June 2018,⁴⁶ which states:

It is now approaching a decade since Ofcom last carried out a review of its regulation of localness on radio. Since then, local analogue radio stations have faced increasing competition for both listeners and advertisers. This competition is coming from music streaming services such as Spotify and Apple Music, as well as from other radio services which are either not regulated (internet radio) or are regulated less than analogue services (DAB and other digital broadcast platforms).

Data from the independent radio audience research organisation RAJAR shows that there has been a noticeable shift in listening patterns over the past decade away from local commercial radio stations to national commercial radio. ... This is likely to reflect the fact that listeners now have a much greater choice of national radio stations available to them on the DAB platform. Over half of all radio listening is now to digital services (almost three-quarters of which is via DAB) ... There is also currently a difference, particularly with regards to 'localness' requirements, between the considerably 'lighter touch' regulation of services broadcast on the DAB platform compared to the

⁴³ This is the requirement for between the hours of 6am and 7pm if local news is provided at least hourly. If local news is not provided at least hourly there must be a minimum of 6 hours of locally-made programming.

⁴⁴ See <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness>.

⁴⁵ Bauer [Response to issues statement](#) paragraph 2.5.

⁴⁶ Ofcom [Localness of commercial radio: Proposals to amend guidelines 21 June 2018](#) paragraphs 2.17-2.22 (edited).

regulation of those which are broadcast on analogue (AM and FM) radio.

In their responses to the Government's 2017 consultation on commercial radio deregulation ... some of the larger radio station owners asked Government to create a more level playing field between analogue and digital services. Less prescriptive regulation in the analogue sector, they claimed, will enable them to be more flexible and compete more effectively against unregulated music streaming services and internet-only stations.

- 2.26 This Ofcom consultation document does not specifically refer to competition from non-radio advertising (other than streamed music services). It does indicate that the purpose of deregulation is to improve flexibility and to reduce costs. In its hearing, Ofcom told us that it had undertaken listener research to inform its decision to deregulate localness and found that some aspects of tight regulation of local content were no longer necessary as this was of lesser significance to listeners, and because of increasing competition within radio and from other formats. Ofcom acknowledged that bigger companies are likely to be better placed to take advantage of this through, for example, allowing national radio brands to be delivered locally.⁴⁷ Ofcom reported that following these changes the two main commercial radio groups, Global and Bauer, announced additional shared programming across their brands.⁴⁸
- 2.27 We consider that a possible consequence of the deregulation of localness is that it may facilitate further consolidation of networks, to take advantage of opportunities to reduce costs and share programming (see paragraphs 2.28 to 2.31).

Industry structure and consolidation

- 2.28 There has been consolidation in the local and regional commercial radio sector, with the largest groups being formed as the result of a series of mergers. The two main groups, who have led the consolidation, are Global and Bauer:
- (a) Global Media & Entertainment Limited (Global): Global is a media company founded in 2007. In 2008 it acquired GCap Media PLC (itself a merger of Capital Radio and GWR Group in 2004). In 2012 it acquired GMG Radio which also resulted in the divestment of a number of stations

⁴⁷ See [Summary of Hearing with Ofcom](#), 11 September 2019.

⁴⁸ Ofcom, [Media Nations UK 2019](#), page 78.

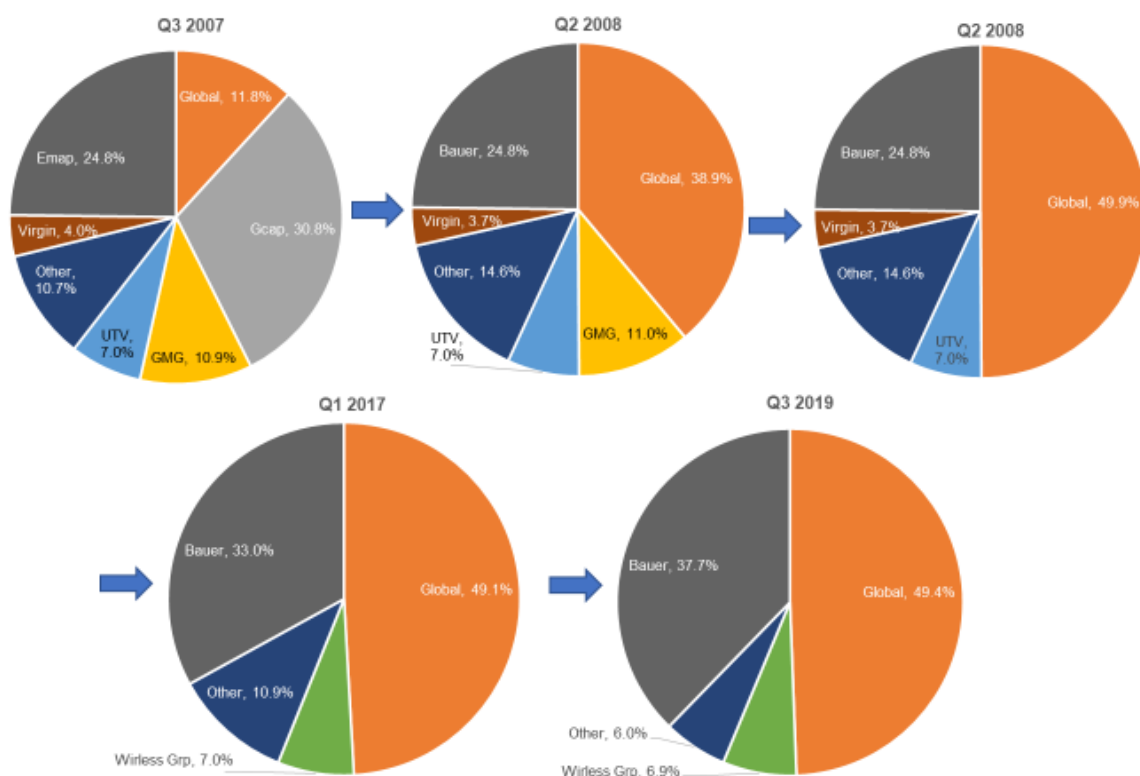
to Communicorp (a new entrant from Ireland). It has made further small acquisitions in recent years.⁴⁹ It operates radio stations on AM/FM and digital in the UK under the brands Capital, Heart, Classic FM, Smooth, LBC, Radio X and Gold (not all stations are available on all platforms). In the year ended 31 March 2018 it recorded revenues of £388 million with an operating profit of £83 million.

- (b) Global also sells national advertising on behalf of Communicorp UK (Communicorp). Although independently owned, Communicorp operates seven regional stations as part of Global's Capital, Heart and Smooth networks under a brand and licensing arrangement. Communicorp also owns one local station, XS Manchester.
- (c) Bauer is a multi-media company with interests in print, radio, television and digital operations. It is described in paragraphs 3.3 to 3.8. In the UK Bauer owns and operates a portfolio of commercial radio stations that broadcast locally and nationally under brands including Kiss, Absolute, Magic, Hits and Greatest Hits, and includes Jazz FM and Scala Radio. Bauer purchased Planet Rock in February 2013, this was followed by Absolute Radio at the start of 2014, Orion Media in May 2016 and Jazz FM in August 2018. In the year ended 31 December 2018 Bauer had total revenue of approximately £[REDACTED] in the UK. Its UK commercial radio operation generated revenue of approximately £[REDACTED].

2.29 These acquisitions have led to a consolidation of commercial radio hours into fewer and fewer radio services providers. This is illustrated in Figure 1 based on share of listening hours.

⁴⁹ eg The Bay, Lakeland Radio, 2BR and Juice 107.2.

Figure 1: Evolution of UK Commercial Radio Market Shares by Media Owner (2007-2019, based on RAJAR data for listening hours)



Source: CMA from Bauer data

- 2.30 The final pie-chart in Figure 1 is based on the post-Acquisitions position: it reflects Bauer's acquisitions of Jazz FM and the Acquired Businesses,⁵⁰ and recent acquisitions by Global (eg, The Bay, Lakeland Radio, 2BR and Juice 107.2). Bauer explained that it has included within 'Other' smaller operators such as Nation Broadcasting Group, Tindle Radio Group, JACK, Quidem, IOW Radio, More Radio, Dee Radio Group and KMFM. The data also includes Communicorp's business within Global's total despite its separate ownership, because it broadcasts under Global's branding (see paragraph 2.28(b)).
- 2.31 Overall, the industry is now heavily concentrated with Global accounting for 49.4% of commercial radio listening, and Bauer (post-Acquisitions) 37.7%. Bauer also submitted that Global (with Communicorp) wins a disproportionate share of national advertising revenue. It told us that [✂].

⁵⁰ Although during the period of the CMA's inquiry the Acquired Businesses are held and operated separately from Bauer in accordance with the CMA's initial enforcement orders of 1 March 2019 and 12 March 2019.

Advertising on commercial radio

- 2.32 Advertisers may reach radio audiences in two main ways: by purchasing airtime in commercial breaks or through sales promotion and sponsorship.

Airtime purchasing

- 2.33 Radio airtime may be bought on a national, regional or local basis. Major advertisers whose requirements include the ability to reach consumers across a wide geographic area are typically represented by a media buying agency. The main media buying groups negotiate terms, usually annually, with the large radio stations' sales houses. We refer to this as 'contracted advertising'.
- 2.34 The four main media buying groups are Group M, Omnicom, Dentsu Aegis and Publicis, each of which has several media buying agencies. Although they typically negotiate terms with media owners on behalf of all the agencies in the group, in order to leverage their combined buying power, they plan and book campaigns for clients on an individual agency basis according to that client's requirements. As well as these large buying groups, there are many medium and small agencies, some regional and some specialising in particular areas.
- 2.35 The large media buying groups often enter into share deals with large radio sales houses (ie Global and Bauer). [✂]. Bauer also said that there are volume deals [✂].
- 2.36 Airtime may be bought on a regional or local basis on behalf of clients who only require coverage in particular regions or who wish to 'upweight' their coverage in particular areas of the country. In the case of major national advertisers, purchasing/booking is through one of the media buying agencies under the terms of a contract. Regional and, more commonly, local advertising campaigns are more likely to be booked directly by an advertiser. Bookings by agencies or clients who have no contract with the radio station are 'non-contracted' sales.

Airtime sales

- 2.37 Radio airtime may be sold on a local, regional and national basis. Typically, for networks of local stations, local, low-value advertisers are dealt with by the station's local sales staff, whereas higher-value and in particular national advertisers are handled by the station's (or a third-party) sales house.

2.38 The three main commercial sales houses are operated by Global, Bauer and FRS.⁵¹

- (a) Global, in addition to selling national advertising for its in-house stations, sells national advertising on behalf of radio stations that have a brand and content licence agreement with it eg Communicorp (Quidem has also recently agreed such an arrangement).⁵² Global also sells national airtime around news bulletins under the Independent Radio News (IRN)/Newslink arrangements on behalf of all UK radio stations subscribed to IRN. The IRN/Newslink sales are attributed proportionately to the radio operators that contribute airtime to IRN.⁵³
- (b) Bauer sells national advertising for its in-house stations. It currently does not sell national advertising on behalf of other stations, although it has done so in the past (for Orion from 2014 to 2016).
- (c) FRS is a sales house that sells national advertising, sponsorship and promotion and digital campaigns on behalf of independent local radio stations. FRS represents 118 local radio stations across the UK.⁵⁴ FRS is jointly owned by Bauer (following its acquisition of UKRD) and Wireless. FRS is described in more detail in paragraphs 3.18 to 3.28.

2.39 In all cases the sales house is able to sell all or part of the geographical footprint of the radio stations that it represents. In the case of a sales house representing several local radio stations, it may combine their footprints to offer regional or national coverage.

Sponsorship and promotion

2.40 Sponsorship involves an advertiser associating its brand with a particular feature of the radio station's programming that has some relevance to it. For example, the station's weather forecasts might be sponsored by a holiday company or its traffic news by a motor dealership. Sales promotions may take many forms and, again, are usually related to the product or service being promoted and integrated with the station's programming rather than being

⁵¹ In addition, Wireless and GTN sell advertising on a national basis. GTN sells radio stations' airtime in exchange for providing traffic, travel and entertainment bulletins to those stations. In practice, the airtime that is sold is adjacent to the bulletins which GTN provides.

⁵² Under brand and content licence agreements, independent stations (such as Communicorp's stations) adopt the group's branding (eg broadcasting under Global's Heart or Capital brands), and carry its content, other than as required under localness obligations. The independent station receives national sales representation, but remains responsible for securing its own local advertising.

⁵³ Under the IRN/Newslink arrangements, stations contribute airtime around news slots which are sold by Global under an airtime agency agreement. That revenue is used to fund the provision of the IRN news service to all local radio stations. Some stations will receive a rebate of airtime revenue.

⁵⁴ [FRS website, about us](#), as at 26 November 2019.

inserted in commercial breaks. Typically, sales promotions attempt to involve the listener and encourage participation in, for example, a competition. Terms, including prices, for sponsorship and sales promotions are negotiated individually, on a case by case basis, rather than 'contracted.'

3. The Parties and FRS

- 3.1 This section sets out some background on the Parties, ie Bauer and the Acquired Businesses.
- 3.2 The UKRD Acquisition included Bauer purchasing UKRD's 50% interest in FRS. This section also sets out details of FRS and its activities, as background to our assessment of the competitive effects of the Acquisitions.

Bauer

- 3.3 Heinrich Bauer Verlag KG, trading as Bauer Media Group (Bauer), is a Germany-headquartered media company primarily active in Europe, but also in Russia, the United States and Australasia. It is a privately-owned company employing approximately 12,000 staff.
- 3.4 In the year ended 31 December 2018, it generated €[REDACTED] in revenue primarily from publishing (mainly from consumer magazines) and audio (mainly from selling inventory on a large portfolio of radio stations it owns and operates), but also from online comparison platforms, television and digital services for SMEs.
- 3.5 The same year, the UK accounted for approximately [REDACTED] (£[REDACTED]) of Bauer's global revenue. Bauer is the second largest radio operator and largest consumer magazine publisher, by revenue, in the UK. These two businesses together account for the vast majority of its UK revenue, with Bauer's UK commercial radio operations alone generating revenue of approximately £[REDACTED] in the year ended 31 December 2018.
- 3.6 Bauer entered the UK commercial radio market in 2008 by acquiring EMAP plc. It has since grown by launching new DAB stations, and also through a series of acquisitions. Notable examples of these include Absolute Radio (2014) and Orion Media (2016). The former increased Bauer's commercial share of listening from 26.2% to 31.1%, while Orion Media added a further 1.9%. Bauer's pre-Acquisitions share of [REDACTED] [30-40]%⁵⁵ is the second largest in the UK, see Table 5.

⁵⁵ [REDACTED]

- 3.7 Bauer's UK radio operations, both DAB and analogue, are primarily conducted through Bauer Radio Limited (Bauer Radio), a wholly owned subsidiary which owns and operates a portfolio of commercial radio stations that broadcast locally and nationally. Bauer Radio operates several networks of radio stations, the largest of which are Kiss, Magic, Absolute Radio and Hits Radio. Kiss, Magic and Absolute Radio are all listener- and trade-facing brands. Hits Radio is a trade-facing brand, with a number of the radio stations that form part of it retaining distinct listener-facing identities. On 30 January 2019, Bauer incorporated Scala Radio LP (renamed Bauer Media Audio LP (Bauer Media Audio) on 11 March 2019), another wholly-owned subsidiary of Bauer which operates Scala Radio, a national DAB radio station.
- 3.8 Bauer also owns a 30% stake in Sound Digital Limited, one of the two national commercial radio multiplexes licenced by Ofcom, as well as several local commercial radio multiplexes. Bauer additionally owns a 22.3% stake in Independent Radio News (IRN), a news service provider to commercial radio operators.

Celador

- 3.9 Celador is a UK-headquartered media company with interests in film and television production, TV format licensing, and radio ownership and operation. Prior to the Celador Acquisition, through Celador Radio Broadcasting Limited (Celador Radio), Celador owned 25 local FM radio licences, mainly in the South and East of England as well as a DAB-only station in Ipswich. Some of these licences were amalgamated so as to create 15 local radio stations. The Celador Acquisition was immediately followed by a divestment of four licences (comprising two radio stations) to Nation Broadcasting Limited (Nation), a media company which owns and operates radio stations in the UK (see paragraph 4.6). Celador Radio, and therefore Bauer, consequently retains 21 local FM licences plus the DAB-only licence, comprising 14 local radio stations.
- 3.10 The UK revenue of Celador's radio station businesses, in the financial year ended 30 September 2018, was approximately £[REDACTED]. Of this total revenue, £[REDACTED] was attributable to the Celador radio stations that have been acquired and retained by Bauer (ie excluding the radio stations Bauer divested to Nation).

Lincs

- 3.11 Lincs is a UK-headquartered regional media company with interests in radio broadcasting in the Lincolnshire / South Yorkshire area. Lincs does not own or

operate a non-radio business. Prior to the Lincs Acquisition, Lincs owned nine local FM radio licences (comprising eight local radio stations) and a DAB-only station in Suffolk, as well as a 40% interest in Ipswich 102 FM. Lincs also owned interests in the Lincolnshire (51%) and Suffolk (33.3%) digital multiplexes. The Lincs Acquisition was immediately followed by a divestment of one FM licence (comprising one station) to Nation (see paragraph 4.2). Lincs, and therefore Bauer, consequently retains eight local FM radio licences plus the DAB-only licence (comprising eight local radio stations), the 40% interest in Ipswich 102 FM, and all of Lincs' multiplex interests.

- 3.12 The UK revenue of Lincs, in the financial year ended 30 September 2018, was approximately £[X], of which £[X] related to the Lincs stations that have been acquired and retained by Bauer (ie excluding the radio station Bauer divested to Nation).

Wireless

- 3.13 Wireless is a UK media company which is wholly-owned by News Corp UK and Ireland Limited (News UK), itself a subsidiary of the US-headquartered News Corporation. It is primarily active in the UK and Ireland. In addition to commercial radio, Wireless owns and operates a digital services division incorporating Zesty and Tibus. These entities provide a range of services, including cloud hosting and streaming solutions, as well as digital strategy and transformation.
- 3.14 Prior to the Wireless Acquisition, Wireless' radio business comprised: (i) 32 national and local radio stations across the UK and Ireland (of which Bauer bought 12 local FM licences plus six DAB-only spin-off stations), (ii) local digital multiplexes across the UK (some of which Bauer has bought), (iii) national advertising sales houses in the UK and Ireland (Wireless Sales and Urban Media), (iv) 50% of FRS, and (v) a 3.4% interest in IRN.
- 3.15 Wireless sold to Bauer 12 local radio stations plus the six DAB-only spin-off stations, as well as digital multiplexes in Stoke, Swansea and Bradford (Wireless Acquired Business). Wireless has retained the following as part of its UK radio business: (i) national stations (Talk Sport 1, Talk Sport 2, Virgin Radio and TalkRadio), (ii) two DAB+ national stations (Virgin Chilled and Virgin Anthems), (iii) one local radio station in Northern Ireland and three in Scotland, and (iv) two local digital multiplex operators (Central Scotland and Aberdeen) and its shareholding in a third local digital multiplex operator (London II).
- 3.16 The UK revenue of the 12 acquired stations, in the financial year ended 30 June 2018, was approximately £[X].

UKRD

- 3.17 UKRD is a commercial radio broadcaster operating solely in the UK. It owns and operates 11 FM radio licences (comprising ten local radio stations) together with two DAB-only spin-off stations. In addition, UKRD operates an internet-only radio service, Encore Radio, featuring songs and news relating to musicals. UKRD has additional interests in three local multiplexes which cover the areas: North Yorkshire; Surrey and North Sussex; and Plymouth and Cornwall. The UK revenue of UKRD in the financial year ended September 2018 was approximately £17.26 million. On a continuing operations basis (after disposals unrelated to the Acquisitions) revenue in this period amounted to approximately £[REDACTED].

FRS

- 3.18 FRS, which is 50% owned by Wireless and 50% owned by UKRD, is a national sales house selling, for a commission, national radio advertising airtime to media buying agencies⁵⁶ on behalf of the local radio stations it represents.
- 3.19 Media buying agencies represent companies seeking to run advertising campaigns, usually on a national or regional basis, using radio, and which are likely to utilise networks of local radio stations. Media buying agencies do not normally negotiate directly with local stations due in part to the complexity this would involve. Sales houses offer a network of radio stations to these agencies.
- 3.20 FRS currently sells national radio advertising on behalf of 118 local radio stations,⁵⁷ including the radio stations forming part of the Acquired Businesses, in exchange for a commission. FRS' retained commission in 2018 was £[REDACTED] and its total revenue was £[REDACTED]. FRS employs 21 people, based in London and Manchester.
- 3.21 The stations currently represented by FRS are shown in the maps in Figure 2 and Figure 3, with the key to the maps in Figure 4. There is partial geographic coverage of the UK and it does not include all the major conurbations.
- 3.22 FRS holds an important position within the overall market structure of the commercial radio sector in the UK, as it is the principal supplier of

⁵⁶ All of FRS' customers are media buying agencies.

⁵⁷ This includes stations owned by two media owners, Quidem and Connect FM, who have since confirmed they have entered into national sales representation agreements with Global. [REDACTED].

representation for national advertising to independent local radio stations.⁵⁸ It allows these stations to access national advertising customers, whether as part of a national or regional bundle, or individually.

3.23 Media buying agencies may look to advertise on just one local radio station or several local radio stations at any one time (eg for a store opening), for multiple simultaneous local campaigns, or for regional and national campaigns where the use of local radio is intended to build scale in terms of the audience reached. Of FRS' retained commission in 2018:

(a) [X] were 'national' bookings, that is, bookings on all FRS stations.⁵⁹

(b) [X] were 'regional' bookings, that is, bookings on one or more of FRS' regional groupings of radio stations, but fewer than all stations.

(c) [X] were 'single station' bookings, that is bookings for individual or groups of stations, which are not in either category above.

3.24 FRS enters into rolling [X] contracts with radio stations to sell airtime and S&P slots on their behalf to media buying agencies. Commission rates paid by the stations represented by FRS [X].

3.25 On the other side of its market, FRS typically enters into negotiations with media buying agencies every [X]. These negotiations determine the trading rate (ie how much media buying agencies pay per minute of airtime). [X].

3.26 FRS trades with a large number of media buying agencies. Between 1 April 2018 and 1 April 2019, [X].

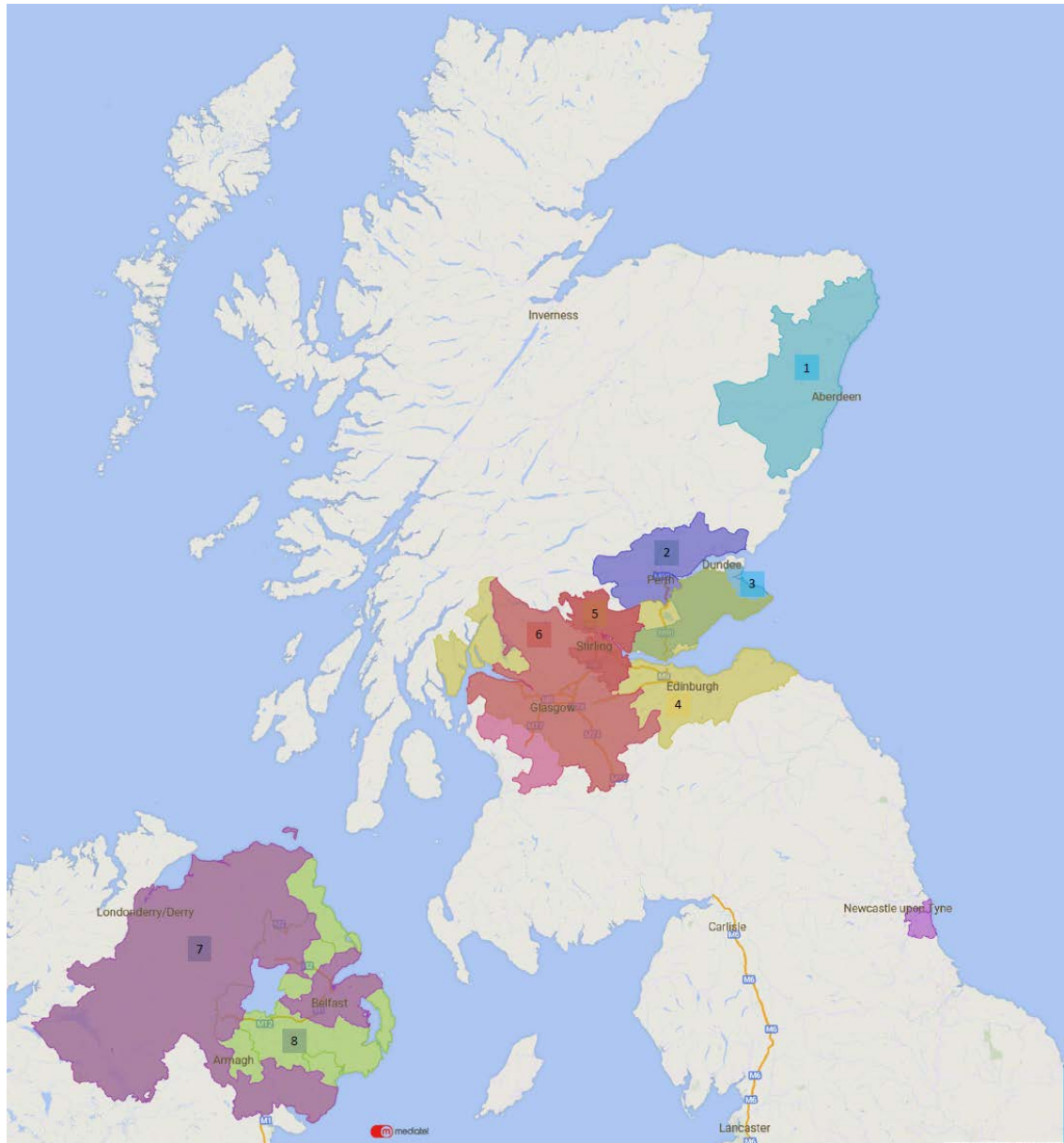
3.27 Bauer told the CMA that its intention was to represent the Acquired Businesses and, to the extent that they want to be represented by Bauer, any other third party station currently represented by FRS. [X]. Any station represented by Bauer would no longer be represented by FRS.

3.28 FRS' geographic coverage, if the Acquired Businesses [X] are excluded, is shown in Figures 5 and 6 with the key in Figure 7.

⁵⁸ Prior to the Acquisitions, FRS' joint owners, UKRD and Wireless, do operate radio stations. Global and Bauer have also provided or currently provide representation for local radio stations, this is discussed in paragraphs 201 to 203. However, both also operate their own local radio businesses.

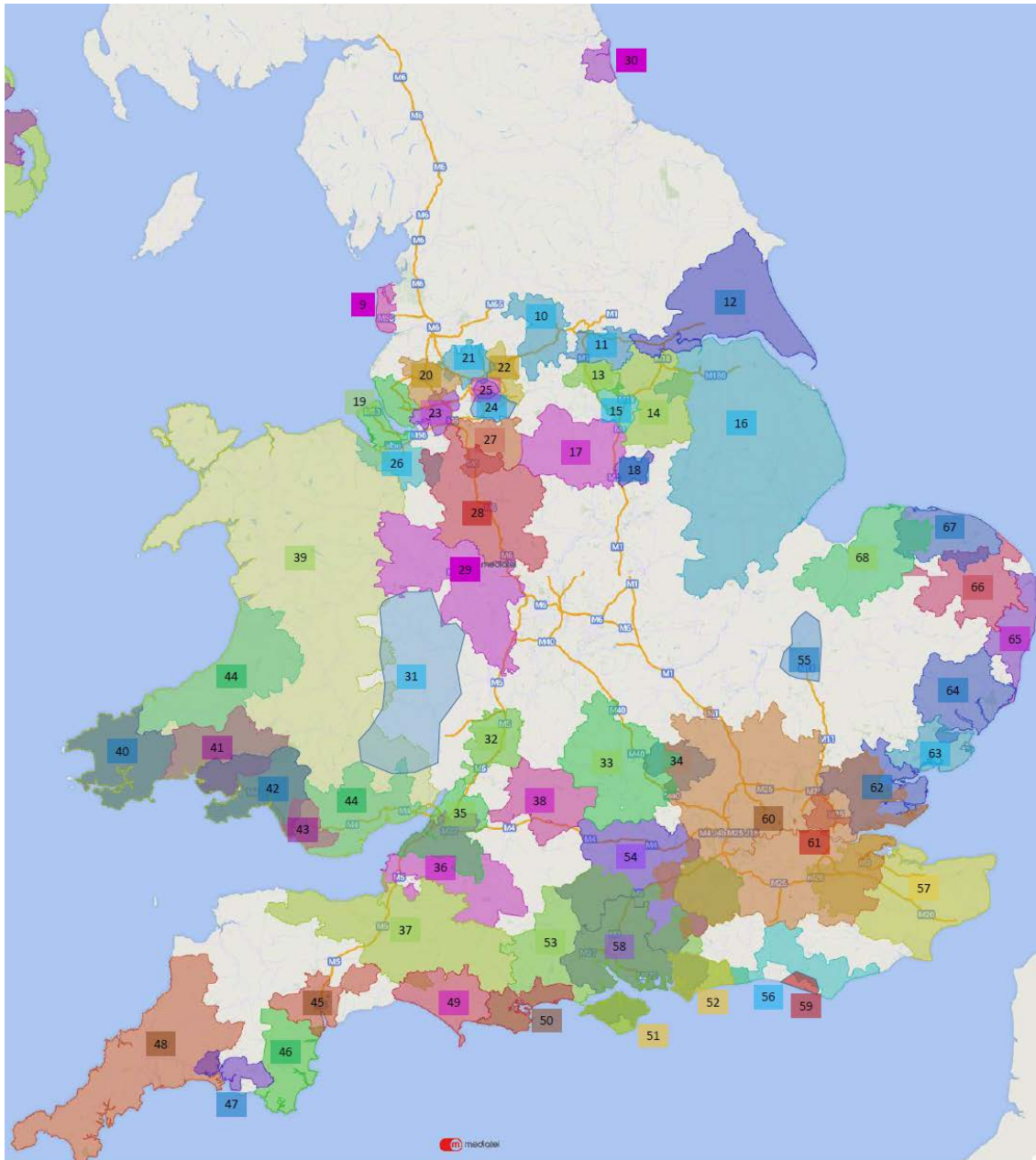
⁵⁹ We note that this is not comprehensive national coverage.

Figure 2: Map of FRS' current coverage – Scotland, Northern Ireland and North East England



Source: Bauer

Figure 3: Map of FRS' current coverage – England and Wales



Source: Bauer

Figure 4: Key for Figure 1 and Figure 2

1	Original 106 (Aberdeen)		
2	Wave (Dundee & Perth)		
3	Kingdom (Fife)		
4	Scottish Sun Hits, 80s and Greatest Hits (Central Scotland)		
5	Central FM (Stirling)		
6	Nation Radio Scotland (Glasgow)		
7	Q Radio (Northern Ireland)		
8	U105 (whole of Northern Ireland)		
9	Radio Wave (Blackpool) - Wireless		
10	Pulse 1, Pulse 2, Pulse 80s, Pulse Total Access (Bradford) - Wireless		
11	Ridings FM (Wakefield) – Lincs FM		
12	KCFM (Hull) - Nation		
13	Dearne FM (Barnsley) – Lincs FM		
14	Trax FM (Doncaster & Bassetlaw) – Lincs FM		
15	Rother FM (Rotherham) – Lincs FM		
16	Lincs FM (Lincolnshire) inc Compass (Grimsby) & Rutland – Lincs FM		
17	Peak 107 (Chesterfield) - Wireless		
18	Radio Mansfield (Mansfield - Independent		
19	Love 80s (Liverpool) – Dee Radio Group		
20	Wish FM (Wigan) - Wireless		
21	Tower FM (Bolton) - Wireless		
22	Revolution (Oldham) - Independent		
23	Wire FM (Warrington) - Wireless		
24	Imagine FM (Stockport) – Helius Media		
25	Gaydio (Manchester) - Independent		
26	Dee 106.3 (Chester) – Dee Radio Group		
27	Silk 106.9 (Macclesfield) – Dee Radio Group		
28	Signal 1, Signal 2, Signal 80s, Signal Total Access (Stoke) - Wireless		
29	Signal 107 (Wolverhampton, Shropshire) - Wireless		
30	Sun FM (Sunderland) - Nation		
31	Sunshine Radio (Hereford, Monmouth & S Shrops) – Murfin		
32	The Breeze (Cheltenham) - Celador		
33	Jack, Jack 2, Jack 3 (Oxford) – Oxis Media		
34	Mix 96 (Aylesbury) - UKRD		
35	Sam FM (Bristol) - Celador		
36	The Breeze SW (Bristol, Weston, Bath, Warminster) - Celador		
37	The Breeze (Yeovil, Shaftesbury, Bridgwater) - Celador		
38	Sam FM (Swindon) - Celador		
39	Dragon FM (Wales) - Nation		
40	Radio Pembrokeshire - Nation		
41	Radio Carmarthenshire - Nation		
42	Swansea Bay (Swansea) – Nation Swansea Sound, Wave, Wave 80s, Wave Tot Acc (Swansea) - Wireless		
43	Bridge FM (Bridgend) - Nation		
44	Nation Radio (South Wales) - Nation		
45	Radio Exe (Exeter) - Independent		
46	The Breeze S Devon (Torbay) - Celador		
47	Radio Plymouth (Plymouth) - Independent		
48	Pirate FM (Cornwall) - UKRD		
49	Wessex FM (Weymouth) - UKRD		
50	Fire Radio (Bournemouth) - Celador		
51	IOW Radio (Isle of Wight) – Media Sound Holdings		
52	Spirit FM (Chichester) – UKRD		
53	Sam FM (Solent) – Nation		
54	The Breeze (Thames Valley) - Celador		
55	Star Radio (Cambridge & Ely) - Independent		
56	More Radio (Sussex) – Media Sound Holdings		
57	KMFM (Kent) – Iliffe Media		
58	The Breeze (Solent) – Nation		
59	Gaydio (Brighton) – Independent		
60	Chris Country (London) – Independent Mi-Soul (London) – Independent Nation Radio (London) – Nation Gaydio (London) – Independent Spectrum (London) - Spectrum		
61	Time 107.5 (Romford) – Lyca Media		
62	Radio Essex (Essex) – Adventure Radio		
63	Dream 100 (Tendring) - Celador		
64	Town 102 (Ipswich) – Celador Ipswich 102 (Ipswich) – Lincs/Nation/Folder		
65	The Beach (Gt Yarmouth) - Celador		
66	Radio Norwich (Norwich) - Celador		
67	N Norfolk Radio (N Norfolk) - Celador		
68	KLFM (Kings Lynn) - Celador		
<u>Not shown:</u>			
Island FM (Jersey) – Tindle Radio			
Channel 103 (Guernsey) – Tindle Radio			
3FM (Isle of Man) - Independent			

Source: Bauer

Figure 5: Map of FRS' coverage following the removal of the stations of the Acquired Businesses and [REDACTED] – Scotland, Northern Ireland and North East England

[REDACTED]

Source: Bauer

Figure 6: Map of FRS' coverage following the removal of the stations of the Acquired Businesses and [REDACTED] – England and Wales

[REDACTED]

Source: Bauer

Figure 7: Key for Figure 4 and Figure 5

[REDACTED]

Source: Bauer

4. The Acquisitions

- 4.1 On 31 January 2019, Bauer bought the entire share capital of Celador Radio for £[REDACTED]. Following completion Bauer immediately divested The Breeze (Winchester, Portsmouth and Southampton), along with Sam FM (South Coast), to Nation. Bauer and Nation had agreed for this divestment to be automatically activated upon completion of the Celador Acquisition.
- 4.2 On 28 February 2019, Bauer acquired the entire share capital of Lincs for £[REDACTED]. Following completion Bauer immediately divested KCFM to Nation. Bauer and Nation had agreed for this divestment to be automatically activated upon completion of the Lincs Acquisition.
- 4.3 On 28 February 2019, Bauer bought from Wireless 12 local FM radio stations and associated licences, as well as digital multiplexes in Stoke, Swansea and Bradford, for £[REDACTED]. This comprised most of Wireless's local radio and local multiplex business interests.
- 4.4 On 31 March 2019, Bauer bought the entire issued share capital of UKRD for £[REDACTED].
- 4.5 Table 4 lists the radio stations purchased and retained by Bauer (ie excluding the stations sold to Nation, see paragraph 4.6).

Table 4: Radio stations purchased and retained by Bauer through the Acquisitions

<i>UKRD</i>	<i>Celador</i>	<i>Lincs</i>	<i>Wireless</i>
Wessex FM	The Breeze (Solent)	Lincs FM	The Wave (Swansea)
Eagle Radio	Fire Radio	Compass FM	Swansea Sound
KL.FM 96.7	The Breeze (Somerset)	Rutland Radio	Peak FM
Mix 96	The Breeze (Cheltenham)	Trax FM	Wave FM
Minster FM	Sam FM (Swindon)	Dearne FM	Wish FM
Pirate FM	Sam FM (Bristol)	Ridings FM	Wire FM
Yorkshire Coast Radio	The Breeze (Basingstoke & North Hampshire)	Rother FM	Tower FM
Spire FM	The Breeze (South West)		Pulse 1 (Bradford)
Spirit FM	The Breeze (South Devon)		Pulse 2 (Bradford)
Stray FM	The Beach		Signal 107
	North Norfolk Radio		Signal One (Stoke)
	Dream 100		Signal Two (Stoke)
	Radio Norwich		

Source: Bauer.

Note: This table excludes digital-only stations – Bauer acquired an additional ten DAB-only stations and one IP-only station.

4.6 Bauer submitted that it agreed to sell KCFM to Nation in order to eliminate an overlap in the Hull area. Similarly, it sold Sam FM (South Coast) and The Breeze (Winchester, Portsmouth and Southampton) to Nation to eliminate an overlap in the south coast of England. Bauer explained that it wanted to avoid any competition concerns being raised by the CMA because of these overlaps, and considered that Nation, as an experienced operator of local radio stations, would be a credible and effective local competitor in respect of any stations that it acquired.

Agreements with [REDACTED]

4.7 [REDACTED].

4.8 [REDACTED].

Rationale for the acquisitions

4.9 Bauer submitted that it had been considering the Acquisitions in the radio sector [REDACTED].

4.10 This strategy is reflected in Bauer's submitted rationale and investment case for the Acquisitions where it stated that:

(a) [REDACTED].

(b) The Acquisitions enable Bauer to compete more effectively with Global. [REDACTED].

(c) [REDACTED].

4.11 Bauer has since indicated to the CMA that its core rationale is to integrate the stations forming part of the Acquired Businesses into the Bauer station network, while also enhancing their appeal to listeners and therefore advertising customers. This would in turn enable Bauer to compete more effectively with Global. Bauer expects the four Acquisitions to collectively immediately increase Bauer's national share of commercial listening by [REDACTED] [0-10]%. Bauer's share of listening [REDACTED] would then stand at [REDACTED] [30-40]% (see Table 5).

4.12 [REDACTED]. Bauer considers this necessary to increase its share of national radio advertising revenue [REDACTED].⁶⁰ [REDACTED]. In addition, through the Celador Acquisition in particular, Bauer will significantly increase its reach in areas, like the south of England, where its reach had been considerably lower than Global's.

4.13 According to Bauer, by completing the four Acquisitions in very close succession, [REDACTED].

4.14 Post-Acquisitions, Bauer plans to increase the audience of the stations forming part of the Acquired Businesses (both in terms of an absolute increase and in terms of reaching new demographics) by leveraging Bauer's digital skills to build digital/IP listening, [REDACTED]. Bauer expects that this would further increase Bauer's national share of commercial listening which it expects would [REDACTED].

4.15 [REDACTED]. Bauer also submitted that Global (with Communicorp) wins a disproportionate share of national advertising revenue. [REDACTED].

4.16 [REDACTED].

4.17 Bauer told us it expects to increase the collective EBITDA of the Acquired Businesses [REDACTED]. Bauer submitted that this increase in EBITDA would result from [REDACTED].

4.18 Bauer has also submitted that it aims to sell inventory on radio stations currently represented by FRS (and not bought by Bauer) through agreements similar to [REDACTED]. [REDACTED]. Bauer submitted that this would [REDACTED] increasing Bauer's national share of commercial listening by an additional 2.7%.

⁶⁰ Bauer also said that its strategy included launches of new stations (such as Country Hits and Scala) and [REDACTED].

- 4.19 Bauer submitted that, through the mechanisms outlined above, it would be better able to [✂].

5. Jurisdiction

- 5.1 Under section 35 of the Act and pursuant to our terms of reference,⁶¹ we are required to investigate and report on certain statutory questions, the first being whether a separate relevant merger situation has been created as a result of each of the Acquisitions.

The elements of a relevant merger situation

- 5.2 A relevant merger situation has four elements:⁶²
- (a) Firstly, the transaction must involve at least two enterprises.
 - (b) Secondly, in completed merger cases, two or more enterprises must have ceased to be distinct as a result of the transaction.
 - (c) Thirdly, the enterprises must have ceased to be distinct at a time or in circumstances falling within section 24 of the Act.
 - (d) Finally, either the turnover test or the share of supply test must be satisfied.

Application to the Acquisitions

Two or more enterprises

- 5.3 Section 129 of the Act defines an enterprise as the activities, or part of the activities, of a business. Business is defined as including any undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge.
- 5.4 Each of (i) Bauer (via Bauer Radio and Bauer Media Audio) (ii) Celador, (iii) Lincs, (iv) UKRD and (v) the Wireless Acquired Business own and operate commercial radio services in the UK for gain or reward.
- 5.5 The Acquisitions of:

⁶¹ [Terms of reference](#).

⁶² Section 23 of the Act.

- (a) Celador, Lincs and UKRD were structured as share acquisitions, resulting in transfers of all assets, property interests, contracts, personnel and operations of each target company; and
- (b) the Wireless Acquired Business was structured as a share, asset and business sale, resulting in the transfer of assets, property interests, contracts, personnel and operations.

5.6 Accordingly, we consider that each of Bauer, Bauer Radio, Bauer Media Audio, Celador, Lincs, UKRD, the Wireless Acquired Business are enterprises for the purposes of the Act.

Have ceased to be distinct

- 5.7 The Act provides that two enterprises cease to be distinct enterprises if they are brought under common ownership or common control.⁶³
- 5.8 As a result of the Celador Acquisition, Bauer Radio (a wholly-owned, indirect subsidiary of Bauer) has ownership and control of Celador. Therefore, we are satisfied that as a result of the Celador Acquisition the enterprises of Bauer Radio and Bauer on the one hand, and Celador on the other, have ceased to be distinct for the purposes of the Act.
- 5.9 As a result of the Lincs Acquisition, Bauer Radio has ownership and control of Lincs. Therefore, we are satisfied that as a result of the Lincs Acquisition the enterprises of Bauer Radio and Bauer on the one hand, and Lincs on the other, have ceased to be distinct for the purposes of the Act.
- 5.10 As a result of the UKRD Acquisition, Bauer Radio has ownership and control of UKRD. Therefore, we are satisfied that as a result of the UKRD Acquisition the enterprises of Bauer Radio and Bauer on the one hand, and UKRD on the other, have ceased to be distinct for the purposes of the Act.
- 5.11 As a result of the Wireless Acquisition, Bauer Media Audio (a wholly-owned, indirect subsidiary of Bauer) has ownership and control of the Wireless Acquired Business. Therefore, we are satisfied that as a result of the Wireless Acquisition the enterprises of Bauer Media Audio and Bauer on the one hand, and Wireless Acquired Business on the other, have ceased to be distinct for the purposes of the Act.

⁶³ Section 26(1) of the Act.

At a time or in circumstances falling within section 24

- 5.12 The Celador Acquisition completed on 31 January 2019 and the CMA was first informed about completion on 15 February 2019. Following extensions⁶⁴ the four-month deadline for a decision under section 24 of the Act was 14 August 2019.
- 5.13 The Lincs Acquisition completed on 28 February 2019.⁶⁵ Following extensions⁶⁶ the four-month deadline for a decision under section 24 of the Act was 27 August 2019.
- 5.14 The Wireless Acquisition completed on 28 February 2019.⁶⁷ Following extensions⁶⁸ the four-month deadline for a decision under section 24 of the Act was 27 August 2019.
- 5.15 The UKRD Acquisition completed on 31 March 2019 and the CMA was informed about completion on 1 April 2019. Following extensions⁶⁹ the four-month deadline for a decision under section 24 of the Act was 22 August 2019.
- 5.16 The reference decision for all four Acquisitions was issued on 7 August 2019. Therefore, in the case of each Acquisition, the relevant enterprises ceased to be distinct at a time or in circumstances falling within section 24.

Turnover test and/or share of supply test

- 5.17 The turnover test⁷⁰ is not met in relation to any of the Acquisitions because the turnover of each of (i) UKRD, (ii) Celador, (iii) Lincs and (iv) the Wireless Acquired Business in the UK does not exceed £70 million.
- 5.18 The share of supply test in section 23 of the Act is satisfied where as a result of enterprises ceasing to be distinct, at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK are supplied by or to one and the same person.

⁶⁴ For failure to answer in good time two notices issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act.

⁶⁵ The CMA was first informed on 15 February 2019 that completion would take place on 28 February 2019.

⁶⁶ For failure to answer in good time two notices issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act.

⁶⁷ The CMA was first informed on 15 February 2019 that completion would take place on 28 February 2019.

⁶⁸ For failure to answer in good time two notices issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act.

⁶⁹ For failure to answer in good time a notice issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act accordance with section 25(4) of the Act.

⁷⁰ Set out in section 23(1) of the Act.

- 5.19 Bauer on the one hand and each of Celador, Lincs, UKRD and the Wireless Acquired Business on the other overlap in the supply of commercial radio services in the UK.
- 5.20 The share of supply test is met for each Acquisition by reference to the relevant parties' combined share of total: (i) national commercial radio revenues; and (ii) national commercial radio listening:
- (a) Bauer's [REDACTED] [30-40]% share of commercial radio revenues at the national level is increased by:⁷¹
- (i) [REDACTED] [0-5]% from the Celador Acquisition;
 - (ii) [REDACTED] [0-5]% from the Lincs Acquisition;
 - (iii) [REDACTED] [0-5]% from the Wireless Acquisition; and
 - (iv) [REDACTED] [0-5]% from the UKRD Acquisition.
- (b) Bauer's [REDACTED] [30-40]% share of commercial radio listening at the national level is increased by:⁷²
- (i) 1.1% from the Celador Acquisition;
 - (ii) 1.1% from the Lincs Acquisition;
 - (iii) 1.7% from the Wireless Acquisition; and
 - (iv) 1.3% from the UKRD Acquisition.
- 5.21 In light of the above assessment, we provisionally conclude that each of the Acquisitions has resulted in the creation of a separate relevant merger situation for the purpose of section 35(1) of the Act.

6. The counterfactual

- 6.1 The assessment of the effects of a merger and application of the SLC test involves a comparison of the prospects for competition with the merger against the counterfactual, which is the competitive situation which would have applied absent the merger.⁷³

⁷¹ RAJAR (Q4 2018), Radiocentre and Bauer estimates. [UKRD Final Merger Notice](#), Table 1 and [REDACTED].

⁷² Commercial listening data is from RAJAR (Q2 2019).

⁷³ [CC2 Revised](#), paragraph 4.3.1.

- 6.2 The counterfactual is an analytical tool which serves as a benchmark against which the expected effects of a merger can be assessed, and is determined as the most likely scenario that would apply in the absence of the merger. Due to its inherently hypothetical nature, the analysis to determine the counterfactual is generally not comparable in detail to that of the competitive effects of a merger.⁷⁴ Further, the CMA's analysis is affected by the extent to which events or circumstances and their consequences are foreseeable and the CMA seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not the counterfactual.⁷⁵
- 6.3 Against this framework, and in light of the Parties' submissions and the evidence we have received from third parties, we considered the appropriate counterfactual for the purposes of this inquiry by taking account of:
- (a) the extent to which the Acquisitions were linked by a common commercial strategy pursued by Bauer to bring about a [X], such that it would be artificial and inappropriate to consider each of the Acquisitions separately and involve unsubstantiated speculation and spurious accuracy to try to identify which, if any, combination of the Acquisitions would proceed absent any other;
 - (b) whether, as part of any such common commercial strategy, Bauer was likely to have proceeded with any other acquisition;
 - (c) the applicable counterfactual for each of the Acquisitions absent a sale to Bauer (including the subsequent sale of three acquired stations by Bauer to Nation);
 - (d) the extent to which [X] were likely to have proceeded absent the Acquisitions; and
 - (e) the applicable counterfactual for FRS absent the Acquisitions, taking into account the cumulative effect of certain of the above agreements and transactions on FRS.

⁷⁴ CC2 Revised, paragraph 4.3.1-4.3.2.

⁷⁵ CC2 Revised, paragraph 4.3.6.

Common commercial strategy

6.4 Before turning to each of the specific agreements and transactions referred to above, we set out Bauer's submissions, and the CMA's provisional conclusions, on the appropriate counterfactual to be used to assess the effects on competition of the four Acquisitions.

6.5 In this context, Bauer submitted that:

- (a) the Acquisitions are not commercially interdependent or contractually inter-conditional and were entered into with different counterparties at different points in time;
- (b) the Acquisitions were part of a number of options Bauer was considering ([§]) and Bauer would have pursued each individual Acquisition in light of the contribution that Acquisition made to Bauer's overall strategic aim of [§], irrespective of whether any of the other Acquisitions went ahead; and
- (c) as a result, the CMA is required to:
 - (i) assess separately whether each Acquisition gives rise to an SLC; and
 - (ii) determine the counterfactual for each Acquisition independently.

6.6 Bauer submitted that:

[a]part from the CMA's theory of harm regarding unilateral effects in the supply of local radio advertising, each of the CMA's remaining theories of harm turns on the combined effects of the [Acquisitions] on the viability of FRS. There is no analysis [in the materials provided by the CMA to Bauer] of whether any individual [Acquisition] (or any combination short of all four) would produce the same effect on FRS. For example, in relation to the Celador [Acquisition], if it is found that it does not individually give rise to the FRS related theories of harm, then there is no SLC in respect of that [Acquisition]. The counterfactual for the assessment of the other [Acquisitions] would therefore need to include the acquisition of Celador by Bauer.

6.7 We do not accept the proposition put forward by Bauer that the CMA is required to determine the counterfactual for each Acquisition independently. We consider that adopting such an approach would mean the CMA must ignore the cumulative effects on competition of a series of separate transactions that were [§] (see paragraphs 4.9 to 4.19).

- 6.8 Instead of carrying out an artificial and speculative exercise of assessing the Acquisitions individually or sequentially, our assessment of the competitive effects of the Acquisitions is to consider all of them together against a counterfactual of none of the Acquisitions having gone ahead. We do so because Bauer viewed the Acquisitions as [REDACTED].⁷⁶ Evidence obtained by the CMA indicates that the Acquisitions were a major part of Bauer's [REDACTED] 'overarching strategy' to grow its UK commercial radio audience in response to radio consolidation and [REDACTED]. Bauer viewed it as necessary [REDACTED].
- 6.9 Bauer explained its strategy relating to the Acquisitions at the Main Party Hearing as follows:
- Our ideal strategy was to land those acquisitions, and to land them hopefully as sequentially as we could do, which creates an environment like this as a consequence [ie a main party hearing in a phase 2 CMA inquiry], [REDACTED]. If we had staggered the acquisitions and started on one, [REDACTED]. Effectively, we get back to the place that we were talking about before, which is [REDACTED] and it does not really sit with our strategy [REDACTED].
- 6.10 We consider that – given this overarching strategy and Bauer's ultimate aim – bringing about [REDACTED] would only have been achieved by Bauer where it succeeded in executing this approach of multiple, closely timed transactions, ie Bauer had a universal approach to its acquisition strategy, designed to achieve a [REDACTED].
- 6.11 We note that the sections of the CMA's Guidelines⁷⁷ which cover the assessment of competing bids and parallel transactions do not address the precise set of facts brought about by these transactions (ie a series of parallel completed transactions involving the same purchaser carried out as part of a common acquisition strategy designed to achieve a cumulative impact on competition in a market). We are, therefore, assessing the counterfactual position for the Acquisitions on first principles: the counterfactual is an analytical tool intended to assist the CMA in assessing mergers and determining the effects on competition resulting from mergers. Assessing the Acquisitions together against a counterfactual of none of the Acquisitions having gone ahead achieves that aim. An artificial and speculative assessment of the Acquisitions individually or sequentially does not.

⁷⁶ Three of the actual transactions were included in the overarching project Lancaster (formerly Project Spitfire): Project Millionaire – Celador; Project Florence – Lincs; and Project Melbourne – Wireless. UKRD was under a separate project - Project Moon. However, all projects were covered by Project 94/20 which anticipated all transactions occurring as part of one global acquisition strategy. [REDACTED].

⁷⁷ [CC2 Revised](#), paragraphs 4.3.20 - 4.3.27.

- 6.12 In light of the above, we provisionally conclude that it is appropriate to consider the competitive effects of the Acquisitions together against a counterfactual of none of the Acquisitions having gone ahead. This approach avoids an artificial and speculative exercise of considering the Acquisitions individually or sequentially, which would result in the cumulative effect of the Acquisitions on the relevant markets not being adequately assessed.
- 6.13 Lastly, our approach also enables us to consider the impact of the Acquisitions on competition without importing into our assessment any spurious claims to accurate prediction or foresight⁷⁸ and means that it is not necessary to engage in undue speculation in the counterfactual by attempting to individually and sequentially assess the competitive impacts of every potential hypothetical permutation of the four Acquisitions.

The position of Bauer in the counterfactual

- 6.14 Whilst we note that Bauer had been considering a variety of acquisition options, we saw no evidence, sufficient for the purpose of the counterfactual assessment, that Bauer was in a position to execute alternative purchases at the time of the Acquisitions. Bauer [X].⁷⁹ Given [X] scale, such a transaction on its own would not have achieved the [X]. There were no other active discussions regarding acquisitions with third parties at the time of the Acquisitions.
- 6.15 Bauer also had the option of negotiating with third parties for them to carry its brands through a BCL or for it to represent them for national advertising through a national sales agreement (NSA). Whilst we note that following the Acquisitions Bauer agreed a [X] (see paragraphs 6.49 to 6.57) this by itself would not achieve the [X] that Bauer wished to achieve. It may have approached Celador, Lincs, Wireless and UKRD absent the Acquisitions to negotiate BCLs and/or NSAs as an alternative way to achieve [X]. However, we have no evidence that this was considered an option at the time by Bauer. Further, to the extent that there is any evidence of any of the Acquired Businesses having considered this, it was not their preferred option⁸⁰ Therefore, we consider that there is insufficient evidence to allow us to form

⁷⁸ [CC2 Revised](#), paragraph 4.3.6: ... 'the [CMA] will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary for the [CMA] to make finely balanced judgements about what is and what is not the counterfactual.'

⁷⁹ Bauer [X].

⁸⁰ Celador submitted that it may have looked at a licence agreement but that this was not its preferred option. Response to CMA questions (on the Counterfactual) 3 September 2019.

an expectation on whether BCLs or NSAs would have been negotiated with the Acquired Businesses absent the Acquisitions.

- 6.16 We provisionally conclude therefore that absent the Acquisitions, Bauer would have continued to operate and compete as it had done prior to the Acquisitions.

Counterfactual in relation to each of the Acquisitions and the subsequent station sales to Nation

- 6.17 In this section we first set out Bauer's overall submission on the counterfactual concerning each individual Acquisition before looking in more detail at the appropriate counterfactual for each of the Acquired Businesses, taking into account each of the businesses own specific circumstances.

Bauer's overall counterfactual submission

- 6.18 Bauer submitted that it was not appropriate to assume that the pre-transaction conditions of competition would have continued absent the Acquisitions under the counterfactual.⁸¹ Bauer believed that it was likely that all Acquired Businesses would have been sold under the counterfactual for various reasons and that Global and/or Communicorp would have been the most likely purchasers.⁸² Bauer considered that the sale of some of the acquired stations to Nation would also have occurred.
- 6.19 [X]. It viewed FRS as already in a strategically challenged position with the stations it represented lacking geographic coverage, audience share and the reach of either Bauer or Global. As such it was and would have become increasingly a materially reduced business in terms of scale and that this could have led to an accelerated decline or even failure. Furthermore, given Bauer's view of the counterfactual position of the Acquired Businesses, Bauer considered it likely that these businesses would have withdrawn from FRS and thus made FRS economically unviable under the counterfactual.⁸³

Celador

- 6.20 Bauer's view was that given its financial position and the age of its owner, Celador would have been sold to another radio operator, most likely in its opinion Global and/or Communicorp. Bauer considered it unlikely that UKRD

⁸¹ [Bauer response to Issues Statement](#), paragraph 3.2.

⁸² Bauer's opinion on the most likely purchaser is based on Global and Communicorp being the other main players in the market, their financial resources and history of having acquired businesses in the past.

⁸³ [Bauer response to Issues Statement](#), paragraphs 3.5 and 3.6.

or Wireless would have acquired Celador given their respective strategies. An alternative and less likely strategy in Bauer's view is that Celador would have entered into brand and content licensing/national sales representation arrangements with Global. It submitted that in either scenario Celador would have ceased its arrangements with FRS.⁸⁴

6.21 [REDACTED].

6.22 [REDACTED]. Global told us that [REDACTED].⁸⁵ [REDACTED].⁸⁶

6.23 [REDACTED],⁸⁷ [REDACTED].

6.24 [REDACTED].

6.25 We note that Celador's preferred option was [REDACTED]. However, there is insufficient evidence that there was a willing purchaser who was in sufficiently advanced discussions with the owner that a sale was foreseeable in the near future. [REDACTED]. There is no evidence to show that the owner was looking to sell at any valuation or that Celador was a failing business. [REDACTED].

6.26 As Celador submitted, absent such a sale it could have continued to operate [REDACTED]. We therefore provisionally conclude that the appropriate counterfactual absent the Celador Acquisition is the pre-merger conditions.

Lincs

6.27 Bauer submitted that Lincs may have continued as an independent radio operator. However, Bauer was of the strong view that Lincs was entertaining other offers for its business. It told us that it understood from Lincs that [REDACTED]. Bauer believed that it was likely, in the counterfactual, that Lincs would have considered a sale in the event that other operators were sold and left FRS. Bauer considered that Global and/or Communicorp would have been the likely purchaser in these circumstances.⁸⁸

6.28 Lincs is profitable. The 30 September 2018 statutory accounts show the group had increased turnover in 2018 to £6 million producing an operating profit of £513,541. This compared with £5.7 million turnover in 2017 producing an operating profit of £150,581.

⁸⁴ [Bauer response to Issues Statement](#), paragraph 3.3.1.

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [Bauer response to Issues Statement](#), paragraph 3.3.2.

- 6.29 [REDACTED]. Further it stated that [REDACTED].
- 6.30 Lincs had approaches in 2017 [REDACTED] and [REDACTED]. However, Lincs' position was that if it were to sell it was only looking to sell the entire business and not individual licences/stations.
- 6.31 Bauer approached Lincs in 2018 with an offer for the group which led to the Lincs Acquisition on 28 February 2019. Global [REDACTED] on the understanding that Lincs was open to offers. [REDACTED]. Global [REDACTED].
- 6.32 The financial evidence shows that Lincs is a profitable business. Whilst it stated that it would consider any realistic offer for the business it was not actively looking for a sale. We also note that Global was only really interested in one licence held by Lincs and not the whole group. It is not foreseeable therefore that in the absence of the Bauer offer that the whole of Lincs would have been sold to Global. In fact, Lincs [REDACTED].
- 6.33 We therefore provisionally conclude that the appropriate counterfactual absent the Lincs Acquisition is the pre-merger conditions.

Wireless

- 6.34 Bauer believed News UK's long-term strategy was to exit local radio. As such, it believed under the counterfactual Wireless would likely have sold some or all of its existing stations to either Global and/or Communicorp. Bauer submitted that these stations would therefore have stopped using FRS.⁸⁹
- 6.35 [REDACTED].
- 6.36 [REDACTED].
- 6.37 We therefore provisionally conclude that, absent the Wireless Acquisition, the Wireless assets sold to Bauer would have been retained in the wider Wireless radio business and operated under pre-merger conditions.

UKRD

- 6.38 Bauer submitted that UKRD had decided to exit radio and therefore in the counterfactual would have sold its stations to one or more purchasers. This aligns with UKRD's exit planning detailed below. According to Bauer, the most

⁸⁹ [Bauer response to Issues Statement](#), paragraph 3.3.3.

likely purchasers would been Global and/or Communicorp and potentially Bauer (if the stations were split up).

- 6.39 UKRD is loss making. However, it had reduced its losses in the last financial year to 30 September 2018⁹⁰ and had seen [REDACTED].⁹¹ [REDACTED].
- 6.40 [REDACTED].
- 6.41 [REDACTED].
- 6.42 Global told us that [REDACTED].
- 6.43 We consider that whilst UKRD was [REDACTED]. Whilst UKRD was loss making, it had a plan in place (which was perceived to be working) to develop the business in such a way that it would achieve [REDACTED]. It told Global that it was not for sale in February 2019, although we note this could have been because of its discussions with Bauer. However, Global [REDACTED] and would have represented it only under a brand license agreement. This option would not have provided the exit UKRD's shareholders were seeking. A BCL with [REDACTED] following an acquisition by [REDACTED] of UKRD is highly speculative given that [REDACTED].
- 6.44 Further, there is nothing in the board documents or finances that suggest that UKRD was in such a perilous situation that it would need to be sold at any price. It was also not in a sale process with any other potential purchaser except Bauer.
- 6.45 In light of the above, we provisionally conclude that the most likely counterfactual is the pre-merger conditions ie UKRD was looking to sell but for the foreseeable future would have continued to operate in the market as it did pre-merger albeit that it may have considered withdrawing further stations from FRS.

Bauer/Nation transaction

- 6.46 On 28 February 2019, Bauer sold The Breeze (Winchester, Portsmouth and Southampton), Sam FM South Coast and KCFM to Nation Radio. These radio stations were part of the Celador and Lincs Acquisitions. Bauer explained that it sold these stations immediately in order to eliminate potential competition issues, based on their local geographic overlaps with Bauer stations.

⁹⁰ The UKRD group accounts for the year ended 30 September 2018 showed that revenue from continuing operations fell marginally from £15.9 million to £15.6 million with operating loss reducing from £524,000 to £251,000.

⁹¹ [REDACTED].

6.47 Bauer believed that if the transactions with Celador and Lincs had not happened then the sale of The Breeze (Winchester, Portsmouth and Southampton), Sam FM South Coast and KCFM to Nation Radio would still have happened. This was based on Bauer's view that absent Bauer acquiring Celador and Lincs these businesses would still have been sold in the short term.

6.48 However, because we consider that in the counterfactual none of the Acquisitions would have occurred, it follows that neither the subsequent sale of these stations to Nation by Bauer nor to Nation by any other party would have happened. Accordingly, we provisionally conclude that the station sales to Nation do not form part of the counterfactual.

[X]

6.49 [X].

6.50 [X].

6.51 [X].

6.52 [X].

6.53 [X].

6.54 Bauer further submitted that it had been approached by Lincs looking for it to provide national representation following its entry into an NSA with Orion.⁹² It said it had also been approached by four other third parties since 2016 looking for representation.⁹³ None of these discussions resulted in an NSA [X].

6.55 [X].

6.56 [X].

6.57 [X].

⁹² Third parties that approached Bauer for national sales representation following its agreement with Orion were Lincs and Nation.

⁹³ The third parties were Celador, Kingdom FM, Panjab Radio and KMFM.

FRS

- 6.58 Bauer submitted that the Acquired Businesses would still have been likely to be sold relatively quickly in the absence of the Acquisitions, and that likely purchasers, [REDACTED], would have then taken representation away from FRS.
- 6.59 Bauer also argued that even if this had not happened FRS would have ceased to be profitable in the short to medium term and would have exited the market.
- 6.60 Bauer argued FRS had lost stations including five ex-FRS stations acquired by Global/Communicorp between 2016 and 2019, and five stations which UKRD, one of the two shareholders of FRS, had removed from FRS representation in 2017. Other stations were actively considering their options prior to the Acquisitions and [REDACTED].⁹⁴ Therefore it was not reasonable to assume that other stations would not continue to leave FRS in the counterfactual.
- 6.61 Bauer further submitted that FRS listener reach had fallen [REDACTED] between 2015 and 2018 whilst overall commercial listening hours were growing. Its revenue had fallen by [REDACTED] between 2016 and 2018 and its EBITDA in that period by [REDACTED]. Bauer considered that it was therefore reasonable to assume that revenue and EBITDA would continue to fall. Bauer submitted that if revenue declined at the same rate as FRS' last financial year ([REDACTED]), with no loss of stations, FRS would not be a viable business after [REDACTED]. This Bauer considered was highly conservative and unlikely given the rate of station loss in the past and the current financial situation of a number of radio stations that it believed would lead them to look elsewhere for national representation. Further details of Bauer's calculations are included in Appendix C.
- 6.62 Bauer argued that FRS was not in a position to arrest this decline as:
- (a) It lacked the ability to compete effectively for national advertising, with it being unable to offer agencies the scale, coverage and efficiency they obtain from Bauer and Global;
 - (b) It was unable to respond to changing listener habits and in particular to fully monetise IP listening;
 - (c) Local radio listening is falling, and stations are financially challenged and not able to take full advantage of Ofcom's deregulation; and

⁹⁴ Bauer submitted that [REDACTED]. Quidem had also entered into a national representation agreement with Global.

(d) There is increased competition from non-radio media.

- 6.63 Some significant radio stations we contacted expected that FRS would struggle to retain its portfolio of client stations, and that some of FRS' client stations may seek representation from Bauer and Global. Quidem has an agreed NSA deal with Global and will leave FRS. We were told that FRS stations achieve a far lower share of national advertising revenues than their share of radio listening.⁹⁵ In part, FRS is disadvantaged because of its relatively small size and because its stations are of disparate identity and limited geographic coverage, meaning it is comparatively less attractive to national advertisers than Bauer and Global.
- 6.64 Most of FRS' costs are fixed and so any substantial decline in turnover would mean it would likely rapidly become loss-making (see Appendix C). However, we note that FRS is currently profitable and its pricing is stable. Most of FRS' client stations, apart from the Acquired Businesses are small, so there would be no substantial impact on FRS' profitability in the foreseeable future if individual stations did leave.
- 6.65 We agree that the sizes of the Acquired Businesses are significant relative to FRS. However, as set out in paragraphs (6.26, 6.33, 6.37 and 6.45) we consider that these businesses would not have been sold immediately in the counterfactual. As such they, [X] would have continued to use FRS as their national advertising representative at least in the foreseeable future.
- 6.66 Further, even if a potential alternative purchaser or purchasers had existed for the Acquired Businesses, there is no evidence that such a purchaser or purchasers would necessarily have ceased representation arrangements with FRS and thereby adversely impacted FRS' viability in the foreseeable future. Whilst Bauer claims that it is likely that they would have been acquired by Global or Communicorp, there is insufficient evidence to enable us to form an expectation sufficient to support a counterfactual that this would have happened.
- 6.67 We do not consider that FRS is a failing firm.⁹⁶ At least in the foreseeable future, we consider that in the counterfactual FRS would have remained active providing national advertising sales representation to radio stations.
- 6.68 We therefore provisionally conclude that absent the Acquisitions, the appropriate counterfactual is that FRS would have continued as an

⁹⁵ FRS pre-acquisition ([X]): share of commercial listening [X] [5-10]%; estimated share of national airtime revenue [X] [0-5]%, see Table 5.

⁹⁶ See [CC2 Revised](#), paragraphs 4.3.8-4.3.18.

independent business owned by UKRD and Wireless, operating on the same basis as was the case pre-merger.

Prospects for FRS in the longer term

6.69 Notwithstanding the provisional conclusion on the FRS counterfactual, in light of the evidence we have received, we also considered whether, over a longer period, FRS would have continued to operate absent the Acquisitions. That is, we are considering a period beyond the foreseeable future – whereas the counterfactual deals with the period which is reasonably foreseeable, here we address a period where developments are subject to a greater degree of conjecture. This is inherently uncertain, as precisely what events could happen, and their timing, cannot be predicted.

6.70 In the longer term, we acknowledge that FRS' position is potentially vulnerable due to the following industry specific factors:

- local radio is in decline as national commercial radio is taking share from it (see paragraph 2.16);
- because [X], more radio stations may contemplate seeking representation from Bauer or Global;⁹⁷
- because of Ofcom's decisions to relax localness requirements (which appear in part to be motivated by a desire to help local radio stations maintain their viability), it is now much easier and more cost effective for independent stations to enter into BCLs and as a result NSAs with the brand licensee; and
- there is a process of mutually reinforcing interaction between station exits and declining advertising revenues. A loss of significant scale is likely to make FRS less attractive to advertisers and so increase the likelihood of further stations choosing to leave.

6.71 Bauer's view was even assuming that FRS were able to maintain the stations that it representing, which Bauer considered to be an unrealistic scenario, FRS' earned revenue would continue to reduce as it had done in its last two financial years. Cost savings would be able to be made but its view was these

⁹⁷ We received 15 responses from FRS customers excluding the Acquired Businesses and Nation. With the exception of Quidem who approached Global in May 2018 [X]. Since the announcement of the Acquisitions, [X].

would be limited and as a result, FRS would not be a viable business after [REDACTED] (see Appendix C).

- 6.72 We have no way to assess the likelihood of Bauer's forecast occurring with any degree of certainty. However, FRS's budget for FY2020 shows that earned commission is forecast to [REDACTED] from FY2019 to [REDACTED]⁹⁸ (see Appendix C). Given that we consider that [REDACTED] would still be looking [REDACTED] and it provided revenue of around £[REDACTED] in the last financial year, the loss of just this one customer would push FRS close to breakeven. There is therefore a prospect of FRS becoming unprofitable over time and we have seen no evidence that its current owners would have reason to maintain a loss-making business.
- 6.73 While the speed and extent to which this might happen is unpredictable, in light of the factors noted in paragraph 6.70, it seems likely that one or more of the Acquired Businesses would have been sold and removed from FRS representation within a number of years beyond the time period relevant to the counterfactual. A loss of significant scale is likely to make FRS less attractive to advertisers and so increase the likelihood of further stations choosing to leave. Because FRS' profitability is dependent on maintaining a scale of turnover (as potential for cost-savings in proportion to scale appear limited) it is likely that it would no longer be economically viable to continue in such circumstances. While the timing of closure is uncertain, we provisionally conclude that the most likely longer-term position for FRS is that it would have exited the market at some point, after the foreseeable counterfactual period but within, at most, ten years.

7. Market definition

Introduction

- 7.1 The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of a merger. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.⁹⁹ Market definition in a merger inquiry identifies the set of alternative products (and areas) that exercise a significant competitive constraint on the merging parties. This is typically based on considering how customers would respond to an increase in price of the merging parties' offerings. The closest alternatives, those that would

⁹⁸ FRS stated that it [REDACTED].

⁹⁹ [CC2 Revised](#), paragraphs 5.2.1 and 5.2.2.

prevent a monopoly supplier of those alternatives from raising prices, from the relevant market.¹⁰⁰

- 7.2 The boundaries of the market do not determine the outcome of our analysis of the competitive effects of a merger in a mechanistic way. In assessing whether a merger may give rise to an SLC, we may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.¹⁰¹
- 7.3 There are normally two dimensions to the definition of the relevant market: a product dimension and a geographic dimension. The relevant product market is a set of products that customers consider to be close substitutes ie in terms of utility, brand or quality. The relevant geographic market may be local, regional, national or wider.¹⁰²
- 7.4 This section looks at:
- (a) The supply of radio advertising.
 - (i) Product scope.
 - (ii) Geographic scope.
 - (b) The supply of representation for national advertising to independent radio stations.

The supply of radio advertising

Product scope

- 7.5 Bauer and the Acquisitions overlap in the supply of commercial radio services in the UK.
- 7.6 Commercial radio is a two-sided market. Suppliers compete to serve both advertisers (who pay to advertise) and listeners (who generally do not pay). The size of each group of customers affects the profitability of the radio

¹⁰⁰ Formally this is the narrowest candidate group of products or areas (a 'candidate market') that satisfies the hypothetical monopolist test. This test is satisfied if a hypothetical firm that was the only present and future seller of the products in the candidate market would find it profitable to raise prices. Source: [CC2 Revised](#), paragraph 5.2.10.

¹⁰¹ [CC2 Revised](#), paragraph 5.2.2.

¹⁰² [CC2 Revised](#), paragraph 5.2.5.

station, because the value that advertisers realise from using the radio station depends on its listenership.

7.7 In our provisional findings, we have focussed our assessment on the effect of the Acquisitions on the advertisers' side of the market, and not on radio listeners. This is because, while the Acquisitions could impact on local radio listeners' range of choice, radio listeners can turn to national commercial stations, and also BBC national and local radio stations which do not carry advertising but account for around 51% of radio listening in the UK.¹⁰³ Also, Ofcom's licensing requirements include a requirement to protect the interests of listeners.¹⁰⁴ Further, insofar as the Acquisitions may reduce competition and choice in regard to local radio stations, the analysis of competition for local advertising can act as a proxy for assessing this effect. Therefore, we have not considered or defined the market for listeners.¹⁰⁵

7.8 In terms of product scope, we consider the following:

(a) Types of radio advertising

(b) Non-radio constraints

Types of radio advertising

7.9 The two main revenue streams for commercial radio providers are the sale of airtime advertising (broadcast in programmed commercial breaks) and sponsorship and promotion.¹⁰⁶

7.10 As discussed in paragraphs 2.33 to 2.39, advertisers seeking airtime typically either purchase this from media buying agencies or directly from the radio station/group, and airtime is accordingly sold on a contracted or non-contracted basis.

7.11 We consider that, absent exceptional circumstances, the conditions of competition for airtime advertising and sponsorship and promotion advertising

¹⁰³ [Media nations: UK 2019](#), Ofcom, Figure 4.8.

¹⁰⁴ Ofcom's statutory duties include ensuring that: a wide range of high-quality radio programmes are provided, appealing to a range of tastes and interests; and television and radio services are provided by a range of different organisations. Source: [Ofcom website](#).

¹⁰⁵ As a result of the Acquisitions, Bauer has acquired interests in eight local multiplexes. It already holds interests in some 15 local multiplexes. The Acquired Multiplexes do not overlap with the local multiplexes Bauer already owns. For reasons set out in the reference decision (CMA, Decisions to refer, 30 August 2019), the CMA concluded at phase 1 that the Acquisitions were not likely to give rise to an SLC in relation to either horizontal or vertical theories of harm. Therefore, we have not investigated this possibility and have not defined a market for multiplexes.

¹⁰⁶ CMA Case, [Global Radio / Juice](#), 5 October 2015, paragraphs 20-27 (providers may have ancillary revenues, such as some digital revenues); Competition Commission case, [Global Radio / GMG](#), 21 May 2013, paragraphs 5.17-5.20; OFT Case, [Bauer Radio Ltd / TIML Golden Square Ltd](#), 20 December 2013, paragraphs 10 and 11.

are similar, as advertisers have access to the same sets of stations supplying advertising.

- 7.12 We did not receive evidence supporting a departure from the approach taken in previous radio mergers. Consistent with that approach, we therefore did not consider contracted, non-contracted, and sponsorship and promotion advertising as separate markets. However, we have taken into account the existing alignments between contracted and non-contracted advertising and the particular levels of geographic radio advertising competition described in the competitive assessments in sections 8 to 11.

Non-radio constraints

- 7.13 On the advertiser side of commercial radio there are two main types of customers: national advertisers, who wish to reach regions across the UK, and local advertisers, who wish to target smaller and more specific regions with their advertising. We consider the product scope separately for each of these groups of customers, as it is possible these customers face different alternatives to radio advertising.
- 7.14 When considering non-radio constraints, we are conscious that local and national advertisers can use a variety of different means to advertise and promote their products and services. However, the relevant question is whether non-radio advertising alternatives form a sufficient competitive constraint on radio advertising, such that they would on their own constrain radio stations.

National non-radio constraints

- 7.15 This section assesses whether the market for radio advertising should be wider than radio and include, for example non-radio advertising such as other audio advertising platforms and/or digital advertising platforms.
- 7.16 In previous radio mergers, the CMA excluded non-radio advertising from its market definition.¹⁰⁷ This is because there are certain features of radio as an advertising medium which mean it is well positioned to meet the needs of certain advertisers, for example it is difficult for listeners to avoid adverts when listening to commercial radio and people often listen to the radio whilst doing other tasks which may be relevant to some products being advertised.

¹⁰⁷ CMA Case, [Global Radio / Juice](#), 5 October 2015, paragraph 32; Competition Commission case, [Global Radio / GMR](#), 21 May 2013, paragraph 5.44; OFT Case, [Bauer Radio Ltd / TIML Golden Square Ltd](#), 20 December 2013, paragraph 38.

- 7.17 Bauer submitted that radio advertising is part of a wider audio advertising market. In addition, Bauer said that radio is competing heavily for advertising spend with digital platforms, such as Facebook and Google. Although it also submitted that national radio revenues and prices have remained resilient to the threat from digital advertising, and that up until 2019 commercial radio has had five years of record revenues. Bauer further submitted that the growth of digital media as an alternative to radio has largely taken effect on radio at the local level.
- 7.18 Bauer submitted that media buying agencies can credibly threaten to move at least some of their radio budget to other forms of media such as online, though it noted that in some cases clients explicitly request radio advertising.
- 7.19 Bauer has previously submitted to the CMA that radio advertising has some unique qualities¹⁰⁸ not precisely replicable by other forms of media advertising.^{109,110}
- 7.20 All national radio companies questioned¹¹¹ said that, they face competition from multiple forms of non-radio advertising. They also all emphasised the growth of digital players, such as Google and Facebook, and said they internally monitor these.
- 7.21 We asked media buying agencies and national advertisers which non-radio forms of advertising they considered when buying their (or their clients') national radio advertising.¹¹² Of the 35 customers that responded, only six either did not consider purchasing any alternatives to radio advertising or did not consider any of the alternatives as suitable. The remaining 29 customers listed other types of advertising as alternatives to national radio advertising, but only two of these rated any other form of advertising as a very close alternative.¹¹³ Overall, television and digital advertising were the forms of advertising that were rated as closest alternatives to radio advertising, but even these were only considered by around half of the 35 customers that responded and were rated closer to the middle of our scale of closeness than the top (the top being very close alternatives). Given these responses, we

¹⁰⁸ [Global/GMG](#), paragraph 5.29.

¹⁰⁹ Though Bauer more recently noted that this does not mean that they are not substitutable.

¹¹⁰ Although not submitted directly, a Bauer internal document that analyses why customers use radio states that radio is a 'last minute' medium because an ad can be created and booked within days, it is efficient at targeting (time/place/profile) and is a trusted medium. We infer that these qualities relate to Bauer's assessment of radio as a unique advertising medium.

¹¹¹ Global, Wireless and GTN.

¹¹² We asked these customers what, if any, other forms of advertising they considered when purchasing radio advertising. We further asked them to rate how close these other forms of advertising were to radio. We used a five-point scale where the bottom was not at all and the top were very close alternatives.

¹¹³ Television in both instances.

consider that whilst customers believe there are alternatives to radio advertising, they are not close alternatives.¹¹⁴

- 7.22 This is consistent with Bauer's internal documents, which generally monitor other radio competitors much more closely than other audio, press or digital advertising competitors. However, Bauer submitted that there is little data publicly available on digital advertising and the paucity of such data necessarily is reflected in the content of Bauer's internal documents.

- *Our views on national non-radio constraints*

- 7.23 We consider that, given the third-party evidence, non-radio alternatives act as a constraint for national radio advertising to some extent. This is particularly true of digital advertising and television. However, also as a result of the third-party evidence, we consider that customers do not see other forms of advertising as close alternatives. This is also consistent with Bauer's submission that national radio advertising has remained resilient against the growth of digital advertising and Bauer's lack of internal monitoring of non-radio alternatives. For these reasons, we provisionally consider that non-radio alternatives are not such that they would on their own sufficiently constrain radio stations.

Local non-radio constraints

- 7.24 In relation to local advertising, Bauer submitted that the alternatives to advertising on local radio (particularly for the acquired stations which operate in very small geographic areas) will be local newspapers, out-of-home advertising and online services (such as directories, social media etc).
- 7.25 Bauer also submitted that digital competition is a growing threat to local radio stations as it enables advertisers to precisely target certain audiences. Bauer said that a growing proportion of total advertising spend, including that which would have otherwise gone to radio, is being allocated to online advertising, and that this trend is likely to continue. However, Bauer also submitted that while local press revenue is falling as a result of the rise of digital advertising, radio has so far maintained its level of revenue.

¹¹⁴ We asked this question in the context of our assessment of the effect of the loss of FRS, but consider that it is relevant to market definition.

- 7.26 Operators of local radio stations particularly highlighted digital advertising and local press advertising as exerting a competitive constraint on local radio advertising.¹¹⁵
- 7.27 Local advertisers gave mixed responses on whether they considered non-radio advertising to be a close alternative to radio advertising. Fourteen of 24 local advertisers considered non-radio advertising to be a close alternative to radio advertising, however the others emphasised that they consider radio advertising to have unique features, for example listeners are unable to fast forward the advertising and advertisers can create jingles that are frequently repeated, meaning their products become memorable.¹¹⁶
- 7.28 We also asked local advertisers which non-radio forms of advertising they considered when buying their local radio advertising.¹¹⁷ Of the 17 local advertisers who answered this question, only three either did not consider purchasing any alternatives to radio advertising or did not consider any of the alternatives to be suitable. Of the other 14 who did consider alternatives to radio, none considered any alternative to be a very close alternative, 12 considered print and around half considered digital and out-of-home advertising. However, on average, these advertisers rated each of these forms of advertising around the middle of a scale between being a very close alternative and not at all an alternative.
- *Our views on local non-radio constraints*
- 7.29 The third-party evidence shows that local advertisers have alternatives to local radio advertising. As such, we consider that local radio advertising is constrained to some extent by non-radio advertising. However, local advertisers do not appear to consider forms of non-radio advertising to be very close alternatives to radio and consider it to have some unique features. As such, we provisionally consider that non-radio alternatives would not be sufficient on their own to constrain local radio stations.

Community radio

- 7.30 Community radio stations are not for profit and typically cover a small geographic area (see paragraph 2.12). Community radio is funded mainly through a mixture of advertising revenue and grants. No third parties told us

¹¹⁵ Global, Wireless and 18 FRS radio station groups.

¹¹⁶ Evidence gathered as part of the Phase 1 investigation

¹¹⁷ This was as part of our Phase 2 investigation and was just asked to local advertisers in the three areas considered in section 11. We asked these customers what, if any, other forms of advertising they considered when purchasing radio advertising. We further asked them to rate how close these other forms of advertising were to radio on a five-point scale where the bottom was 'not at all' and the top was 'very close alternatives'.

that community radio was a significant competitor for advertising. As such, we have not sought to include competition for advertising from community radio in our competitive assessment.

Provisional conclusion on product market definition

- 7.31 We considered a variety of evidence from Bauer, including their internal monitoring, evidence from other radio groups and from local and national advertisers. We found there is widespread use of alternatives to radio advertising, and advertisers moving spending to other forms of media, particularly digital, but we have not received evidence that this is in response to pricing changes which would indicate that they are in the same market. There was little direct evidence of a competitive constraint, sufficient to mean that non-radio advertising should be included in the same market whether nationally or locally (ie that we should assess the impact of the Acquisitions across a more widely defined advertising market).
- 7.32 Therefore, we provisionally conclude that the product market is radio advertising.
- 7.33 Nonetheless we recognise that non-radio advertising is likely to form an out-of-market constraint, given that it is a readily available and widely used alternative to radio advertising. We have therefore taken account of this within our competitive assessments and given it appropriate weight where relevant. In particular, we have taken account of the views of relevant customers and considered evidence specific to particular local areas in our assessments at the local level (see paragraphs 11.55 to 11.59, 11.75 to 11.76, 11.96 to 11.98 and 11.119 to 11.121).

Geographic scope

- 7.34 A radio station broadcasts nationally, regionally or locally over an area specified by its licence (see paragraph 2.18). Some stations broadcast on multiple transmitters and can split their transmission, broadcasting different programming through each transmitter. This allows advertisers to purchase advertising across only part of the station's TSA.
- 7.35 In previous radio mergers, the CMA found that national, regional and local stations can compete with each other, as there is no direct relationship between the scope of licence held and the scope of advertising campaigns offered.¹¹⁸ Some national stations sell regional advertising, where they are

¹¹⁸ CMA Case, [Global Radio / Juice](#), 5 October 2015, paragraph 33; Competition Commission case, [Global Radio / GMG](#), 21 May 2013, paragraphs 5.47-5.50.

able to split their transmission, and in some circumstances, regional stations can reduce their rates to attract local advertisers within a region. Bauer splits its stations' advertising between different local transmitters in several of its TSAs to attract local advertisers. Local stations frequently carry national advertising as part of a broader network. The distinctions between local, regional and national stations are therefore not necessarily reflected in clear-cut distinctions in competitive dynamics. However, the importance of a station's geographic reach may vary depending on the type of campaign being advertised. For example, a local business may place more importance on broadcast location and advertisers looking for a targeted campaign will take into account the risk of avoidable wastage (from paying for advertising reaching an audience outside of the intended area).¹¹⁹

- 7.36 In the context of the present case, we considered local markets based on local radio stations' TSAs¹²⁰ and a UK-wide advertising market. We assessed the Acquisitions' impact on contracted airtime advertising and national sponsorship and promotion at the national level (national radio advertising), and assessed the Acquisitions' impact on non-contracted airtime advertising and local sponsorship and promotion at the local level (local radio advertising).

Provisional conclusion on geographic market definition

- 7.37 Radio groups and independent sales houses can offer networks of stations, and stations may also be able to split their transmission to provide different tailored content through different transmitters, allowing targeted local advertising to be offered. We have therefore defined both local and national advertising markets with reference to the possible permutations of station coverage at local (station and transmitter and combinations of these) and national level.

The supply of representation for national advertising to independent radio stations

- 7.38 National advertisers and large media buying agencies generally do not negotiate directly with radio stations, as these customers find it costly and inefficient to negotiate advertising directly with individual stations. Instead, they deal with the in-house sales functions of radio groups (eg Global and

¹¹⁹ CMA Case, [Global Radio / Juice](#), 5 October 2015, paragraphs 45-48.

¹²⁰ We considered the ability of stations to broadcast on multiple transmitters and split transmissions as appropriate.

Bauer), or with FRS, a sales house which collectively represents independent radio stations which do not have in-house sales functions.

- 7.39 Therefore, to access national advertisers or large media buying agencies, radio stations use representation services to sell national and contracted advertising. Bauer and Global represent themselves in-house, but independent radio stations need to contract with a sales house to book national advertising in exchange for a commission, as many independents do with FRS, Communicorp has done with Global (and Quidem has also agreed to do so), and [X].
- 7.40 Given that independent radio stations cannot access national advertisers or large media buying agencies without national representation, we consider that there is a market for representation services, ie representing independent radio stations to national advertisers and large media buying agencies. We are considering this separately from self-supply where radio groups use in-house representation.
- 7.41 As discussed in paragraph 7.34, radio stations broadcast to a particular geographic area, however, representation happens at a national level. Global, Bauer and FRS provide representation services to stations across the UK, enabling them to access national advertisers.
- 7.42 Therefore, we provisionally conclude that the geographic market for these representation services is national.

Provisional conclusion on market definition

- 7.43 We have assessed the effects of the Acquisitions with regard to the following relevant markets:
- (a) The supply of radio advertising in:
 - (i) Local markets (corresponding to the transmission areas of analogue radio stations by individual transmitters or combinations of transmitters and also combinations of co-owned stations); and
 - (ii) The national market; and
 - (b) The supply of representation for national advertising to independent radio stations in the UK.

8. The supply of representation for national advertising to independent radio stations

Introduction

- 8.1 This is the first of four sections assessing the theories of harm, as set out in our issues statement,¹²¹ which describe the possible ways in which an SLC could arise as a result of the Acquisitions and provide the framework for our analysis of the competitive effects of the Acquisitions. We received no substantive evidence or suggestion that we should consider additional theories of harm, for example in relation to other specific local overlaps of radio stations, or in regard to competition in the provision of multiplex services.

The representation of national advertising to independent radio stations theory of harm

- 8.2 This theory of harm relates to the possibility that the Acquisitions could result in an SLC in the supply of representation services as a result of FRS ceasing to be a competitor in the supply of representation services (see paragraphs [x-ref market definition and industry background sections]) independent of Bauer. This could occur as a result of each of:
- (a) As part of the UKRD Acquisition, Bauer acquired a 50% shareholding in FRS. This gives Bauer the ability to materially influence,¹²² and impede, FRS' corporate and strategic decision-making and ultimately to weaken FRS and eliminates it as an independent competitor in representation services for independent radio stations.
 - (b) As a result of the combination of the Celador Acquisition, Lincs Acquisition, Wireless Acquisition and UKRD Acquisition together, Bauer is acquiring a large proportion of FRS' customer base and would have the ability and incentive to withdraw these customers from FRS.¹²³ This would lead to FRS losing a large proportion of its customer base and so potentially becoming economically unviable and so ceasing to exist.

¹²¹ [Issues statement](#) and [Issues statement addendum](#).

¹²² This amounts to material influence within the meaning of section 26 of the Act.

¹²³ Indeed, serving the stations forming part of the Acquired Businesses with Bauer's in-house representation services is a key part of the rationale underpinning the Acquisitions.

- 8.3 If FRS exited, independent radio stations wishing to have access to national advertising revenues would need to seek representation elsewhere, and the only remaining options would be to seek this from the in-house sales functions of the large radio groups. Bauer has stated that it ‘intends to directly represent those third-party stations currently represented by FRS and has every incentive to do so’.¹²⁴
- 8.4 The worsening of FRS’ competitive offering, or its exit, could result in an adverse effect for independent radio stations, through higher commission rates and/or the worsening of other terms. Independent radio stations highlighted that representation services are important for them: 12 out of 17 radio groups using FRS for representation services that responded to our questionnaire¹²⁵ said that the revenue from FRS accounts for over 10% of their revenue and a majority said it was important for their viability.
- 8.5 FRS stations raised a further concern that as Bauer would potentially be competing with FRS stations for local and national advertising revenue, it could be incentivised, on a selective basis in areas where its local stations overlap with independent radio stations that it represents, to further worsen terms to those independent stations or treat its own stations preferentially in the allocation of advertising.¹²⁶ While we note this possibility, our assessment of this theory of harm has focussed on the potential impacts resulting from a reduction in competition within the market for the supply of representation services.¹²⁷

Competitive assessment

Parties’ submissions

- 8.6 The Parties submitted that there is no SLC in this market for the following reasons:
- (a) FRS would have failed in the short to medium term absent the Acquisitions and would not therefore have continued as an effective participant in providing national advertising sales representation. Bauer

¹²⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.7.

¹²⁵ This is out of a total of around 20 radio station groups using FRS.

¹²⁶ This potential further harm appears more likely to arise as a result of the possible foreclosure of FRS (due to Bauer’s acquisition of a large proportion of FRS’ customers) and less likely to occur purely as a result of Bauer’s acquisition of 50% of FRS, ie as a result of the UKRD Acquisition alone.

¹²⁷ In other words, this further concern, raised by FRS stations, relates to vertical effects as a result of partial foreclosure, ie Bauer worsening the terms of supply of representation services as a result of its operations at other levels of the radio advertising supply chain. As we provisionally find an SLC as a result of the horizontal unilateral effects, we did not consider it necessary to further assess partial foreclosure. The potential for vertical effects through total foreclosure, ie Bauer not supplying representation services, is considered further in Section 10.

told us that in this counterfactual position, it would have sought to represent as many FRS stations as possible, which would put further pressure on FRS and hasten its exit.

- (b) It also said that Bauer is not an actual or potential competitor in such a market:
 - (i) Prior to the Acquisitions Bauer had not been active in providing representation services since its acquisition of Orion. Its focus had been on making radio acquisitions in the UK and overseas.
 - (ii) Bauer [REDACTED].
 - (iii) Bauer [REDACTED].
- (c) Bauer submitted, as a result of the Acquisitions, that the number of options for representation for the FRS stations thus changes from two pre-Acquisitions (FRS and Global) to two post-Acquisitions (Bauer and Global).
- (d) Bauer submitted its interest in representing the independent FRS stations arises as a result of the Acquisitions, because they add to the share of listening acquired through the Acquisitions [REDACTED]. It said this link arose because:
 - (i) The current opportunity to represent the FRS stations would also result in them moving to Bauer as a bloc, or in a short space of time, in contrast with a situation where Bauer might gain stations (or groups of stations) one by one and thus incrementally increase its share of listening over time. An incremental change, as opposed to a significant step up, would have less impact on [REDACTED].
 - (ii) Bauer has this opportunity as a result of the Acquisitions. Absent the Acquisitions, the decision whether to offer representation to independent radio stations would depend on the extent to which the representation advanced Bauer's overall strategy.
- (e) Bauer submitted that Global was and remains a constraint in the supply of national advertising representation. The independent radio stations represented by FRS were already leaving FRS for Global, whether as a result of acquisition or representation. This would have continued in the counterfactual. The threat of the non-acquired FRS stations switching to Global would incentivise Bauer both to represent those stations and to offer competitive terms in order to do so.

- (f) It said that even if the above points are rejected there is no SLC as the elimination of FRS cannot be expected to have an adverse effect on customers (which in this case it considered to be advertisers or listeners rather than radio stations). It claimed that an adverse effect on individual stations represented by FRS, or removal of their 'preferred option' does not constitute an SLC.

Alternatives for representation

8.7 This section considers the potential alternatives for local stations for representation to national advertisers and how each are likely to be impacted by the Acquisitions. The options considered are:

- (a) FRS;
- (b) Bauer;
- (c) Global;
- (d) Wireless;
- (e) A replacement of FRS;
- (f) Self-representation; and
- (g) Other options

FRS

FRS' position absent the Acquisitions

8.8 FRS is a national sales house which sells national radio advertising to media buying agencies¹²⁸ on behalf of 107 local radio stations,¹²⁹ including the Acquired Businesses, in exchange for a commission. The stations FRS represents have a total of just over 7% of UK commercial radio listener hours and around [X] [0-5]% of national airtime revenue.¹³⁰ This makes FRS the largest current supplier of representation services to independent radio stations both by number of stations represented and by listening hours.

8.9 FRS' customer stations gave a number of reasons why they considered representation by FRS to be preferable to other options for representation

¹²⁸ All of FRS' customers are media buying agencies.

¹²⁹ Excluding Quidem and Connect stations which are now being represented by Global; and JACK which is a national station.

¹³⁰ See Table 5.

services. In particular, they highlighted its relative independence because it is not part of a larger radio group and that it does not require brand or content licensing deals.

- 8.10 As discussed in paragraphs 6.69 to 6.73, there is evidence that FRS' position is potentially vulnerable in the longer term. Even prior to the Acquisitions, over the last three years at least ten stations have stopped being represented by FRS either as a result of being acquired or choosing to focus on local advertising. As set out in paragraph 6.68, we provisionally conclude that absent the Acquisitions, FRS would have continued as an independent business, operating on the same basis as was the case pre-merger. However, we further provisionally conclude that the most likely longer-term position for FRS is that it would have exited the market at some point, after the foreseeable counterfactual period but within, at most, ten years.
- 8.11 We consider that FRS is currently clearly the preferred option of independent radio stations and despite the evidence of a potential future decline that, absent the Acquisitions, it is likely to remain the preferred option for some independent radio stations for the foreseeable future.

How FRS will be affected by the Acquisitions

- 8.12 The Acquisitions have two distinct potential impacts on FRS: first, through Bauer's acquisition of 50% of FRS and second, through Bauer's acquisition of a large proportion of FRS' customers. These two potential impacts are considered in this section.

- *Impact of Bauer's acquisition of 50% of FRS*

- 8.13 Bauer, through the UKRD Acquisition, which includes UKRD's 50% shareholding of FRS, would gain material influence over FRS. This would give it the ability materially to influence, and impede, FRS' corporate and strategic decision-making, ultimately to weaken FRS. It might do this through seeking the decline or closure of FRS or otherwise reducing its attractiveness to independent radio stations or advertisers. It might do this, for example, by preventing FRS making investments or take other action necessary to compete effectively. Using this influence, Bauer may be able to facilitate its intention to represent independent radio stations currently represented by FRS. This would make FRS less able to compete and allow Bauer to represent these stations on worse terms than it would have to offer if FRS were freely competing for these customers.

- *Impact of Bauer's acquisition of 50% of FRS Impact of Bauer's acquisition of a large proportion of FRS' customers*

- 8.14 Bauer's acquisition of a large proportion of FRS' customers has the potential to affect the viability of FRS following the Acquisitions. If FRS is not viable, it will no longer be an option for local radio stations as a route to sell to national advertisers.
- 8.15 As a result of the Acquisitions FRS would lose a substantial part of its business including [REDACTED]% its revenue and [REDACTED]% of its retained commission.¹³¹ FRS' offer to national advertisers would also be much reduced, losing nearly [REDACTED] listeners, reducing its reach by [REDACTED]%, and much of its geographic coverage.¹³²
- 8.16 Bauer has stated that '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 independent stations currently represented by FRS and has every incentive to do so'.¹³³ Bauer's internal documents indicate that FRS would not be economically viable following the Acquisitions.¹³⁴
- 8.17 The available evidence, including CMA analysis of FRS' financial data, strongly indicates that, without the revenue stream from the Acquired Businesses, FRS would cease to be profitable (see Appendix C). FRS' overheads make up around [REDACTED] [60–70%] of its revenue. A large part of this comprises staffing costs, which the CMA considers would be difficult to reduce substantially (without materially impacting the quality of FRS' service offering). FRS also has fixed costs within its overheads, such as those relating to its premises, which would be high relative to expected future revenues (following the loss of revenues for the local radio stations acquired by Bauer). FRS told the CMA [REDACTED]. The CMA's analysis, in Appendix C, of FRS' financial data, including the high fixed costs, [REDACTED].
- 8.18 FRS' greatly reduced reach and coverage would make it more difficult for FRS to attract media buying agencies as customers and would reduce its negotiating power. As such, we do not consider that it would be possible for

¹³¹ Based on FRS 2018 data, excluding stations now owned by Bauer or Global.

¹³² [REDACTED].

¹³³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.7.

¹³⁴ We found that Bauer expected that the cumulative effect of Acquisitions, would make FRS 'uneconomic'. It also said that 'even if we don't buy FRS, the acquisitions will make it very difficult for it to continue as a viable model', and that the residual FRS stations 'would be a complex group to provide sales representation for'.

FRS to raise its prices to media buying agencies to offset such a substantial loss of revenue.¹³⁵

8.19 Our assessment is that it would not be possible for FRS to reduce its costs and/or raise its prices sufficiently to compensate for the loss of around two-thirds of its commission. In addition, FRS' offer to national advertisers would be much worsened as a result of representing fewer stations, listeners and geographic areas. As a result of these factors, we consider that the removal of the stations forming part of the Acquired Businesses from FRS would cause FRS to cease to be financially viable.

- *Our provisional assessment of the impact of the Acquisitions on FRS*

8.20 We provisionally conclude that each of the two impacts described above means that FRS is likely to cease to act as a competitor independent from Bauer. As such, we currently consider that the option of using FRS, which is currently independent stations' preferred option and is likely to remain so for some stations for the foreseeable future, is likely to be removed or significantly worsened as a result of the Acquisitions.

Bauer

Bauer's position prior to the Acquisitions

8.21 We now consider whether Bauer has been or would be an actual or potential competitor in the market for representation services, given its statement (paragraph 8.6(b)) that it is not a competitor. Bauer does not currently represent any third-party stations [REDACTED], but it previously represented Orion between 2014 and 2016.¹³⁶

8.22 Bauer has [REDACTED].

8.23 [REDACTED], all industry indicators available to it suggested that [REDACTED].

8.24 [REDACTED].¹³⁷ [REDACTED].

8.25 We note that Bauer has previously appeared reluctant to represent independent radio stations. Two FRS stations told the CMA that they had discussed the possibility of national radio advertising representation from

¹³⁵ It may be able to increase commission rates to independent radio stations, but this would depend on competition for those customers reducing, which is what we are considering in this section.

¹³⁶ Bauer ultimately acquired Orion in 2016, and it told us it had won the opportunity to represent Orion from Global.

¹³⁷ [REDACTED].

Bauer in the last five years. However, both discussions were limited and neither agreed representation. One of the stations was told by Bauer that 'third party representation was not something it would consider'. Another station said 'Bauer has told [it] in the past that [it] did not want to sell national airtime/sponsorship and promotions for smaller brands because it would be too much work for not enough return'. Further in the past, another station had 'informal talks with little or no interest from the larger operators'.

- 8.26 Despite this, Bauer appears to have been considered a potential option by both independent radio stations, a number of which approached Bauer (as set out above) and FRS. FRS indicated that it had seen Bauer as one of the most likely alternative options (along with Global) for its independent radio station customers. FRS told us that in the recent past [redacted] served FRS with notice to leave as it was looking at other options. FRS told us it presumed these alternatives were Bauer and/or Global. While [redacted] remained an FRS customer and this renegotiation did not lead to a reduction of the headline commission rates it paid, [redacted] did achieve other improvements in its terms. This suggests that Bauer was, at the very least, perceived by FRS as a competitor and that Bauer's presence as a possible supplier of representation services has constrained the terms offered by FRS in the recent past.
- 8.27 Bauer does not appear to face any significant barrier to starting to offer representation to independent stations provided both it and the relevant stations wished Bauer to do so; and this is also consistent with Bauer's position absent the Acquisitions.

Bauer's position absent the Acquisitions

- 8.28 As noted above, Bauer has told the CMA that '[redacted]'. Bauer highlighted that FRS stations moving to Bauer as a bloc, which is an opportunity resulting from the Acquisitions, would have more benefit to Bauer than a situation where it might gain stations one by one. We consider that while the incentive to gain customers for representation services as a bloc may be greater, Bauer would still have an incentive to gain these customers one by one. This is consistent with Bauer's view that it has a strong incentive to represent independent radio stations¹³⁸ and that it did not do so prior to the Acquisitions because it was focussed on an acquisition rather than a representation strategy. Absent the Acquisitions, Bauer would appear to still have the incentive to increase its commercial share of listening and if it was not possible to do this through acquisitions, we consider it likely that Bauer would have sought to do so through representing independent radio stations. This is

¹³⁸ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 2.5.

consistent with its submission at paragraph 8.6(a) and 8.6(d) that it would have incentives to represent them to grow its scale (albeit those refer to different scenarios).

8.29 Bauer submitted that Bauer's representation of the FRS stations provides an opportunity for these stations to be better represented.¹³⁹ It gave the following reasons:

- (a) Bauer has in the past successfully represented the Orion stations.¹⁴⁰
- (b) Bauer is better placed to win sponsorship and promotion campaigns for the stations.¹⁴¹
- (c) FRS is 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.¹⁴²
- (d) Unlike Bauer and Global, FRS does not benefit from share deals with media buying agencies.¹⁴³
- (e) For representation by Bauer there will be no requirement from Bauer for the third-party stations to rebrand or take Bauer content.¹⁴⁴

8.30 We asked independent radio stations whether they were open to representation from Bauer. In many cases they were, but with caveats. Overall, 14 of 17 radio groups that use FRS that responded to our questionnaire said that they may consider representation from Global, Bauer or another national radio station operator in the future. However, as can be seen from the responses cited below this was often with caveats and potentially only due to the possibility of losing FRS:

- (a) Mi-Soul said that it would definitely explore the Bauer/Global options, as they have the benefit of being dominant players in the market, and would be better resourced and funded than FRS.
- (b) Jack FM said that it would be open to considering alternative national representation subject to certain conditions.

¹³⁹ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.4.

¹⁴⁰ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.11.

¹⁴¹ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.4.

¹⁴² [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.5.

¹⁴³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.5.

¹⁴⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.11.

- (c) [X] said that 'if an independent sales point did not exist, then [it] would consider representation from Global, Bauer or another national sales point as national revenues are vitally important to our business'.
- (d) [X] said that it 'would consider any option that enables [it] to continue to access the national marketplace'.

8.31 Nine of 17 FRS radio groups expressed concerns that Bauer (and Global) would prioritise their own brands over and above any stations they represent. For example:

- (a) 'Both Global and Bauer could discriminate in favour of their stations in the Plymouth area. They are in direct competition for listeners within our area without the stand-alone costs that we carry.'¹⁴⁵
- (b) 'They are competition and why would they promote our station before their own brands?'¹⁴⁶
- (c) In each market that the radio group operates both Bauer and Global are its main competitors and it's likely they would favour their own services to carry any advertising over using a third party.¹⁴⁷

8.32 Among the reservations of FRS stations is that representation may require licensing a brand or content. We note in this respect Bauer has stated that it does not require a BCL. This makes Bauer's offer to independent stations more similar to, and as such Bauer potentially a closer competitor to, FRS than Global (see paragraphs 8.34 to 8.42).

8.33 While Bauer does not currently represent independent stations, it has done so in the past, has recently agreed to represent [X] and we consider that it has the incentive to do so to a greater extent in the future absent the Acquisitions. Independent stations also appear open to representation by Bauer, although with some concerns. As such, the CMA provisionally considers that absent the Acquisitions Bauer would have been a credible and growing competitor to FRS.

Global

8.34 Bauer submitted that independent radio stations could obtain alternative representation from Global.

¹⁴⁵ Radio Plymouth.

¹⁴⁶ Lyca Media/Time 107.5.

¹⁴⁷ [X].

- 8.35 Global currently represents stations operated by Communicorp, which accounts for around 5% of total UK commercial radio listening hours. Global has recently entered into a brand licensing and national representation arrangement with Quidem, which is currently represented by FRS. Global has also previously represented Orion, although this is over five years ago.

Requirement for brand and licensing agreements

- 8.36 Global's current representations include brand and licensing agreements, such that the represented stations carry Global's programming (excepting local programming obligations) and they are branded with one of Global's brands (eg Capital or Heart).
- 8.37 Global submitted that it would not be 'commercially viable' to represent the FRS stations, outside of its Heart, Capital and Smooth brands. Global told us that its entire national sales operation is structured around selling national brands. It said that marketing individual stations does not fit into this structure and where Global has in the past sought to market individual stations which do not form part of a larger branded network (such as Global's now defunct digital-only stations the Arrow and Chill), [REDACTED]. Global also told us that 'adding independents to its propositions [REDACTED].'
- 8.38 Global has said that since 2016, it has [REDACTED]. As set out below, [REDACTED]:
- (a) [REDACTED].
- (b) [REDACTED].
- (c) [REDACTED].
- 8.39 We note that Ofcom's regulatory changes in 2018 mean that content licensing is now more appealing, as the changes reduced requirements for local content. BCLs may be particularly attractive where there is no direct competition between brand owner and licensee for listeners. However, we note that some residual FRS stations expressed reluctance to enter into brand and content licence agreements.¹⁴⁸

¹⁴⁸ For example:

- Dee 106.3 said 'Given the brands of Bauer and Global operate in our markets it would be very important that we weren't tied to licence agreements.'
- Mid Anglia Media (Star Radio Cambridge) said it would not wish to be forced into taking an existing national Global or Bauer brand.
- [REDACTED] said that a brand licensing arrangement would not work for it at all.
- Jack FM said under no circumstances could it accept a brand and content licensing agreement.

Global's willingness to represent additional independent radio stations

8.40 In terms of representing additional independent radio stations, Global also told us that:

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

(d) [REDACTED].

Provisional conclusion on Global as an option

8.41 We provisionally conclude that there are limited circumstances where Global would be willing to represent any more independent radio stations and this would require a brand licensing agreement. Given that [REDACTED], we currently consider that this issue could occur again in the future. Furthermore, even if willing to accept a BCL, there are not many independent radio stations for whom Global would be a viable option, because of the independent stations' limited scale and their potential overlap with Global's brands.

8.42 The CMA provisionally concludes that Global is an alternative to FRS, albeit a limited one. It represents stations on behalf of Communicorp and has agreed to do so for Quidem, currently an FRS customer. However, it will likely only be a suitable option for those independent radio stations willing to make a brand licensing agreement and who are in areas where Global's own brands are not already present.

Wireless

8.43 Wireless represents its own national stations, eg talkSPORT and Virgin Radio, but used FRS to represent its local stations, including those it has sold to Bauer and its retained stations.

8.44 Bauer submitted that Wireless' retained local station U105 may be able to obtain representation by Wireless' existing sales house.¹⁴⁹

8.45 [REDACTED].¹⁵⁰

¹⁴⁹ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 8.13.

¹⁵⁰ [REDACTED].

8.46 Given that [REDACTED], we provisionally conclude that Wireless is unlikely to supply representation services to independent radio stations.

A replacement of FRS

8.47 One alternative option for independent radio stations to obtain (or threaten to obtain) representation services may be to create or sponsor entry for a new entity to offer representation services.

8.48 Bauer submitted that this option was not credible and that it carried considerable execution risk, partially because it would require a critical mass of stations, which presents a significant practical coordination problem.

8.49 This option does not appear to have been considered (or threatened) prior to the Acquisitions. Some independent radio stations referred to creating a replacement for FRS if it were no longer available, but all considered that there would be problems with this approach.

8.50 Quidem told us that, following the Acquisitions, it met with Jack FM, [REDACTED] and KM Media Group. They discussed the options available should FRS fold, one of which was to take some FRS staff and create an independent substitute for FRS. Such ideas were not progressed. Quidem considered that Bauer's Acquisitions would take the available portfolio to below the critical threshold required to have an offering which could be sold to national media buying agencies. Quidem has since opted to enter into a representation agreement (including a BCL) with Global.

8.51 We provisionally conclude that it is unlikely that an FRS-type replacement would have been established to replace FRS in the counterfactual (and would be even more unlikely following the Acquisitions).

Self-representation

8.52 Eight of the 17 radio station groups that told the CMA what options they would consider should FRS no longer be available said that they would consider representing themselves. However, they all saw this as being problematic.¹⁵¹ Typical responses included:

¹⁵¹ Responses from Star Radio, [REDACTED], [REDACTED], Lyca Media, Dee 106.3, Media Sound Holdings, Tindle CI Broadcasting, and KM Media Group.

- (a) The amount of national revenue would not justify employing a dedicated national sales representative.¹⁵²
- (b) [The radio group] ‘has neither the audience scale nor could it sustain the cost of setting up the sales team that would be required to operate on this market effectively against the sales teams of national radio operators.’¹⁵³

8.53 This is consistent with what FRS and media buying agencies told us. FRS said that media buying agencies do not normally negotiate directly with local stations due in part to the complexity this would involve. Also few large media buying agencies suggested that they would negotiate with or purchase advertising from individual independent operators if FRS was unavailable.

8.54 Based on the evidence from residual FRS customers, we provisionally conclude that self-representation is likely to be too costly an option to be a close alternative to representation by FRS, Bauer or Global.

Other options

8.55 Of the 17 radio groups that told the CMA what options they would consider should FRS no longer be available, the only further option raised was to use ‘Digital Audio Exchanges’.¹⁵⁴ This was raised by one customer who said that this option would be online only and only cover part of its need for representation.¹⁵⁵

8.56 Bauer submitted that there were also routes to market such as the Radio Trading Desk and national advertising sold via GTN and IRN/Newslink. However, as noted in the previous paragraph these were not raised as options by any independent radio stations.

Provisional finding on competition in the supply of representation services

8.57 As a consequence of the Acquisitions, Bauer gains the ability to exercise material influence over FRS. This would give it the ability to materially influence, and impede, FRS’ corporate and strategic decision-making. This would make FRS less able to compete to supply representation services.

8.58 Also as a consequence of the Acquisitions, Bauer is acquiring a large proportion of FRS’ customers. Bauer would have the ability and incentive to

¹⁵² Star Radio Cambridge response.

¹⁵³ [REDACTED].

¹⁵⁴ These are platforms, such as Global’s DAX, that connect advertisers with publishers of online audio content.

¹⁵⁵ Helius response.

withdraw these customers from FRS. FRS is likely to cease to exist due to the loss of these customers.

- 8.59 Each of these outcomes means that FRS is likely to cease to be an independent competitor in the supply of representation services. We also consider that absent the Acquisitions Bauer would have been a credible and growing competitor to FRS for the supply of representation services. As such, competition to represent independent radio stations will reduce, from FRS and actual and potential competition from Bauer and Global pre-Acquisitions, to competition between only Bauer and Global post-Acquisitions. By eliminating the principal route of choice for independent radio stations to sell advertising slots to purchasers of airtime for national advertising, the Acquisitions reduce the number of separate options for independent stations from three to two. Furthermore, one of the remaining options, Global, appears more limited because it is unlikely to wish to serve some stations and other stations are unlikely to want to accept its branding and content conditions.
- 8.60 We consider that the impact of this loss of competition to be substantial. This is because the independent radio stations told us that revenues from national advertising are very important to their financial health, because the existing preferred option of suppliers is removed and the number of possible suppliers falls from three to two, because all the residual-FRS independent stations could be affected,¹⁵⁶ and because this will apply to stations across the UK.
- 8.61 Subject to any countervailing factors, we therefore provisionally conclude that the Acquisitions, as a result of each of Bauer's acquisition of the ability to exercise material influence over FRS and its acquisition of a large proportion of FRS' customers, have resulted, or are expected to result, in an SLC in the market for supply of representation for national advertising to independent radio stations in the UK.

9. Horizontal unilateral effects in the supply of national advertising

Introduction

- 9.1 This section addresses the theory of harm that the Acquisitions would lessen competition in the market for the provision of national advertising because (as explained in paragraph 8.2):

¹⁵⁶ We reject Bauer's argument presented at paragraph 8.6(f). The statutory test for an SLC is whether it arises in any market in the UK, not that it necessarily directly impacts on final customers.

- (a) due to the UKRD Acquisition, Bauer is acquiring a 50% shareholding of FRS; and
- (b) the Acquisitions would, by removing a significant part of FRS' customer base, make FRS economically unviable as an independent competitor.

We therefore provisionally consider that following the Acquisitions, FRS will cease to compete independently of Bauer.

- 9.2 Consequently, FRS would be expected to be eliminated as a competitor in the provision of advertising to national advertisers. As two competitors in the supply of national advertising, Bauer and FRS are likely to impose some form of competitive constraint on each other.
- 9.3 We would normally expect that firms that offer lower prices and/or better quality products/services than their competitors impose a competitive constraint, putting pressure on competitors to position their offering to prevent customers switching to such rival firms. When previously competing firms merge, this results in the constraint one competitor imposes on another being lifted. The now merged firm may be able to reduce the quality of the products or services it provides or increase prices. This is because the merged firm faces fewer competitors to which customers could switch should it worsen its offer.¹⁵⁷
- 9.4 This effect is more likely to have a negative impact on customers when the products/services offered by firms compete closely with each other. This is because it is likely that the constraint each firm imposes on the other is substantial and so when this is removed post-merger, the negative effect on prices and or quality will be more significant.
- 9.5 If FRS currently imposes a competitive constraint on Bauer by offering a potential alternative option for Bauer customers in the supply of national advertising, post-Acquisitions, as FRS ceases to be an independent competitor and the number of suppliers of national advertising fall, this constraint will be lifted. This has the potential to result in Bauer increasing prices or decreasing the quality of the services offered to its customers. Similarly, Bauer may also currently be constraining FRS as it potentially offers an alternative to FRS customers in the supply of national advertising. Post-Acquisitions, as FRS ceases to be an independent competitor and the number of suppliers of national advertising fall, this constraint will be lifted. This may result in the stations forming part of the Acquired Businesses, which were

¹⁵⁷ In our Merger Assessment Guidelines this is referred to as horizontal unilateral effects ([CC2 Revised](#), section 5.4).

previously part of FRS and so constrained in the same way as FRS, offering services at increased prices or reduced quality. Hence, the Acquisitions have the potential to worsen the offers facing current customers of both FRS and Bauer.

- 9.6 This section considers how close Bauer and FRS are as competitors in the supply of national advertising in order to assess whether, and to what extent, FRS poses a competitive constraint on Bauer and vice versa. We then assess the effects of these potential constraints being removed as a result of the Acquisitions.

Competitive assessment

- 9.7 We now consider competition in the market for national advertising and how closely Bauer and FRS compete.

- 9.8 Table 5 shows shares of supply in the provision of national advertising.

Table 5: National shares of supply Q2 2019

	<i>Share of commercial listening (UK) (%)</i>	<i>Estimated share of national airtime revenue (%)</i>
Bauer [X]	[X] [30–40]	[X] [30–40]
FRS pre-Acquisition [X]	[X] [5–10]	[X] [0–5]
<i>Celador</i>	1.1	[X] [0–5]
<i>Lines</i>	1.1	[X] [0–5]
<i>Wireless (local stations acquired by Bauer)</i>	1.7	[X] [0–5]
<i>UKRD*</i>	1.3	[X] [0–5]
<i>Increment [X]</i>	[X] [0–5]	[X] [0–5]
<i>Merged entity [X]</i>	[X] [30–40]	[X] [30–40]
<i>Other FRS stations</i>	[X] [0–5]	[X] [0–5]
Global & Communicorp†	50.4	[X] [50–60]
Wireless (National stations only)	5.1	[X] [0–5]
Others	2.2	[X] [0–5]

Source: Bauer.

* [X].

† Global sells contracted advertising on behalf of Communicorp.

- 9.9 The shares of supply show that Global and Bauer are by far the largest suppliers of commercial radio by listening hours and revenue with a combined share of around 90% for both listening hours and revenue. FRS is a much smaller supplier, by share of commercial listening and particularly by share of national revenue.
- 9.10 As discussed in paragraphs 6.69 to 6.73, there is evidence that FRS is a declining competitive constraint. This is supported by views expressed in the internal documents of FRS and UKRD (the co-owner of FRS). Bauer has submitted that FRS would likely have continued to decline (and ultimately left

the market) absent the Acquisitions.¹⁵⁸ Our assessment of what would have happened to FRS absent the Acquisitions is set out in the Counterfactual section, where we provisionally conclude that FRS would have continued to operate in the market (for the foreseeable future). However we also provisionally conclude that beyond the period we have considered for the counterfactual, the most likely longer-term position for FRS is that it would have exited the market at some point, within, at most, ten years (see paragraphs 6.69 to 6.73).

- 9.11 In addition, we recognise that non-radio advertising may also be relevant as an out of market constraint (see paragraph 7.23).

Constraint from FRS on Bauer

Bauer's submissions on closeness of competition

- 9.12 Bauer has submitted that in the provision of national advertising it competes most strongly with Global and that this competition will be unaffected by the Acquisitions.¹⁵⁹ Bauer has also submitted that the Acquisitions have the potential to enhance competition between Bauer and Global. We consider this further in paragraphs 12.31 to 12.40.
- 9.13 In terms of the constraint imposed on Bauer by FRS, Bauer submitted that FRS is at best a fringe player in the provision of national advertising. Bauer submitted that due to its limited audience share, reach and geographic coverage FRS is not a material competitive constraint on Bauer (or Global) for the sale of national airtime¹⁶⁰ and FRS is competitively irrelevant when Bauer negotiates deals with media buying agencies.
- 9.14 Bauer also submitted that FRS is unable to compete for share deals.¹⁶¹
- 9.15 Bauer submitted that local stations represented by FRS are largely complementary to Bauer's, and as a result the stations represented by FRS are used primarily as complements rather than as substitutes to Bauer's stations – either geographically (for example, in the South East where Bauer is not represented pre-Acquisitions) or to add unique reach from stations that generally target smaller local areas or have fewer listeners (ie reach listeners that cannot easily be reached through Bauer or Global).

¹⁵⁸ [Bauer response to issues statement](#), paragraph 4.4.

¹⁵⁹ [UKRD Final Merger Notice](#), paragraphs 2.10 and 2.11.

¹⁶⁰ [UKRD Final Merger Notice](#), paragraph 2.10.2.

¹⁶¹ Share deals account for the bulk of national airtime spending.

9.16 Figures 8 and 9 show Bauer's and FRS' pricing, measured by net national airtime CPTs¹⁶² for 2007 to 2018, and their volume of impacts¹⁶³ over the same period. The relationship between FRS and Bauer's CPTs and volumes demonstrated by Figures 8 and 9 is consistent with Bauer's submission that FRS is neither a substitute for or competitor to Bauer.

9.17 Figure 8 suggests that despite [REDACTED].

Figure 8: Bauer submission on comparison of Bauer and FRS net national airtime CPTs, 2007-2018

[REDACTED]

Source: Bauer and FRS

9.18 Figure 9 suggests that, [REDACTED] whilst [REDACTED].

Figure 9: Bauer submission on comparison of Bauer and FRS net national airtime impacts, 2007-2018

[REDACTED]

Source: Bauer and FRS

9.19 Bauer submitted that if FRS were a substitute for, and competitor to, Bauer, then [REDACTED], media buying agencies would have switched volumes (measured by impacts) away from Bauer and towards FRS.

9.20 Bauer submitted that the removal of FRS will not result in price increases to advertisers. Instead it is more likely that advertisers will experience pricing efficiencies that arise from combining complementary offerings under one sales house. It submitted that customer concerns over prices were unfounded. It cited the following reasons:

- (i) [REDACTED] (£[REDACTED] for Bauer and £[REDACTED] for FRS).
- (ii) Post-Acquisitions, Bauer [REDACTED].
- (iii) Bauer [REDACTED].
- (iv) Global is the main constraint on Bauer's pricing today and this will continue post-Acquisitions.

¹⁶² Cost per thousand impacts (ie when an advertisement is listened to 1,000 times), a commonly used measure in relation to radio advertising.

¹⁶³ An impact is where one listener hears an advertisement once.

Evidence on closeness of competition from internal documents

- 9.21 We also looked at evidence of Bauer's consideration of competition in its internal documents. We found that Bauer focuses most of its internal analysis on its position in relation to Global. We also found that FRS is infrequently featured within Bauer's internal documents and that there is a lack of any monitoring of FRS activity. This supports Bauer's submissions that it sees FRS as an unimportant competitor.

Evidence on closeness of competition from third parties

Customers

- 9.22 We asked customers¹⁶⁴ if they had any concerns about the Acquisitions. The majority raised no concerns. This was largely attributed to FRS having a smaller presence in the market relative to Bauer and Global and hence only making up a small proportion of customers' radio spend. The small number of concerns expressed by customers were with regard to potential impacts on prices for national advertising.
- 9.23 We asked customers to list the top five radio companies from whom they purchased national radio advertising in 2018. These responses indicated that customers generally believe FRS to be a weak competitor in the supply of national advertising as FRS was consistently ranked in 4th or 5th position, if mentioned at all. Most customers explained this was because Bauer and Global sufficiently cover their clients' desired geography and demography in most cases, hence FRS would not be considered as an alternative. Further, some third parties suggested that FRS is a good option to achieve incremental reach on a campaign that is mostly on Bauer's and Global's stations because it provides access to some geographical regions not covered by Bauer and Global.
- 9.24 We also questioned customers as to how close an alternative they consider FRS to be to Bauer in general.¹⁶⁵ Customers submitted a low average rating, suggesting that FRS is not generally thought of as a close alternative to Bauer. Customers typically attributed this to the difference in audience demographics of the stations represented by Bauer and FRS.
- 9.25 We similarly asked customers if their current advertising expenditure with Bauer could be replaced by spending with FRS. Given customer responses, we consider that a vast majority of customers' advertising expenditure with

¹⁶⁴ Media buying agencies and advertisers.

¹⁶⁵ On a scale of 1-5, 1=not at all, 5=very close alternatives.

Bauer could not be replaced with FRS spending, suggesting that FRS is not a close competitor or a substitute for Bauer.

- 9.26 We also assessed whether FRS may have an impact on negotiations even in situations where media buying agencies do not often use FRS and questioned media buying agencies regarding this. The responses to this question suggest that for most media buying agencies, the option of using FRS does not assist their negotiations with other radio station operators.

Competitors

- 9.27 We asked competitors about the role of FRS in competition in the market for national advertising.
- 9.28 Global told us that it does not view FRS as a [X] and [X] that FRS exiting the market would [X]. Wireless told us it considers itself and FRS to be relatively small players in the overall radio advertising market when compared to Bauer and Global. Global Traffic Network (GTN) submitted that FRS is a weak and potentially weakening option.

Provisional assessment of the constraint on Bauer from FRS

- 9.29 We provisionally conclude that, based on Bauer's submissions and internal documents, Bauer does not view FRS as a constraint on its national advertising business. This is also consistent with evidence from third parties that FRS does not impose a material constraint on Bauer. Whilst Figure 8 and Figure 9 show that [X] was not a result of substitution from FRS as can be seen [X] in Figure 9. Similarly, Figure 8 shows that [X]. These points are consistent with Bauer not being a strong constraint on FRS and vice versa.¹⁶⁶ We provisionally conclude that Bauer's largest competitor is Global, and this will not be materially affected by the Acquisitions.

Constraint from Bauer on FRS

- 9.30 We now consider the possible constraint that Bauer might impose on FRS as a potential alternative option FRS customers could use in the supply of national radio advertising. The consequence of the Acquisitions would then be that current customers of FRS could be impacted by a loss of competition should FRS cease to operate independently.

¹⁶⁶ However, we consider that it is possible that FRS and Bauer could be substitutes for some customers given there are several geographical overlaps in their coverage prior to the Acquisitions (although we accept these overlaps are not extensive).

Submissions on closeness of competition

- 9.31 Bauer submitted that Bauer and FRS can only be close competitors if their underlying stations are substitutable and that due to the lack of geographic overlap between these stations, FRS and Bauer are complements not substitutes. Bauer also submitted that if it were exerting a material constraint on FRS, then as Bauer [REDACTED], [REDACTED], however Figure 8 shows that this has not occurred. For example, between 2012 and 2017 [REDACTED] whilst [REDACTED], implying a lack of competitive constraint imposed on FRS from Bauer. However, this evidence is not as clear cut in recent years. Between 2016 and 2018 as [REDACTED] which implies Bauer could have begun to constrain FRS.
- 9.32 FRS submitted that its main competitors were Bauer and Global. [REDACTED].¹⁶⁷
- 9.33 FRS' internal documents suggest that FRS considers Bauer and Global to be its largest competitors given extensive internal analysis of FRS' position behind Bauer and Global in the supply of national radio advertising.
- 9.34 FRS submitted that FRS sees itself as third in line to Bauer and Global when it comes to selling national airtime slots to media buying agencies, but that FRS offers geographic coverage that Bauer does not have and so some customers will use both to reach a wider audience. FRS views Bauer as a key competitor despite the fact that some of the listeners of FRS stations are not accessible to national advertisers through Bauer stations.
- 9.35 We asked media buying agencies and advertisers how they consider spending with FRS would be reallocated if FRS was unavailable. Responses were mixed, making it difficult to draw conclusions about the implications of the constraint on FRS from Bauer. However, the responses indicate that many customers would divert at least some of their spending with FRS to Bauer should FRS become unavailable. This implies that Bauer is likely to currently be a constraint on FRS to some extent.

Provisional assessment of the constraint on FRS from Bauer

- 9.36 We first consider whether Bauer is in a general constraint on FRS in that it offers an alternative option in the supply of national radio advertising to FRS customers, and then whether there are FRS customer segments who might be disadvantaged by the loss of competition should Bauer represent the stations forming part of the Acquired Businesses.

¹⁶⁷ [REDACTED].

- 9.37 While FRS considers Bauer to be one of its largest competitors, implying that Bauer constrains FRS to some extent, third-party evidence does not tend to support this. Media buying agencies and advertisers did not tend to see FRS as a direct alternative to Bauer, and many emphasised that they use FRS and Bauer to achieve different objectives (eg to cover different geographic areas). There was a general lack of concern shown by national advertisers and media buying agencies about the Acquisitions. The evidence in the round indicates that Bauer is a limited source of competitive pressure on FRS, and hence we provisionally conclude Bauer does not materially constrain FRS and that they are not close competitors in the supply of national radio advertising.
- 9.38 We considered whether there are any customers who, rather than using FRS and Bauer as complements to achieve broad geographic coverage, instead viewed them as alternatives and who would substitute between them, at least at the margin, to achieve greater impacts in response to relative differences in pricing and reach. While theoretically possible, we did not find evidence of this substitution happening in practice, and no significant concerns were expressed by media buying agencies or advertisers.
- 9.39 We therefore provisionally find that Bauer does not pose a material competitive constraint on FRS.

Provisional conclusion on horizontal unilateral effects in the supply of national advertising

- 9.40 Overall, this indicates that the Acquisitions are unlikely to substantially lessen competition as Bauer and FRS do not appear to be close competitive constraints on each other in the supply of national advertising and Bauer's largest competitor is Global, and this will not be materially affected by the Acquisitions.
- 9.41 We provisionally conclude that the Acquisitions have not and may not be expected to create a SLC in the provision of national advertising.

10. Vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house

Introduction

10.1 The theory of harm refers to the possible impact on local radio advertising markets as a consequence of Bauer representing the stations forming part of the Acquired Businesses:¹⁶⁸

- (a) Removing the acquired ([§] ¹⁶⁹) stations substantially degrades FRS' offering and may make FRS unviable.
- (b) The residual FRS stations will lose FRS as a source of national advertising revenues if FRS closes.
- (c) Alternative sources of national advertising revenues may be limited; potentially just representation by Bauer or Global. However, these sources of national advertising revenues might, in theory, not be offered or be offered under terms which are not as attractive for the residual FRS stations.
- (d) Despite potential benefits from representing stations, such as commission for representation and increased ability to renegotiate national contracts with media buying agencies, Bauer may have the incentive not to represent the residual FRS stations because of the potential for those stations' national and local advertising revenues to divert to Bauer.
- (e) This would mean that, as a result of the Acquisitions, the merged entity may have the ability and incentive to withhold access for the residual FRS stations to its own sales house – we refer to this as total foreclosure.¹⁷⁰
- (f) The loss of access to national advertising revenues via FRS may cause a significant loss of revenue to the residual FRS stations. This loss of revenue could significantly weaken the residual FRS stations' ability to compete for local advertising, thereby lessening competition in the local

¹⁶⁸ In addition, Bauer's acquisition of the ability to exercise material influence over FRS means FRS is no longer an independent sales house. This may also provide a mechanism by which Bauer could foreclose the residual FRS stations, but we have not traced through this mechanism here as we consider that the removal of the stations forming part of the Acquired Businesses is the more likely mechanism by which Bauer could foreclose the residual FRS stations.

¹⁶⁹ [§], we consider this theory of harm in terms of the impact of the Acquisitions.

¹⁷⁰ We consider the potential for a worsening of the terms in the supply of representation in Section 8. As set out there, we provisionally find an SLC as a result of the horizontal unilateral effects and as such did not consider it necessary to further assess partial foreclosure.

areas where they compete. The reduced access to national advertising customers via FRS could also reduce the revenue of new entrants or expanded radio stations and thus reduce competition dynamically.

Assessment framework

- 10.2 We assessed the theory of harm described in paragraph 10.1 using the CMA's ability, incentive and effect framework.^{171,172} This framework applies regardless of the intent of Bauer in choosing to represent the stations it is acquiring.
- 10.3 We assessed the following under each part of the framework:
- (a) Ability refers to whether Bauer, as a consequence of the Acquisitions can foreclose the residual FRS stations, ie whether it can significantly impact their viability or competitiveness:
 - (i) The impact of the Acquisitions on the viability of FRS and its ability to act as a source of national advertising revenue for the residual FRS stations.
 - (ii) What, if any, replacements are available for FRS revenues for the residual FRS stations.
 - (b) Incentive of Bauer to foreclose the residual FRS stations, in particular, the financial impact through revenues from representation, compared with diversion of national and local advertising revenues to Bauer stations.
 - (c) Effect of foreclosing local radio stations on competition for local advertisers.

Ability of Bauer to foreclose residual FRS stations

- 10.4 This section assesses whether the merged entity would have the ability to harm the residual FRS stations, through denying them access to national advertising revenues.
- 10.5 This section assesses:

¹⁷¹ [CC2 Revised](#), paragraph 5.6.6.

¹⁷² We are not implying that the Acquisitions were motivated by an intention to foreclose the residual FRS stations, but we are considering whether the consequence is that Bauer's incentives to subsequently represent them are influenced.

- (a) The impact of the Acquisitions on the viability of FRS and its ability to act as a source of national advertising revenue for the residual FRS stations.
- (b) What, if any, replacements are available for FRS revenues for the residual FRS stations.

Impact of the Acquisitions on the viability of FRS

10.6 As discussed in paragraphs 8.12 to 8.20, the removal of the acquired ([X]) stations from FRS would make FRS unviable. The Acquisitions and [X] mean that FRS is losing [X]% of its revenue and [X]% of its retained commission. We consider that it would not be possible for FRS to reduce its costs and/or raise its prices sufficiently to compensate for the removal of these stations. Even if FRS were to be able to do this, its reduced reach and coverage would make it more difficult to attract media buying agencies as customers. Therefore, it would likely cease to represent local radio stations for national advertising and cease to provide national advertisers access to local radio stations.

Replacements for FRS revenues

10.7 This section assesses the ability of the residual FRS stations to seek alternative revenue sources following the loss of FRS. If residual FRS stations have other revenue sources, then Bauer is unlikely to be able to foreclose them.

Alternative sources of national revenues

10.8 The alternatives for representation are considered in paragraphs 8.21 to 8.56. We consider that following the Acquisitions, Bauer and Global would be the only options for the residual FRS stations, with Global unlikely to want to serve some stations and other stations unlikely to want to accept its branding and content conditions.

Additional local advertising

- 10.9 Although Bauer and Global may have the ability to restrict or worsen access to national customers, residual FRS stations may be able to compensate for lost revenue by seeking additional local customers/revenue.
- 10.10 We found that, for the vast majority of residual FRS radio stations, local advertising CPT rates were higher than those for national advertising received via FRS. This suggests that FRS stations already maximise their local sales as they will get higher rates than selling the same inventory through FRS.

10.11 Residual FRS stations' responses supported the view that they would be unable to compensate for lost revenue by securing additional local advertising, though we note that the sales team requirements mean it is more expensive to acquire local advertising than advertising via FRS. For example:

- (a) Dee 106.3 said it does not sell out of inventory so it can carry lower yield national advertising and it provides the turnover to take Dee 106.3 to profit.
- (b) Adventure Radio (Radio Essex) said there is not enough demand to fill a local only or national only revenue source. It has a significant amount of unsold inventory and with a high cost of operation this means Radio Essex currently makes a loss.
- (c) [X] said both revenue streams are vital, whilst national advertisers are generating a much lower yield the cost of sales to [X] is equally much lower. Local advertising generates a higher yield but requires a team of people to facilitate the booking from sales exec, creative and sponsorship and promotion managers. Both markets are vital to a station's survival.

10.12 Five out of 16 residual FRS station groups that responded to our questionnaire¹⁷³ said that, if FRS no longer existed, they would consider increasing local advertising revenues. However, the responses from these station groups suggest that this would be a very difficult strategy and is unlikely to be profitable without cutting costs in the business and/or raising local prices. For example:

- (a) Radio Plymouth said that it would compensate little for the loss of revenue from FRS. 'We drive hard for local revenue already against three main competitors in our TSA who have very low costs compared to ours. The High Street is also contracting making the task even more difficult.'
- (b) [X] said that 'putting up the price on our local advertising may also be a possibility, but to replicate the loss of income, it'd have to be around 20-30% and that would also assume that we didn't lose any existing business.'
- (c) Lyca Media (Time 107.6) said that it 'could pull out of RAJAR and only sell locally. This would impact profits by about 60% but we could also reduce some programming, [X].'

¹⁷³ This is out of a total of around 20 radio station groups using FRS.

10.13 Twelve out of 16 residual FRS station groups that responded to our questionnaire told us that they would not be able to increase local revenues to compensate for the loss of FRS revenue, including some that said they would consider this option. One of the remaining station groups said that it would be able to replace revenue if it left FRS.

10.14 UKRD removed five out of its ten stations from FRS, despite owning a 50% share of FRS. An internal document shows that [REDACTED]. Bauer submitted that UKRD's strategy to focus on local advertising suggested it was plausible that the residual FRS stations could do the same.

10.15 [REDACTED].

10.16 [REDACTED].¹⁷⁴

10.17 We considered the revenues for the stations UKRD removed from FRS. [REDACTED].

Our provisional assessment

10.18 We consider that following the Acquisitions there would be two options for the residual FRS stations for representation services; Global and Bauer. For some local radio stations Global would not be a viable option (see paragraphs 8.34 to 8.42). As such, we consider that the residual FRS stations would have very limited alternative sources of national revenues.

10.19 We consider that the residual FRS stations would be unlikely to be able to gain additional local advertising to compensate for the loss of national advertising revenues (see paragraphs 10.9 to 10.17). In particular, the evidence from the FRS stations and differential between local and national advertising prices suggest that the residual FRS stations are already maximising their local sales.

10.20 Therefore, we consider that, following the Acquisitions, Bauer is likely to have the potential to foreclose competitors by refusing to supply representation for national advertising. Therefore, we provisionally conclude that, following the Acquisitions, Bauer is likely to have the ability to foreclose the residual FRS stations.

¹⁷⁴ [REDACTED].

Incentive of Bauer to foreclose the residual FRS stations

10.21 This section assesses whether Bauer would find it profitable to foreclose the residual FRS stations through denying them access to national advertising revenues.

10.22 Bauer has told us that it does not have an incentive to foreclose the residual FRS stations – instead it has an incentive to represent them on similar terms to FRS. The main reasons it gave for this were:

- (a) Representing the residual FRS stations would increase Bauer's share of radio listening and geographic coverage and enable it to renegotiate its contracts with media buying agencies.
- (b) Attempting foreclosure risks benefitting Global, if Global represents the stations instead.

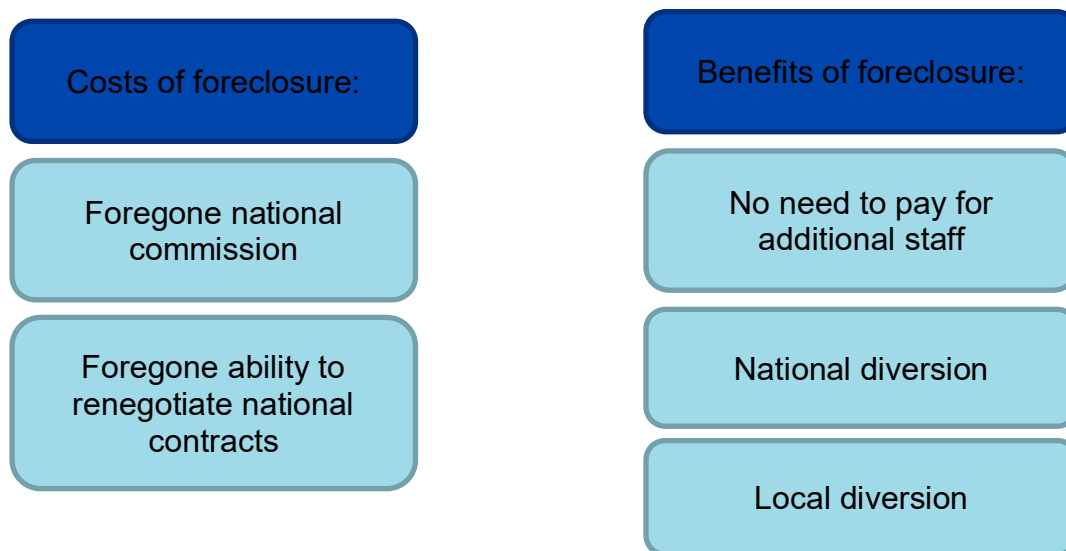
10.23 This section looks at:

- (a) The costs to Bauer of foreclosing local radio stations.
- (b) The benefits to Bauer of foreclosing local radio stations.

10.24 The potential costs and benefits¹⁷⁵ of foreclosing independent local radio stations are summarised in Figure 10. We look at each of these in turn in the sections that follow.

¹⁷⁵ We also considered whether Bauer could benefit by refusing to represent any new entrants, thus raising barriers to entry. This could benefit Bauer if these stations would have competed with it for revenues. However, large scale future entry is likely to be limited (see paragraphs 12.8 to 12.21), therefore we have not considered this further.

Figure 10: The potential costs and benefits to Bauer from foreclosing the residual FRS stations



Source: CMA analysis.

Costs to Bauer of foreclosing the residual FRS stations

10.25 Bauer has argued that the benefits to it from representing the residual FRS stations are clear-cut, quantifiable and achievable in the near term. Not realising these benefits would be a cost of a foreclosure strategy. This section assesses these costs:

- (a) Loss of commission earned.
- (b) Foregone ability to renegotiate contracts.

Loss of commission earned

10.26 If Bauer pursued a foreclosure strategy by not representing the residual FRS local radio stations, it would forego the commission it could earn from representing these stations.

10.27 Bauer has said that it intends to offer the residual FRS local radio stations a commission rate of [%]%. At this rate, Bauer estimates that it would generate direct commission revenues of approximately £[%] per annum.

10.28 Nothing commits Bauer to this commission rate,¹⁷⁶ but based on current commission rates and Bauer's likely ability to raise commission rates, we

¹⁷⁶ Given the horizontal concerns in supply of representation, Bauer is likely to have ability and incentive to raise commission rates.

consider that this is likely to be an underestimate of the commission Bauer would forego if it refused to represent these stations.

Foregone ability to renegotiate contracts

Bauer's views on the ability to renegotiate contracts

- 10.29 Bauer has said that representing the residual FRS stations would enable it to attract additional advertising and renegotiate contracts with media buying agencies because it improves Bauer's listener share and coverage.¹⁷⁷
- 10.30 Bauer has said that the additional reach and share of listening provided by the residual FRS stations will be an important part of Bauer's case when seeking to convince agencies to place a higher share of their advertising spend with Bauer instead of with Global. Bauer said that this increased share will be associated with increased volumes (measured by impacts, which is what national advertisers buy) and lower prices. It also said that this will be pro-competitive.
- 10.31 Bauer also said that obtaining a greater share from agencies relies on [REDACTED] share of listening – as well as geographic coverage and demographic coverage. Any actions that Bauer might take which risks this [REDACTED] would not make commercial sense. This would undermine Bauer's ability to achieve an increase in agencies' committed share of spend or volumes. Bauer obtains [REDACTED] of its national advertising revenues from the large agencies, with which it has share or other deals. [REDACTED].
- 10.32 Bauer also said that, in addition to increased scale and geographic coverage which will make Bauer a more attractive partner for media buying agencies, the Acquisitions will provide it with a significant increase in volumes of inventory (on the stations forming part of the Acquired Businesses, [REDACTED]¹⁷⁸). Bauer said that this increased inventory will [REDACTED].

Bauer's quantification of the benefits of renegotiating contracts

- 10.33 Bauer has estimated the benefits of renegotiating contracts which it would forego if it did not represent the FRS stations. It assumes that:

¹⁷⁷ Bauer has submitted that the addition of the residual FRS stations will enhance the Hits Radio network in the eyes of the agencies. They add coverage in areas where Bauer is not present. They also increase the reach of the network including in areas where Bauer is present. The residual FRS stations have a reach of 1.2 million listeners per week which would increase the reach of the Hits Radio network by nearly [REDACTED]%, to [REDACTED] listeners per week. [REDACTED].

¹⁷⁸ [REDACTED].

(a) The Acquisitions [X] and the residual FRS stations will enable it to increase its share of commercial listening to [X] [35-45]%.

(b) This increase in its share of commercial listening will enable it to renegotiate its deals with media buying agencies, [X].

10.34 This increase in revenues from media buying agencies will be due to both the increased share of commercial listening from the residual FRS stations and the acquired [X] stations. Therefore, Bauer isolated the increase in revenues resulting from representing the residual FRS stations.

10.35 It sequentially removed commission payable to media buying agencies and music royalties. It then calculated the increase in revenue due to Bauer (which it would retain in full), and the increase due to [X] the represented former FRS stations (on [X] which it would retain a [X]% commission).

10.36 Using this methodology, it estimated a cost of foreclosure of around £[X] from the foregone ability to renegotiate contracts resulting from not representing the residual FRS stations.

10.37 Bauer also quantified its expected losses if refusal to represent the residual FRS stations led to them being represented by Global, either through acquisition (by it or Communicorp) or by representing residual FRS stations. This would increase Global's share of listening and Bauer assumes this would increase Global's share of revenues from media buying agencies.

Our provisional assessment of Bauer's ability to renegotiate contracts

10.38 Bauer's ambition in representing the residual FRS stations is not just to earn commission on their existing national revenues, but also, [X].¹⁷⁹

10.39 Media buying agencies indicated that they would be resistant or unwilling to renegotiate [X].

10.40 In 2014, Bauer acquired Absolute Radio and started to represent Orion. Together this gave Bauer a 7.9 percentage point increase in its share of commercial listening. This led to a [X] percentage point increase in its share of national spend as a result of [X]. We acknowledge that the addition of share of commercial listening increased Bauer's revenue share. Bauer told us that this increase in revenue was driven by increased volumes (advertising impacts on the Absolute stations doubled from [X] in 2014 to [X] in 2018) and utilisation (inventory utilisation on Absolute improved from approximately

¹⁷⁹ At present the residual FRS stations represent [X] [0-5]% of share of commercial listening (Q3 2019 RAJAR Data) but only [X] [0-5]% of revenue (UKRD Merger Notice, Table 1).

[X] % in 2014 to [X] % in 2018). Bauer achieved this increase in revenue whilst keeping Absolute's prices broadly flat. We note, however, that the increase was not proportional to its increase in share of commercial listening. Bauer said that the acquisition of Absolute Radio did not produce the step-change in scale required to [X].

- 10.41 Media buying agencies indicated that the value advertisers place on advertising on represented stations might not increase, particularly without brand and content licensing arrangements. The underlying offering of the stations would be unchanged from the advertiser's perspective, ie the content and listenership would be unchanged. Therefore, the value that media buying agencies will place on represented stations is likely to be unchanged, and therefore their willingness to increase their advertising on these stations is likely to be limited.
- 10.42 Media buying agencies told us that even if Bauer represents these stations, this does not reduce Global's absolute number of listening hours. Therefore, it is not clear that media buyers would [X] switch to advertising on stations owned or represented by Bauer.
- 10.43 We do consider that representing the residual FRS stations will increase media buying agencies' willingness to advertise on these stations to some extent. This may mean that Bauer can [X].
- 10.44 Regarding potential losses from Global representing stations discussed in paragraph 10.37, given that Bauer may have overestimated its gains from the increase in its share of commercial listening, it is possible that it has also overestimated Global's gains from any increase in its share of commercial listening. In addition, whilst Bauer has argued that Global will represent these stations through acquisition or representation deals, there are some instances where it is unlikely that Global would either:
- (a) be able to acquire stations if it overlaps with them; or
 - (b) be willing to represent these stations (either directly or via Communicorp) due to its preference for brand and content licensing arrangements and some stations' unwillingness to enter into this type of arrangement.
- 10.45 Therefore, we attribute some value to the ability of Bauer to renegotiate its contracts with media buying agencies, but we do not consider it to be as high as Bauer proposes. Also, we attribute some value to potential losses from Global representing stations, because it is possible that Global would be able to acquire or represent some stations.

Benefits to Bauer of foreclosing the residual FRS stations

10.46 We now consider the benefits to Bauer of foreclosure to balance against the costs or forgone revenues of foreclosure.

Cost saving benefits of foreclosing the residual FRS stations

10.47 If Bauer foreclosed the residual FRS local radio stations, it would not incur the financial costs of representing them. This section assesses those costs, which are counted as benefits of foreclosing the residual FRS local radio stations.

10.48 Should Bauer represent the residual FRS local radio stations, it envisages that it would [REDACTED].¹⁸⁰

10.49 There may also be one-off costs in order to represent the FRS stations (eg in relation to setting up IT interfaces).

National diversion

10.50 This section assesses Bauer's likely gains from foreclosing the residual FRS stations such that their national customers switch from purchasing from FRS stations to purchasing from Bauer stations. This is referred to as national diversion.

10.51 Our starting point is to assume that national diversion is proportional to national shares of revenue.

Bauer's views on national diversion

10.52 Bauer has submitted that the limited substitutability between Bauer's local radio stations and most of the residual FRS stations limits the scope for Bauer to benefit from diversion of national airtimes sales. It submitted that agencies use the residual FRS stations when they wish to reach listeners that they cannot access directly through Bauer (or Global). This is either because: they cover specific geographic areas which Bauer (or Global) do not reach, or do not reach as efficiently as the FRS stations; or because the residual FRS stations have unique listeners who add additional reach to campaigns running on Bauer and/or Global stations (and the stations are used as complements). Therefore, for national advertising sales on the residual FRS stations, Bauer's local radio stations would mostly not be a suitable alternative to FRS.

¹⁸⁰ [REDACTED].

10.53 It also submitted that some of the residual FRS stations may be able to retain some national sales revenues¹⁸¹ and, if so, these sales would not be available for other radio station operators such as Bauer. It also submitted that there are likely to be substantial revenues lost to non-radio channels. For the specific needs that national advertisers have when they use the residual FRS stations, and given that agencies will tend to use FRS only when they consider that Global and Bauer are unable to provide them what they need (due to the existing share deals), other forms of advertising than radio may be more effective than alternative radio stations. This may be the case if the other forms of advertising are a better way to target the specific listeners and coverage areas than other radio stations.

Media buying agencies' views on national diversion

10.54 We asked media buying agencies, if FRS was unavailable, to estimate how their 2018 spend with FRS would have been reallocated between:

- (a) Other forms of advertising.
- (b) Other radio stations.
- (c) Reduced advertising spend.

10.55 As shown in Appendix D, several media buying agencies said that between 50% and 100% of that advertising spend would likely be transferred to non-radio advertising. Only one media buying agency said that it anticipated that advertising spend would be reduced rather than diverted and then only by 10% of its spend with FRS, and it said it would seek to place adverts with the ex-FRS stations. A smaller number of media buying agencies said that all, or nearly all, advertising would stay within radio although few quantified the proportions going to different radio groups.

Bauer's quantification of national diversion

10.56 Bauer estimated the potential increase to its revenues from direct national advertising if residual FRS stations do not switch to Global (either through representation or acquisition).¹⁸²

¹⁸¹ For example through their own national sales houses, making national sales directly to media buying agencies or using the Radio Trading Desk.

¹⁸² Bauer submitted that its analysis was conservative and that the values it used were not what it considered to be most likely. Bauer also updated its analysis in response to our working paper, but these updates are not included here.

10.57 Bauer used the following methodology:

- (a) Starting with the residual FRS stations' national sales, it assumed [X] would be lost to non-radio media.¹⁸³
- (b) It then assumed that [X] of national revenue would remain with the residual FRS stations through other channels.¹⁸⁴
- (c) It then assumed that the remainder of the national spend would divert to Global and Bauer in proportion to their shares of national advertising revenues.
- (d) It removed music royalties and then calculated the total increase in revenue due to Bauer (which it would retain in full) and [X].

10.58 Using this methodology Bauer estimated a maximum gain from national diversion of £[X] to Global and Bauer.

10.59 Bauer assumed a probability of [X]% for the residual FRS stations switching to Global (either through representation or acquisition). As a consequence, Bauer estimated its own potential gain from national diversion to be £[X].

10.60 For the reasons stated in paragraph 10.44, whilst we acknowledge that it is possible that some of the residual FRS stations could end up being represented or acquired by Global, we think that [X]% is too high an estimate.

Our quantification of national diversion

10.61 We estimated a lower and upper bound for the benefit to Bauer of national diversion from foreclosing the residual FRS local radio stations.

10.62 In order to calculate the lower bound, we used the following methodology:

- (a) For each media buying agency that responded to our diversion question, we started with its 2018 FRS spend.¹⁸⁵ Because this included spend with

¹⁸³ In response to our working paper on vertical effects, Bauer used the difference between our upper bound and lower bound for national diversion to estimate the diversion to non-radio. They estimated this to be around 40-50%. We consider this to be a substantial overestimate because our estimate of the lower bound had substantial missing data (in particular from a big media buying agency).

¹⁸⁴ Bauer submitted that certain of the residual FRS stations are part of larger corporates that have their own sales houses; smaller radio stations may be able to make some national advertising sales directly; and that radio stations can make sales via the Radio Trading Desk.

¹⁸⁵ This may include some spend with Quidem which will not divert in proportion to market shares, but we do not consider that this will substantially affect our quantification of the lower bound.

the acquired [%] stations, we apportioned the total spend according to the residual FRS stations' share of FRS' 2018 revenues ([%]%).

(b) We multiplied this by each media buying agency's estimate of diversion should FRS no longer exist. We used the media buying agencies' estimates of diversion in the following ways:

- (i) Where media buying agencies specified the percentage of spend which would divert to Bauer, we used this in the calculation, without adjustments.
- (ii) Where media buying agencies only specified the spend which would divert elsewhere in radio, but did not specify how this would be split between Bauer and other stations, we assumed a [%] diversion in line with Bauer's national revenue shares of supply.¹⁸⁶
- (iii) Because this spend included local spend via FRS,¹⁸⁷ we reduced this spend by [%] in proportion to the 'single station' spend with FRS in 2018.¹⁸⁸

10.63 Using this methodology, we estimated national diversion to Bauer of around £[%] of FRS revenues annually. However, we consider this is an underestimate as it does not include responses from all media buying agencies and significantly it is missing revenue from one of the big media buying agencies (Omnicom¹⁸⁹).

10.64 Therefore, we looked at an alternative methodology:

(a) We started with the total FRS 2018 revenue on the residual FRS stations.¹⁹⁰ As in paragraph 10.62(b)(iii), we reduced this spend in proportion to the 'single station' spend with FRS in 2018.

¹⁸⁶ See Table 5.

¹⁸⁷ FRS classified campaigns as follows:

- national campaigns as those including all FRS stations,
- regional campaigns as those booking FRS geographical packages and
- local campaigns as bookings for individual or group of stations.

We consider that spend on local campaigns is likely to remain with that station or divert within the local area. FRS 'single station' spend is considered as part of local diversion in paragraphs 10.81 to 10.82.

¹⁸⁸ Of FRS' retained commission in 2018:

- [%] were 'national' bookings, that is, bookings on all FRS stations.
- [%] were 'regional' bookings, that is, bookings on one or more of FRS' regional groupings of radio stations, but fewer than all stations.
- [%] were 'single station' bookings, that is bookings for individual or groups of stations, which are not in either category above.

¹⁸⁹ Collectively Omnicom agencies spent around [%] with FRS in 2018, but said that up to [%] [80-100]% of this spend could be diverted to non-radio advertising and up to [%] [80-100]% could be diverted to other radio stations. This meant we were not able to calculate diversion for Omnicom.

¹⁹⁰ This does not include any sales from Quidem.

(b) We multiplied this by the likely diversion should FRS no longer exist, that is, we assumed a [%] diversion in line with Bauer's national revenue shares of supply.

10.65 Using this methodology, we estimated an upper bound for national diversion to Bauer of around £[%] of FRS revenues annually.

10.66 The true value of national diversion is likely to fall somewhere between these two estimates.

Our assessment of national diversion

10.67 We have a range of possible estimates for national diversion: from £[%] to £[%]. It is possible that residual FRS stations could be represented by Global which would reduce this.

Local diversion

10.68 This section assesses Bauer's potential gains from local customers diverting from FRS local radio stations to Bauer radio stations. This could happen if the loss of national advertising significantly weakens residual FRS stations, such that their offer to local advertisers also weakens (eg because of degradation in content). In such a case, insofar as a Bauer station competes with the residual FRS station, Bauer may recoup some local customers.

Bauer's views on local diversion

10.69 Bauer said that the extent of local diversion is not only uncertain but it is likely to be minimal. This benefit would only arise in those areas where Bauer is present as a local competitor. In other areas the sole or principal beneficiary of any diversion would be other competitors present in those areas, particularly Global and/or Communicorp. Moreover, this would allow Global to increase its share of commercial listening.¹⁹¹

10.70 Of the 36 FRS local radio stations that Bauer discussed in its foreclosure analysis, there is no local overlap in 11 cases, and there is no significant overlap in a further 11 cases. It said that an attempted foreclosure strategy would thus not benefit Bauer in these areas.

¹⁹¹ [Bauer response to phase 1 decision](#), paragraphs 8.23-8.24.

10.71 Bauer looked at 12 areas where there is a substantial overlap between Bauer and a residual FRS local radio station. It said that the scope for Bauer to benefit is limited for the following reasons:

- (a) In eight of the 12 areas [redacted].¹⁹² [redacted].^{193, 194} It would earn more revenue by earning commission on the sales than on losing those commission revenues and effectively cannibalising advertising revenues on its own stations.
- (b) Of the remaining four cases where there may be non-negligible scope to increase advertising on the Bauer stations, it told us:
 - (i) Two stations have extremely small shares of commercial listening and therefore they are unlikely to have significant local advertising revenues;¹⁹⁵ and
 - (ii) The remaining two stations ([redacted]) compete with Bauer's [redacted]. It is unpredictable to what extent these stations would be weakened and whether local advertising would divert and where.^{196, 197}

10.72 Bauer also submitted that there is uncertainty as to how the residual FRS 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. Bauer has said that this is a strategy that has been successfully pursued by UKRD.¹⁹⁸ 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.¹⁹⁹

Bauer's quantification of local diversion

10.73 Bauer estimated the potential increase to its revenues from local advertising if residual FRS stations do not switch to Global (either through representation or acquisition).

¹⁹² [redacted].

¹⁹³ [redacted].

¹⁹⁴ [Bauer response to phase 1 decision](#), paragraph 8.25.

¹⁹⁵ [redacted].

¹⁹⁶ [redacted].

¹⁹⁷ [Bauer response to phase 1 decision](#), paragraph 8.25.2(B).

¹⁹⁸ As discussed in paragraphs 10.9 to 10.17, we consider that this would be a difficult strategy for other stations to replicate.

¹⁹⁹ [Bauer response to phase 1 decision](#), paragraph 8.26.

10.74 Bauer used the following methodology:

- (a) It assumed that the residual FRS stations' national sales revenues were [X]% of their total revenues²⁰⁰ and used this to estimate local sales revenue.
- (b) Bauer assumed that, if the residual FRS stations were weakened, [X]% of their advertising would leave the residual FRS radio stations.²⁰¹
- (c) Of this, Bauer assumed that [X]% would be lost to non-radio media.
- (d) Bauer assumed that local advertisers will divert to alternative local radio stations in line with the alternative stations' local share of commercial listening within the TSA of each residual FRS station.²⁰²
- (e) It then multiplied this diversion factor for Bauer by the estimate of total diversion to estimate Bauer's potential increased sales from local diversion.
- (f) It removed music royalties and the cost of acquiring the additional local sales.

10.75 Using this methodology, Bauer estimated the maximum local diversion to be £[X].

10.76 As with national diversion, Bauer assumed a probability of [X]% for the residual FRS stations switching to Global (either through representation or acquisition). As a consequence, Bauer estimated the potential gain from local diversion to be £[X].

10.77 As discussed in paragraphs 10.44 and 10.60, we acknowledge that it is possible that some of the residual FRS stations could end up being represented or acquired by Global, but we think that [X]% is too high an estimate.

Our quantification of local diversion

10.78 We calculated an estimate of potential local diversion.

10.79 Our methodology assumes that the FRS local radio stations exit and that advertisers' total spend with those stations diverted to overlapping local

²⁰⁰ It used this figure based on public reporting by Radio Plymouth.

²⁰¹ Bauer considered this to be a high estimate.

²⁰² It pointed out that this may not be a good proxy for actual diversion given that differences in geographic coverage may mean that stations are not good substitutes. We consider that this may be the case and it may overestimate diversion to both Global and Bauer stations.

stations in proportion to their listener shares. This is a strong assumption and will lead to an overestimate of local diversion because it assumes that stations exit entirely, when they could be weakened, seek representation or be acquired.

10.80 We calculated two elements to local diversion:

- (a) diversion from single station purchases from FRS (see paragraph 10.62(b)(iii));
- (b) diversion from direct spend with local stations.

- *Diversion from single station purchases from FRS*

10.81 We calculated the total diversion from single station purchases from FRS. We used local listening shares as a proxy for shares of advertising spend in each TSA.²⁰³ We used the following methodology:

- (a) For each residual FRS station's TSA, we added together the listening shares for Bauer and the stations forming part of the Acquired Businesses.
- (b) For each residual FRS station's TSA, we added together the listening shares for any other residual FRS stations in that TSA. We then upweighted the listening shares of Bauer plus stations forming part of the Acquired Businesses to estimate the future listening shares for Bauer stations if all the residual FRS stations exit.
- (c) We multiplied these listener shares by each residual FRS station's revenue from 'single station' purchases through FRS.²⁰⁴
- (d) We aggregated these to give a UK total for local diversion of FRS spend.

10.82 Using this methodology, we estimated that total diversion from FRS 'single station' purchases would be around £[REDACTED].

²⁰³ As discussed in footnote 202, this may not be a good proxy for actual diversion.

²⁰⁴ This does not include Quidem.

- *Diversion from direct spend with local stations*

10.83 We also estimated the local diversion from spend from advertisers who advertise directly with local radio stations. We used the following methodology:

- (a) We multiplied each residual FRS station's²⁰⁵ direct local revenue by the estimated future listening shares for Bauer stations in the FRS station's TSA estimated using the methodology described in paragraphs 10.81(a) and 10.81(b).
- (b) We aggregated these to give a UK total for local diversion of direct local spend.

10.84 Using this methodology, we estimated that total diversion from direct spend with local radio stations would be around £[REDACTED].

Our assessment of local diversion

10.85 We acknowledge that our estimate of local diversion is likely to be a significant overestimate. Theoretically local diversion could be very much less or even negligible if the weakening of residual FRS stations does not lead to local advertisers switching to Bauer stations. It is possible that residual FRS stations could be represented by Global which would reduce our estimate.

Our view on the overall profitability of representing the residual FRS stations

10.86 Table 6 shows both our and Bauer's estimated costs to Bauer of foreclosing the residual FRS stations. Table 7 shows the estimated benefits.

Table 6: The estimate of annual costs to Bauer from foreclosing the residual FRS stations

<i>Cost of foreclosure</i>	<i>Our estimate</i>	<i>Bauer estimate</i>	<i>Comments on estimate</i>
Foregone national commission	We accept Bauer's estimate	[REDACTED]	Likely to be an underestimate
Foregone ability to renegotiate national contracts	[REDACTED]	[REDACTED]	We consider that the true value of this would fall between the two extremes.

Source: CMA analysis.

²⁰⁵ Or station group if not available at station level.

Table 7: The estimate of annual benefits to Bauer from foreclosing the residual FRS stations

<i>Benefits of foreclosure</i>	<i>Our estimate</i>	<i>Bauer estimate</i>	<i>Comments on estimate</i>
Cost savings	We accept Bauer's estimate	[£]	May be higher if [£] True value is likely to be somewhere within this range. But we note that it is possible that residual FRS stations could be represented by Global which would reduce this.
National diversion	[£]	[£]	Our upper estimate is likely to be a significant overestimate, the true estimate is likely to be nearer Bauer's estimate. But we note that it is possible that residual FRS stations could be represented by Global which would reduce this.
Local diversion	[£]	[£]	

Source: CMA analysis.

10.87 We observe that the range of potential costs of foreclosure and the potential benefits are broadly similar, given that our estimates of diversion are uncertain and likely to be at the lower end of the ranges. In particular:

- (a) The benefits of national diversion rely on national advertising spend with Bauer increasing substantially – but FRS is generally used for different purposes than Bauer, therefore overall diversion may be low, ie towards lower end of the range but potentially lower.
- (b) The benefits of local diversion are likely to be at the lower end of the range because the benefit relies on local radio stations being significantly weakened or exiting such that a large part of local advertising diverts to Bauer (and does not, for example, go to non-radio advertising) and it is not clear that this would be the case.

10.88 Therefore, even if some of these benefits may be realised, some of the potential values are very uncertain, especially the benefits from diversion. This uncertainty is significant in that Bauer could have reasonable expectations of the commission it would earn from representation and the increased scale would likely enable it to realise some benefits by renegotiating national contracts. As such, we consider that when Bauer is considering whether to represent the residual FRS stations as a whole or foreclose them as a whole, it would be foregoing a reasonably certain commission stream²⁰⁶ for more uncertain benefits of diversion. The costs and benefits of foreclosure are broadly similar, but the costs (the foregone

²⁰⁶ The main uncertainty would be whether stations would be willing to be represented by Bauer which would affect the potential size of commission.

revenue stream) are reasonably certain, whereas the benefits have high uncertainty for Bauer and could be at the lower end of our estimates.

10.89 Therefore, on balance, we provisionally conclude that Bauer does not have the incentive to foreclose the residual FRS radio stations as a whole.

Effect of foreclosing the residual FRS stations on competition for local advertisers

10.90 As we do not consider that Bauer has the incentive to foreclose the residual FRS radio stations by refusing to offer to represent them, we have not analysed whether the foreclosure of the residual FRS stations would have an effect on competition for local advertisers.

Provisional conclusion on vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house

10.91 We provisionally conclude that Bauer has the ability to foreclose the residual FRS stations by refusing to supply them with representation services.

10.92 We provisionally conclude that Bauer does not have the incentive to foreclose the residual FRS stations by refusing to supply them with representation services for the reasons set out in paragraph 10.87.

10.93 Therefore, we provisionally conclude that the Acquisitions have not and may not be expected to result in an SLC through the total foreclosure of the residual FRS stations.

11. Horizontal unilateral effects in the supply of local radio advertising

Background

11.1 As part of the Acquisitions, Bauer is acquiring 14 local radio stations from Celador, nine local radio stations from Lincs, 12 local radio stations from Wireless and ten local radio stations from UKRD. These will be added to Bauer's existing portfolio of 64 local radio stations.

11.2 The CMA assessed the resulting horizontal overlaps as part of its phase 1 investigation and found that the Acquisitions gave rise to a realistic prospect of an SLC in three local areas:

- (a) In the West of England with regard to the overlaps between Celador's Sam FM and The Breeze (South West) and Bauer's Kiss West;
- (b) In the West Midlands with regard to the overlaps between Wireless's Signal 107 and Bauer's Free Radio FM (Birmingham & Black Country) and Free Radio FM (Shropshire), especially in Wolverhampton and Shropshire; and
- (c) In Yorkshire with regard to the overlaps between Lincs' Trax FM, Dearne FM, and Rother FM and Bauer's Hallam FM.

11.3 In this section we assess the possibility of an SLC as a result of horizontal unilateral effects in the supply of local advertising in each of these areas.

Assessing competition in local radio advertising

- 11.4 When two competing local radio stations merge, they no longer constrain each other potentially allowing the combination to raise prices or otherwise worsen its terms to local advertisers.²⁰⁷ The likelihood and size of this effect will be greater when the local stations compete closely with each other.
- 11.5 To assess how closely the Parties' local radio stations compete in the local areas of potential concern, we consider the following:
- (a) Their shares of supply both in terms of listener hours and local advertising revenue.
 - (b) Geographic coverage, particularly the extent to which radio stations' geographic broadcast areas overlap.
 - (c) Whether there are other relevant differences between the stations' offerings, for example in terms of demographics, local content and pricing.
 - (d) Whether local advertisers regarded these stations as being close alternatives, including considering evidence of past switching.
 - (e) The availability and importance of competitors; both alternative radio stations and local non-radio advertising options.

²⁰⁷ [Merger Assessment Guidelines](#), paragraphs 5.4.1, 5.4.6.

Shares of supply

- 11.6 We consider the shares of the Parties' radio stations both in terms of listener hours and local advertising revenue.
- 11.7 Radio stations' relative audience sizes within a geographic area over which they compete can affect competition between those stations. In previous radio mergers, the CMA has found that radio stations with significantly different audience sizes are less close alternatives for advertisers, as they represent different levels of commitment in terms of advertising spend in a particular area.²⁰⁸ Radio stations with greater audience penetration typically charge more to advertisers than radio stations with fewer listeners in a given area. We also considered evidence from the Parties on relative prices of different stations to assess differences in the level of commitment required from advertisers.
- 11.8 We measured stations' relative audience sizes by assessing the share of commercial radio listening hours each station has within its TSA and within the TSAs of overlapping stations. We used RAJAR data to estimate shares of supply of commercial listening hours.
- 11.9 We also estimated each station's share of local advertising revenue within its own TSA and within the TSAs of overlapping stations. To estimate shares of supply by revenue within each TSA, we estimated each competing station's relevant revenue by allocating a proportion of its non-contracted local airtime advertising revenue (as reported to Ofcom) equal to the proportion of that station's listener hours (as measured by RAJAR) that lay within the TSA of interest.²⁰⁹
- 11.10 We consider that these shares of supply of revenue need to be interpreted with caution because these are differentiated markets. These shares of supply measure how much local advertising can be attributed to the broadcasting area of the overlapping stations. However, we note that there may be important differences between the nature of the advertising sold by stations in the same area. For example, if one station covers another station's broadcast area and has a total area five times the size, our methodology would allocate a fifth of its local advertising revenue to the competing station's broadcast area. That may give the station with the wider broadcast area a high share in the other station's broadcast area. However, it is selling advertising for a

²⁰⁸ [Global Radio / GMG](#), 21 May 2013, paragraph 6.96.

²⁰⁹ For example, if a station had half of its listener hours in a competitor's TSA, the CMA would allocate half of that station's local advertising revenue to the competitor's TSA.

much wider area and so is likely to have very different customers and so only compete with the other station to a limited degree, if at all.

Geographic coverage

- 11.11 From the perspective of advertisers, stations' broadcast areas can overlap where: (i) their TSAs overlap; (ii) one or both stations offer split transmission, and one or more of each station's transmitters cover similar areas; or (iii) a collection of smaller stations' TSAs (or a collection of smaller transmitters) together overlap closely with a larger TSA (or transmitter);
- 11.12 TSAs matter because local advertisers are often only interested in paying to reach their local customers in a specific area. Radio stations therefore only compete to the extent that they overlap. The closer the overlap, the more advertisers might consider them as close substitutes. Even if an advertiser can access an area through two radio stations, they may not compete if one broadcasts to a much wider area – there would be 'wastage' for a local advertiser using the wider broadcast.
- 11.13 However, different radio stations with different broadcast areas can compete with each other. Some advertisers may find both TSAs to be imperfect and moving between them changes the wastage they face rather than introducing it. Further, rather than wastage, implying that advertising in the additional areas is of no value, the additional areas may still be areas with positive advertising value.
- 11.14 We also consider where several stations of one Party can compete with one or more stations of the other Party, and where stations offer split transmission, for example combinations of several smaller stations (or transmitters), and a larger station (or transmitter).

Other forms of differentiation

- 11.15 There are further differences between radio stations, for example in terms of audience demographics, audience overlap, local content and pricing. Competition will be less intense where stations have differences if, and only if, enough advertisers care about those differences, for example if they wish to target young people. In that case radio stations reaching significantly different demographics would be less close alternatives for advertisers.

Views and behaviour of local advertisers

- 11.16 One of the sources of evidence we used to assess the factors above is the views of customers, ie local advertisers. However, we note that customers are

likely to have different preferences and reasons for advertising, making it more difficult to extrapolate views than where customers are more homogeneous. This is particularly the case when considering responses to specific questions, in specific areas, because the number of responses from advertisers available to us is low.

11.17 In addition, the customers we sent questionnaires to are not necessarily those that may be affected by the Acquisitions, for example they may not use the transmitter combinations that we have identified as being of interest. For example, advertisers who use a station to advertise to a specific area are going to be less informative about changes in competition in another area covered by that station. Furthermore, we note that we received a relatively low number of responses.

11.18 We also considered observed behaviour of customers, including data from the Parties on the extent that customers purchase different options and switching between options.

Competitors

11.19 In our competitive assessments, we also considered the degree of any competitive constraints from alternative local radio stations, and any constraint from non-radio advertising. Radio stations will compete more closely if local advertisers have few alternative ways to advertise as effectively.

West Midlands

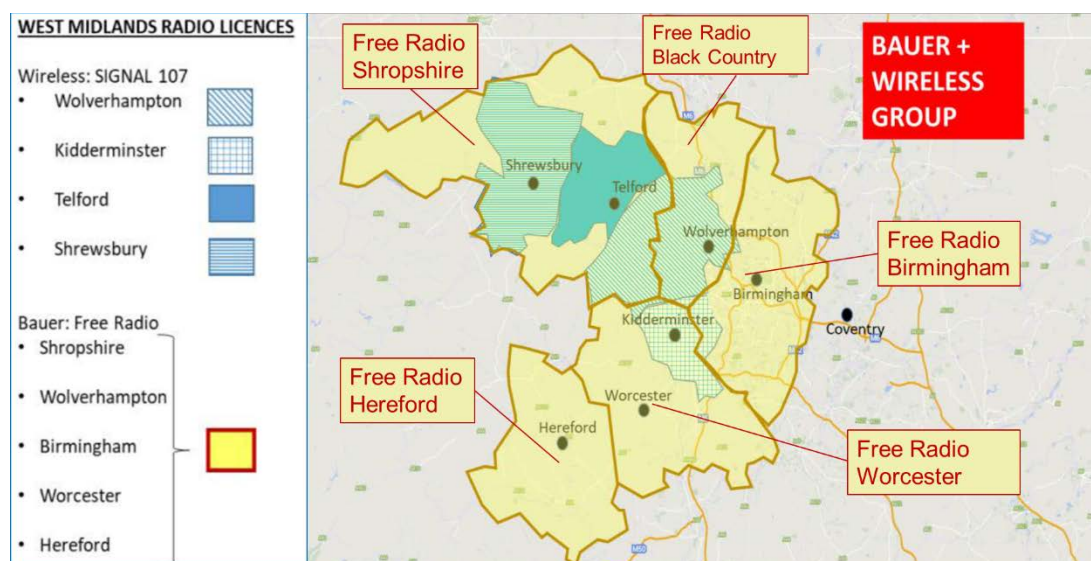
Background

11.20 In the West Midlands, Wireless's Signal 107 overlaps with Bauer's Free Radio FM. As both stations can and do sell advertising separately on each of their transmitters, we consider competition at the transmitter level. In its initial phase 1 investigation, the CMA found that the overlaps between Wireless's Signal 107 and Bauer's Free Radio FM (Birmingham & Black Country) and Free Radio FM (Shropshire) raised significant competition concerns. As such, this section considers competition in:

- (a) Wolverhampton: specifically, the overlap between Free Radio FM (Black Country) and Signal 107's Wolverhampton transmitter.
- (b) Shropshire: specifically, the overlap between Free Radio FM (Shropshire) and the combination of Signal 107's Telford and Shrewsbury transmitters.

11.21 Figure 11 shows the Parties' stations in the West Midlands.

Figure 11: Broadcast areas – Free Radio and Signal 107



Source: The Parties²¹⁰

11.22 This section first considers the evidence that is common to both Wolverhampton and Shropshire, before covering each area in turn.

Parties' submissions

11.23 The Parties submitted that in the West Midlands:

- Signal 107 is a limited constraint, in particular due to its limited share of listening and reach and limited shared audience between it and Bauer's Free Radio;²¹¹
- Bauer's strategy [X], whereas Signal 107's key strength is its ability to offer local businesses a station that covers the specific local area without wastage (and due to Signal 107's more limited reach, at a lower price point); and
- Global's stations, Smooth Radio (West Midlands), Heart (West Midlands) and Capital (Birmingham), present much greater competitive constraints on Bauer.²¹²

²¹⁰ [Bauer response to phase 1 decision](#), 27 August 2019, Figure 7.

²¹¹ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.2.

²¹² [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.5.

Views of third parties

11.24 We asked local advertisers who had advertised on Signal 107 or Free Radio in the West Midlands for their views on the Wireless Acquisition.²¹³ Three out of seven local advertisers who expressed a view had concerns about the Wireless Acquisition. One of the concerns was regarding ‘price control over the broadcast area’.²¹⁴ However, we note that the other two concerns raised did not appear directly related to competition in the relevant local areas:

- (a) One of the concerns was ‘with Bauer and Global taking over everything’.²¹⁵
- (b) Another concern was because the advertiser has ‘a great working relationship with [Signal 107] ... and we would not like to see this affected in any way and lose the team/station we have worked with’.²¹⁶

11.25 Among the four advertisers who said they were not concerned about the Wireless Acquisition, only one appears to have operations in Wolverhampton or Shropshire and the two that gave more details said that Signal 107 “didn’t cover the geographical area and therefore audience we were looking to target for our specific campaign”²¹⁷ and does not ‘broadcast to the areas where we operate’.²¹⁸ This suggests that they are unlikely to be representative of customers advertising in Wolverhampton or Shropshire, ie customers that may be adversely affected as a result of the Wireless Acquisition.

11.26 The CMA asked local advertisers to rate how closely they perceived the stations as alternatives.²¹⁹ The small number of local advertisers that gave ratings typically did not consider the stations as close alternatives.

- (a) The three Free Radio advertisers who gave ratings, rated Signal 107 at or just above the bottom of the scale. The reasons given included that ‘Signal 107 more local to listeners, Free Radio more regional to area.’²²⁰
- (b) The two Signal 107 advertisers who gave ratings, rated Free Radio at just above the bottom of the scale. The reasons given were the more regional

²¹³ We sent questionnaires to the top ten customers of each station.

²¹⁴ [REDACTED].

²¹⁵ [REDACTED].

²¹⁶ [REDACTED].

²¹⁷ [REDACTED].

²¹⁸ [REDACTED].

²¹⁹ We asked the following question: ‘In terms of your advertising, how close an alternative, if at all, do you consider Signal 107 to be to Free Radio? Please explain your answer including whether it would vary depending on the type of campaign or other factors (1=not at all, 5=very good alternatives)’.

²²⁰ [REDACTED].

feel of Free Radio, the greater expense of Free Radio and their own good relationship with Signal 107.

Shares of supply

11.27 As set out in paragraphs 11.8-11.9, we calculated shares of supply for both listening and local advertising revenue, see Table 8. In this area the available RAJAR data is for the two TSAs corresponding to, respectively, the entirety of Signal 107's broadcast area and Free Radio's broadcast area in Shropshire and around Wolverhampton (Free Radio Black Country) combined. These TSAs are wider than the two areas of concern.

Table 8: Local radio stations' shares of supply Q2 2019

			(%)
<i>Share of supply of commercial radio by listening hours</i>			
<i>Radio station</i>	<i>Signal 107 TSA</i>	<i>Free Radio FM (Shropshire & Black Country) TSA</i>	
Global	69		69
Communicorp	-		1
Quidem	-		-
Wireless	7		6
Bauer	24		24
Combined Bauer and Wireless	31		30
<i>Share of supply of commercial radio by revenue</i>			
<i>Radio station</i>	<i>Signal 107 TSA</i>	<i>Free Radio FM (Shropshire & Black Country) TSA</i>	
Global	[3] [50-60]		[3] [50-60]
Communicorp	-		[3] [0-5]
Quidem	-		-
Wireless	[3] [10-20]		[3] [10-20]
Bauer	[3] [30-40]		[3] [30-40]
Combined Bauer and Wireless	[3] [50-60]		[3] [40-50]

Source: RAJAR and Ofcom data and CMA calculations.

11.28 We estimate that the Parties have a combined share of supply by listening hours of around 30% in both the Signal 107 and the Free Radio FM (Shropshire & Black Country) TSAs with similar small increments of 6% and 7%. The Parties' share of supply of local advertising revenue is higher in both TSAs, [~~3~~] [50-60]% in Signal 107's TSA and [~~3~~] [40-50]% in the Free Radio FM (Shropshire & Black Country) TSA. The increment is also larger, [~~3~~] [10-20]% in both areas. However, we have placed limited weight on these shares of supply as they cover wider areas than the two areas we are concerned with, ie Wolverhampton and Shropshire.

11.29 In Wolverhampton, the value of advertising solely on the relevant transmitters²²¹ is similar: £[REDACTED] for Signal 107 (Wolverhampton) and £[REDACTED] for Free Radio (Black Country). This is evidence of both options being credible options for local advertisers.

11.30 In contrast, in Shropshire only £[REDACTED] was spent on Signal 107's Shrewsbury and Telford transmitters combined in 2018 compared with sales of local advertising solely on Free Radio (Shropshire) of £[REDACTED].²²² This usage is consistent with the Signal 107 option being seen as a less attractive or a more limited option by local advertisers.

Wolverhampton

11.31 We now consider the extent of competition between Free Radio and Signal 107 in the Wolverhampton area prior to the Wireless Acquisition.

Differences in geographic coverage

11.32 The Parties submitted that the Free Radio (Black Country) transmission area 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 107.²²³ The Parties submitted that this means that switching between the stations would involve significant wastage as the Black Country/Wolverhampton area extends beyond the area covered by Signal 107 (Wolverhampton).²²⁴

11.33 They also submitted that Free Radio's option to cover just Wolverhampton is only available on the analogue broadcast because the DAB broadcast (which accounts for over 50% of Free Radio Birmingham & Black Country listening) cannot be split to cover just Wolverhampton.²²⁵

11.34 The Parties further submitted that [REDACTED].²²⁶

11.35 While Free Radio's Wolverhampton transmission area may only cover half of Signal 107's Wolverhampton transmission area, this includes the city of Wolverhampton, which is the major conurbation in the area. These two

²²¹ That is excluding any advertising that is sold as part of a wider set of transmitters.

²²² As for the figures for Wolverhampton, this excludes advertising that is sold as part of a wider set of transmitters.

²²³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.15.

²²⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.4.

²²⁵ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.4. Although we note that footnote 68 in the same document suggests that from Q2 2019 the DAB broadcast will align with the new Wolverhampton and Shropshire TSA.

²²⁶ [REDACTED]. Source: [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.11.

stations are the only radio options that can be used to specifically target the Wolverhampton area.

11.36 Because both areas include Wolverhampton the population overlap is likely to be significantly larger than the geographic overlap. Indeed, the Free Radio Wolverhampton transmitter covers 61% of the population in Signal 107's entire broadcast area.²²⁷ The overlap with just Signal 107's Wolverhampton transmitter is therefore larger than 61%, because the overlap is almost entirely with the Wolverhampton transmitter and this covers only a part, albeit a large part, of Signal 107's transmission area. Therefore, we consider that the Parties' Wolverhampton broadcast areas overlap significantly.

Differences in listenership

11.37 The Parties submitted that:

- (a) Signal 107's limited share of listening in its own TSA (just 7%) means that it is a weak radio competitor;²²⁸ Signal 107 is not transmitted on DAB and thus is not heard by listeners using DAB receivers.
- (b) There is minimal overlap in the stations' listener base as 92% of Free Radio (Birmingham & Black Country) listeners do not listen to Signal 107 and this is evidence that the stations are clearly complementary.

11.38 We consider that Signal 107's lower share of listening means that it has been less successful at attracting listeners. Signal 107's ability to attract advertisers in the Wolverhampton area is reflected in its revenue. Its revenue from local advertising on its Wolverhampton transmitter (£[X]) is roughly the same as Free Radio (Black Country)'s revenue (£[X]), which we consider to be evidence of both options being used by local advertisers to a significant extent (see paragraph 11.29).

11.39 The fact that there is limited overlap in terms of listeners between the Parties' stations does not necessarily imply that these stations are not substitutes for local advertisers if, for example, an advertiser does not expect to advertise to every listener and sees Free Radio's and Signal 107's listeners as having similar value.

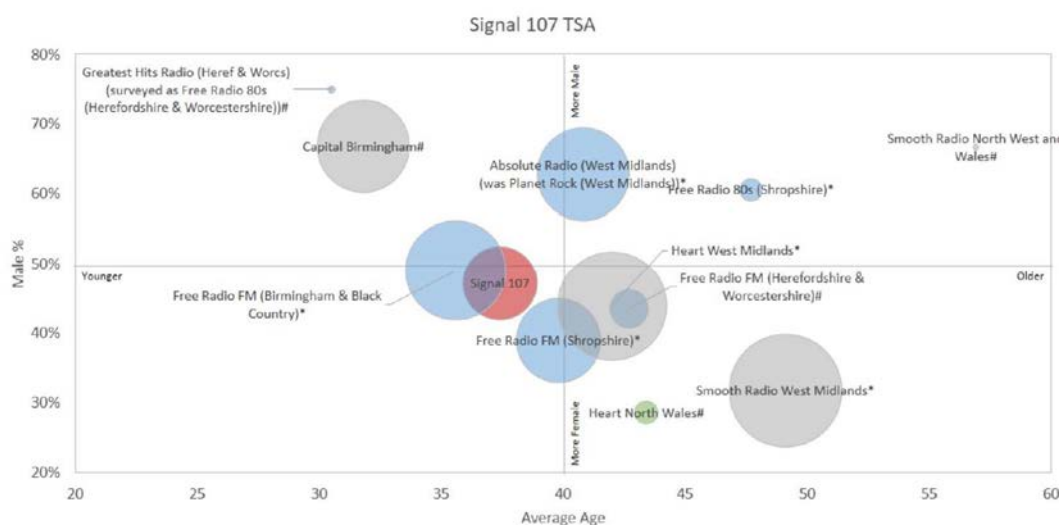
11.40 Figure 12 shows the audience demographics, in terms of average age and proportion of males, for radio stations that broadcast in the same area as Signal 107. Signal 107's demographics are most similar to those of Free

²²⁷ 633,000 out of 1.04 million in Q4 2018.

²²⁸ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.4.

Radio (Birmingham and Black Country) and vice-versa. This demographic information is not available for Signal 107's and Free Radio's Wolverhampton transmitters.

Figure 12: Demographics of radio audiences in Signal 107 TSA



Source: The Parties using RAJAR data

Note: Stations marked with a hash cover a tiny proportion of the TSA and those with an asterisk do not cover the whole of the TSA.

Pricing differences

- 11.41 Advertising options with very different prices will be less close alternatives for local advertisers, as they represent different levels of commitment in terms of advertising spend in a particular area. However, even large price differences are not a clear indicator that the products are not substitutes; if products differ in quality, a high-quality product may be a close substitute for a considerably cheaper but low-quality product.
- 11.42 The Parties submitted that pricing evidence supports the lack of close competition or substitutability between Signal 107 and Free Radio. They submitted that the average price per minute on Free Radio (Black Country) is £[X] compared with £[X] on Signal 107's Wolverhampton transmitter. This is a large difference of £[X], or [X]% of the Signal 107 price.
- 11.43 However, the Parties cautioned that this pricing analysis is not necessarily analysis that Signal 107 carries out in the normal course of business and in some cases pricing data is obtained by combining datasets from different sources that do not reconcile precisely. Bauer told us that 'the data submitted was discussed with Wireless and they were comfortable that this pricing analysis indicated the broad level of average prices relative to their rate card prices. Given that this analysis showed [X] difference in price between stations, the Parties are confident that advertising on Free Radio (Black Country) is [X] than advertising on Signal 107.'

11.44 Some of this price difference may be explained by Free Radio having more listeners.²²⁹ As such, while Free Radio is more expensive per minute, this difference in the level of financial commitment required could be partially offset by advertisers buying fewer adverts, given that each would be heard by more listeners. Taking into account this, we consider that the pricing data cannot be interpreted as implying the Parties' transmitters are not substitutes.

Switching

11.45 Generally, if customers regularly switch between firms this would suggest that they are close competitors. However, low levels of switching need to be interpreted with caution as they could be a result of a lack of competition or other factors, such as infrequent purchasers or a high level of churn amongst customers.

11.46 The Parties submitted an analysis of customer switching for the Parties' Wolverhampton transmitters. The analysis looks at which customers advertised on at least one of the Wolverhampton transmitters during 2017, 2018 or 2019.²³⁰ The Parties tracked whether customers stopped advertising with a transmitter during a certain year and if so, whether they started or continued advertising on the other transmitter in the following year. They found that, while more than [X]% of customers (representing over [X]% in revenues) stop advertising on each transmitter each year, [X]% or less (representing [X]% or less in revenues) start or continue advertising on the other Wolverhampton transmitter in the following year. The Parties submitted that this shows that there is very limited competitive interaction between the stations because despite generally high customer churn from year to year there is very limited switching.

11.47 This switching evidence does appear consistent with the stations not competing closely. However, it is possible that some advertisers stop advertising because they only had a one-off need or potentially because they go out of business. For example, if an advertiser opened a new store in 2017 and decided to promote it by radio it would appear as a non-switcher in the Parties' analysis. However, this lack of switching reflects the nature of the customer's demand rather than the degree of competition between the Parties' stations. Indeed, the customer promoting its new store may have actively chosen between the Parties' stations. Accordingly, the analysis submitted by the Parties does not necessarily reveal the extent to which these

²²⁹ RAJAR does not survey the individual transmitters of interest but we note that Signal 107 has a 7% share of supply of commercial radio by listening hours within its TSA compared to 10% for Free Radio (Wolverhampton & The Black Country).

²³⁰ The 2019 data relates to January to September only.

latter customers do switch from advertising on Free Radio to Signal 107 or vice-versa.

Views of third parties

11.48 Both of the two local advertisers that mentioned Wolverhampton or the Black Country in their responses were concerned about the Wireless Acquisition.²³¹ However, both saw the stations as relatively dissimilar²³² highlighting the local nature of Signal 107 and 'slightly different demographics'.²³³ The only one of these local advertisers that specified told us that if either of the Parties' stations was unavailable they would switch some of their spending to the Parties' other station.²³⁴

Competition with other radio stations

11.49 The Parties submitted that:

- (a) Global's three stations (Heart, Smooth and Capital) have either a sizeable or leading share of local listening around Wolverhampton and that this suggests they are a real competitive constraint to Bauer.²³⁵
- (b) There is an extensive degree of audience overlap between Free Radio and the Global stations; all of the top three stations also listened to by Free Radio (Birmingham & Black Country) listeners are Global stations 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 107.²³⁶

11.50 Global's Capital, Heart and Smooth stations differ significantly from the Parties' stations in terms of geographic coverage. The overlap between Free Radio (Black Country) and Global's Capital station accounts for just 43% of the population of Capital's broadcast area. The overlap with Global's Heart and Smooth stations is even lower, accounting for 31% of their population.²³⁷ Each of Global's stations' broadcast areas include Birmingham and so could not be used to specifically target the Wolverhampton area.

²³¹ [REDACTED].

²³² Rating their similarity second to bottom (bottom was that they were not at all alternatives) on a five-point scale.

²³³ [REDACTED].

²³⁴ The other local advertiser said they would move spending to a radio station but did not specify which. As set out in paragraphs 11.53 and 11.58, neither of these local advertisers specified any other station and both said they would move most of their spending to non-radio options.

²³⁵ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.18 and 7.20.

²³⁶ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.19.

²³⁷ The local Heart and Smooth stations have the same broadcast area.

- 11.51 Less significantly, Global's stations are relatively differentiated from Free Radio and Signal 107 in terms of the audience's average age and gender (see Figure 12).
- 11.52 The high shares of listening of Global's stations, particularly in the Free Radio TSA covering both areas of concern, suggest that Global is a significant presence for listeners. However, this does not necessarily make its stations a close alternative for local advertisers, particularly in light of their very different geographic coverage. Third parties' responses to the CMA's questionnaire suggest that, for at least some Free Radio advertisers, Global's stations are a stronger constraint on Free Radio than Signal 107. When asked what they would do if Free Radio was unavailable, two out of three advertisers who responded said they would switch their spending to one or more Global stations. However, these advertisers are those quoted in paragraph 11.25 that do not have operations in Wolverhampton.
- 11.53 Neither of the two local advertisers that mentioned Wolverhampton or the Black Country said they would move their spending to Global's stations if the Parties' stations were not available. One, who advertised on both, said that they would move some of their spending to the other Party's station.²³⁸ The other, who advertised on Signal 107, said they would move some spending to other radio stations, but did not specify which.²³⁹
- 11.54 From the evidence above, in particular the fact that Global's stations cover significantly larger areas than either of the Parties' transmitters and could not be used to specifically target the Wolverhampton area, we provisionally conclude that other radio stations would not be close alternatives for customers using the Parties' Wolverhampton transmitters.

Competition from non-radio advertising alternatives

- 11.55 The Parties submitted that in Wolverhampton there are particularly strong out-of-market constraints from local press (and other forms of media).²⁴⁰
- 11.56 The Parties submitted that if they were to increase prices further, local advertisers would divert their radio advertising expenditures to other media, in particular to digital advertising in the West Midlands. In Wolverhampton, the Parties submitted that their stations are also constrained by local press.²⁴¹

²³⁸ [REDACTED].

²³⁹ [REDACTED].

²⁴⁰ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.4.

²⁴¹ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.4.

- 11.57 The Parties also provided examples of radio advertisers who have reduced their spending on radio and increased it on digital advertising. However, it is not clear whether these customers switched as a result of changes in the offering of the Parties (and so are something that they could affect) or for other reasons that the Parties could not affect, such as changing circumstances, that would not influence the Parties' incentives.
- 11.58 Two out of four local advertisers who completed the relevant question and a local media buying agency said that if the Parties' stations were unavailable, they would move most of their spending to non-radio advertising. These were both advertisers who mentioned Wolverhampton or the Black Country in their responses, however, they were still concerned about the Wireless Acquisition.²⁴²
- 11.59 Due to the limited amount of evidence, we put less weight on evidence specific to the Wolverhampton area. However, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expect that non-radio alternatives would exert some constraint on the Parties in the Wolverhampton area.

Assessment of the effects on competition in Wolverhampton

- 11.60 The Parties' broadcast areas mostly overlap, and their transmitters are the only radio options for local advertisers wishing to specifically target the Wolverhampton area. The other radio options that cover Wolverhampton also cover a far larger regional area. Both of the Parties' options are used by local advertisers to a similar extent, indicating that these are both credible options for local advertisers.
- 11.61 Given that the other evidence suggests there are not substantial differences between the Parties' stations, it is likely, despite some differences in their offering, that they are alternatives for local advertisers.
- 11.62 While there is evidence of non-radio alternatives for local advertisers, these are unlikely to be sufficient to constrain the Parties.
- 11.63 A small number of local advertisers expressed concern about the Wireless Acquisition. While slightly more local advertisers were unconcerned, these were advertisers that used parts of the Parties' stations other than Wolverhampton.

²⁴² [REDACTED] and [REDACTED].

11.64 Moreover, even if the constraint the Parties imposed on each other is limited, given that these are the only two radio options for advertisers wishing to specifically target the Wolverhampton area, elimination of that constraint is sufficient to raise significant concern because following the Wireless Acquisition the only alternative to the Parties would be to switch to a different form of advertising.

Provisional finding on competition in Wolverhampton

11.65 For the reasons set out above, and subject to any countervailing factors, we provisionally find that the Wireless Acquisition has resulted, or may be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.

Shropshire

11.66 We now consider the extent of competition between Free Radio and Signal 107 in the Shropshire area prior to the Wireless Acquisition.

Differences in geographic coverage

11.67 Signal 107's broadcast area covers 77% of Free Radio Shropshire's. However, part of this is coverage from Signal 107's Wolverhampton transmitter. As such, the overlap between Signal 107's Shropshire transmitters, those in Telford and Shrewsbury, and Free Radio Shropshire will be lower than 77%.

Differences in listener demographics

11.68 Figure 12 suggests that Signal 107's demographics are relatively similar to Free Radio (Shropshire)'s. However, they appear less similar than with Free Radio FM (Birmingham and Black Country). Separate information is not available for Signal 107's Shropshire transmitters.

11.69 The Parties submitted that there is minimal overlap in the stations' listener base as 89% of Free Radio (Shropshire) listeners do not listen to Signal 107; they argued that this is evidence that the stations are clearly complementary. However, for the reasons set out in paragraph 11.39, we do not consider that this implies that these stations are not substitutes.

Pricing differences

11.70 The Parties submitted pricing data for the average prices per minute of advertising on the relevant transmitters in Shropshire. The data show that the

average price per minute on Free Radio (Shropshire) is £[REDACTED] compared to £[REDACTED] on Signal 107's Telford and Shrewsbury transmitters combined. For the reasons set out in paragraph 11.44, we consider that this pricing data has limitations. It also implies that Free Radio (Shropshire) is cheaper despite having more listeners and covering a larger area.

Switching

11.71 The Parties submitted an analysis of customer switching for the Parties' Shropshire transmitters (see paragraph 11.46 for a description). In Shropshire they found that, in each year, [REDACTED] of the customers that stop advertising on Free Radio (Shropshire) only start or continue advertising on Signal 107's Shrewsbury and Telford transmitters only in the following year and vice versa. For the reasons set out in paragraph 11.47, while this switching evidence does appear consistent with the stations not competing closely, it is also consistent with other explanations.

Views of third parties

11.72 None of the local advertisers that responded to our questionnaire specifically mentioned Shropshire.

Competition with other radio stations

11.73 As with Wolverhampton, the Parties submitted that Global's stations have sizeable shares of listeners in Shropshire and an extensive overlap with Free Radio's listenership.²⁴³ Despite not being available on analogue, the Parties submitted that Global's stations can be received in Shropshire via DAB.²⁴⁴

11.74 We found that Global's stations are a very limited constraint in Shropshire due to the limited overlap with their stations; for example, Global's stations' overlaps with Signal 107's Shropshire transmitters account for less than one percent of each of their broadcast areas. In terms of their presence on DAB, Global told us that it sold [REDACTED].

Competition from non-radio advertising alternatives

11.75 The Parties submitted that if they were to increase prices further, local advertisers would divert their radio advertising expenditures to other media, in particular to digital.

²⁴³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.18.

²⁴⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 7.20.

11.76 While we found little evidence specific to Shropshire, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expect that non-radio alternatives would exert some constraint on the Parties in the Shropshire area.

Provisional finding on competition in Shropshire

11.77 Based on the evidence above, we consider that many of the features of competition in Shropshire are similar to those in the Wolverhampton area and that competition may be reduced as a result of the Wireless Acquisition. In particular, the Parties' offerings in Shropshire overlap significantly and are the only radio options for customers wishing to specifically target the area. However, although there may be some lessening of competition, our provisional assessment is that this lessening is not substantial because of the limited amount spent of the combination of Signal 107's Shrewsbury and Telford transmitters in comparison to Free Radio (Shropshire) (see paragraph 11.30) and the absence of any concerns relating to Shropshire from local advertisers.

11.78 As such, on balance, we provisionally find that the Wireless Acquisition has not resulted, and may not be expected to result, in an SLC in the supply of local radio advertising in the Shropshire area.

Provisional finding on competition in the West Midlands

11.79 As set out in paragraph 11.65, and subject to any countervailing factors, we provisionally find that the Wireless Acquisition has resulted, or may be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.

11.80 As set out in paragraph 11.78, we provisionally find that the Wireless Acquisition has not resulted, and may not be expected to result, in an SLC in the supply of local radio advertising in the Shropshire area.

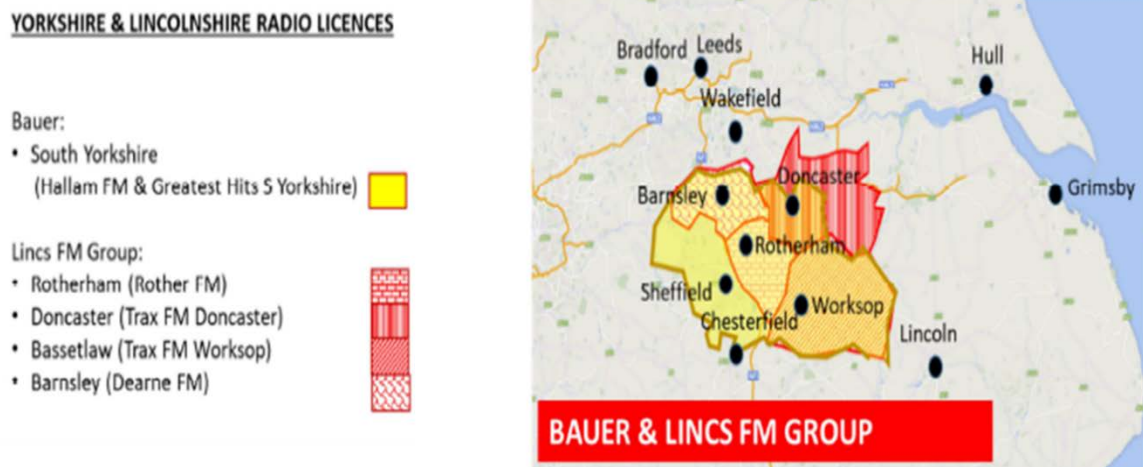
Yorkshire

Background

11.81 In Yorkshire, Lincs' Trax FM, Dearne FM, and Rother FM (the Lincs Stations) each overlap with Bauer's Hallam FM. In its initial phase 1 investigation, the CMA found that the overlaps between any of the Parties' stations were not likely to raise concerns individually. However, the CMA considered that advertisers might switch between Bauer's Hallam FM and the combination of the Lincs Stations. As such, this section considers competition between

Hallam FM and the Lincs Stations. The Parties' stations are shown in Figure 13.

Figure 13: The broadcast areas of Hallam FM and the Lincs Stations.



Source: The Parties.²⁴⁵

Parties' submissions

11.82 The Parties submitted that there would not be an SLC in Yorkshire for the following reasons:

- (a) the Lincs Stations are not a competitive constraint on Hallam FM primarily because of differences in geographic coverage, audience shares and audience demographics;²⁴⁶
- (b) advertisers do not to any significant extent purchase from all three Lincs Stations together. To the extent they do, it remains the case that Hallam FM would not be a credible alternative given the differences between it and the Lincs Stations;²⁴⁷ and
- (c) Hallam FM is constrained by Global and Communicorp as well as out-of-market non-radio advertising.²⁴⁸

²⁴⁵ [Bauer response to phase 1 decision](#), 27 August 2019, Figure 4.

²⁴⁶ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 6.2.

²⁴⁷ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 6.3.

²⁴⁸ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 6.3.

Views of third parties

11.83 Six out of nine local advertisers who expressed a view did not have concerns about the Lincs Acquisition.²⁴⁹ Of the concerned advertisers, one was about the possibility that the Lincs Acquisition would impact the cost of advertising on the Parties' stations²⁵⁰. We note that the two other concerns did not appear directly related to competition in the relevant local areas as they were about a possible loss of local support, content and coverage. For example, one respondent said its concern was that 'Bauer would end up syndicating key shows like Heart have done with the Breakfast Show and the local passion for the area would be lost.'²⁵¹

Shares of supply

11.84 As set out in paragraphs 11.8 and 11.9, the CMA calculated shares of supply in each of the TSAs of interest for both listening and local advertising revenue. These shares are set in Table 9.

Table 9: Local radio stations' shares of supply Q2 2019

	(%)	
	<i>Share of supply of commercial radio by listening hours</i>	
<i>Radio station</i>	<i>Hallam FM TSA</i>	<i>Combined Lincs Stations TSA</i>
<i>Global</i>	27	22
<i>Communicorp</i>	14	14
<i>Wireless</i>	1	-
<i>Lincs</i>	17	27
<i>Bauer</i>	40	37
<i>Combined Bauer and Lincs</i>	57	64
	<i>Share of supply of commercial radio by revenue</i>	
<i>Radio station</i>	<i>Hallam FM TSA</i>	<i>Combined Lincs Stations TSA</i>
<i>Global</i>	[X] [20–30]	[X] [20–30]
<i>Communicorp</i>	[X] [10–20]	[X] [10–20]
<i>Wireless</i>	[X] [0–5]	-
<i>Lincs</i>	[X] [10–20]	[X] [20–30]
<i>Bauer</i>	[X] [30–40]	[X] [30–40]
<i>Combined Bauer and Lincs</i>	[X] [50–60]	[X] [50–60]

Source: RAJAR and Ofcom data and CMA calculations.

11.85 We estimate that the Parties' combined share is relatively high, over 50% in each TSA by each measure. Similarly, the increment is relatively large, at

²⁴⁹ A further respondent did not express a view on the merger but said that they 'have not considered Hallam FM as an option because it's five or six times more expensive for us', suggesting that they did not see the Parties' stations as alternatives. ([X])

²⁵⁰ 'I have concerns that the merger may impact on the cost of advertising on Dearne FM. At the moment it is a more cost-effective option for advertising compared to Hallam and Capital but if this changes we wouldn't allocate more budget to radio ads so would just have to advertise less on radio, or only advertise on Hallam or Dearne (not both).' ([X])

²⁵¹ [X] We further noted that this concern was raised by a customer that also said they would not switch spending between the stations if either was unavailable.

least [§] [10-20]% in each TSA by each measure. As noted in paragraph 11.10, the differentiation in stations' offerings mean that market shares need to be interpreted with caution.

11.86 In 2018, local advertisers spent £[§] on the three Lincs Stations in combination²⁵² compared with sales of local advertising on Hallam FM of £[§]. We consider that this usage is consistent with the Lincs Stations combined option being a more limited option.

Closeness of competition

Geographic coverage

11.87 The Lincs Stations' combined overlap with 61% of Hallam FM's population, however they do not provide coverage of Sheffield, which is the largest city in Hallam FM's broadcast area.

11.88 Moreover, Hallam FM only offers the ability to advertise evenly across its broadcast area, whereas the Lincs Stations allow advertisers to focus more on particular stations within the combination even where they still wish to advertise on all three. For example, one of the largest advertisers that bought advertising on each of the Lincs Stations in 2018 spent [§]% of its advertising spending on just one of the three stations.

Other differences

11.89 The Parties submitted that Hallam FM and the Lincs Stations further differed in the following ways:

- (a) Demographics of listeners: The Parties submitted that Hallam FM attracts a largely female audience as compared to the Lincs Stations and that this demographic is generally considered to be more attractive to local advertisers.²⁵³
- (b) Localness: The Parties submitted that the Lincs Stations have a hyper-local focus on specific towns in the area, which means that these stations are most suitable for local advertisers seeking to target specific local towns rather than a region.²⁵⁴ The Parties also submitted that Hallam FM's top local advertisers (by revenue) include shopping centres and retailers, domestic installers (doors, windows, roofing, flooring), and firms

²⁵² [§].

²⁵³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 6.18.

²⁵⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 6.22.

in the motor and travel and leisure sectors, whereas, local advertisers on Trax, Rother and Dearne tend to be small locally focussed retailers.

- (c) Pricing: The Parties submitted that there are significant differences in prices between the Parties' stations. The average price per minute of Hallam FM (£[REDACTED]) is [REDACTED] times higher than the equivalent price for the Lincs Stations combined (£[REDACTED]). Moreover, the additional reach that a Lincs customer would get by advertising on Hallam FM would be 1.95 the reach of the Lincs Stations. While products with different prices are still able to compete if one is more valuable, the Parties highlighted that it is unrealistic that a Lincs customer would value the additional reach on Hallam FM as much as the price difference would require and therefore decide to switch to Hallam FM.

Views of third parties

11.90 Local advertisers typically did not consider Hallam FM and the Lincs Stations as alternatives. The reasons given were typically that the Lincs Stations were too narrow in terms of reach and audience or that Hallam FM was more expensive, had a broader audience and had different content. Local advertisers generally saw the Parties' stations as different in the following ways:

- (a) Geographic coverage: local advertisers appear to consider differences in the stations geographic coverage as important. For example, one advertiser said that they use Hallam FM because it covers the 'whole South Yorkshire area, as does our programme' whereas '[the Lincs Stations] are all more localised'.²⁵⁵ Another said that they used a Lincs station because it was local and they would 'only choose station (sic) that concentrates on our coverage'.²⁵⁶
- (b) Pricing: Local advertisers' views on price differences supported the Parties' view that this was an important element of difference. For example, one advertiser said it has 'not considered Hallam FM as an option because it's five or six times more expensive for us'.²⁵⁷

Switching

11.91 The Parties submitted a similar analysis of customer switching for Yorkshire as they submitted for Wolverhampton (see paragraphs 11.46) covering the

²⁵⁵ [REDACTED].

²⁵⁶ [REDACTED].

²⁵⁷ [REDACTED].

three year period 2016-2018. The analysis shows that, despite a high level of advertiser churn in each year, there have been few examples of customers ceasing to use one of the Parties' stations during one year and starting or continuing to use the other station in the following year.

- 11.92 Although these results are consistent with the Parties' submissions that there is no actual competition between the Parties' stations, we note the same caveats to the analysis as in paragraph 11.47. In Yorkshire, the Parties also analysed why the advertisers that switched radio station did so.

Competitors

Radio competitors

- 11.93 The Parties submitted that Global and Communicorp are closer competitors to Hallam FM than the Lincs Stations, whether considered individually or in combination. Furthermore, rivalry between Hallam FM, Global and Communicorp is of key importance in the South Yorkshire region and continuing close competition between Hallam FM.²⁵⁸ The Parties also submitted that Hallam FM competes with Global and Communicorp for advertisers in the broader Yorkshire region by combining with Bauer's Aire and Viking stations.²⁵⁹
- 11.94 Global's and Communicorp's radio stations have wider broadcast areas than Hallam FM or the Lincs Stations and as a result overlap less with them. Hallam FM covers just 43% of Heart Yorkshire's broadcast area and 29% of Capital Yorkshire's. Only in combination with Aire does it cover 65% of Heart Yorkshire's broadcast area. The Lincs Stations cover even less of these stations' broadcast areas, less than 25% of each.
- 11.95 The views of local advertisers supported the Parties' view that Global and Heart are the main competitors to Hallam FM. All three local advertisers who considered how they would reallocate their spending if Hallam FM was unavailable said they would move most or all of their spending to Heart or Global. Only one also thought that they would move some spending to a Lincs station.

²⁵⁸ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 6.24-6.26.

²⁵⁹ The Parties submitted that [X] of campaigns run on Hallam FM are also run on Bauer's Aire and/or Viking stations, to reach a coverage area far larger than that of Lincs' stations, in order to compare with the larger coverage area of Capital Yorkshire and Heart Yorkshire and that for these advertisers, Trax, Rother and Dearne even in combination could not be a substitute.

Non-radio alternatives

- 11.96 The Parties submitted that they are constrained by non-radio advertising options in Yorkshire. They submitted examples of Hallam FM advertisers shifting to other forms of media.
- 11.97 Of the Hallam FM customers that told the CMA what they would do if the Parties' radio stations were unavailable, only one out of three said they would switch any spending to non-radio advertising.²⁶⁰ In contrast, four of six Lincs Stations customers who responded to this question suggested they would move half or all of their spending to non-radio advertising.
- 11.98 Due to the limited amount of evidence, we put less weight on the evidence specific to Yorkshire. However, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expect that non-radio alternatives would exert some constraint on the Parties in Yorkshire.

Provisional finding on competition in Yorkshire

- 11.99 Based on the evidence above, we provisionally find that competition between Bauer's Hallam FM and the combination of Lincs' stations is limited due to:
- (a) the low level of concern from local advertisers about the impact of the acquisition on competition;
 - (b) the limited use of the combination of the Lincs Stations in comparison to Hallam FM;
 - (c) the differences between the stations' offerings, particularly in terms of geographic coverage;
 - (d) few customers switching between the stations' relevant options;
 - (e) the remaining constraint from other radio competitors;
 - (f) the presence of non-radio advertising alternatives that potentially exert some constraint on these stations.
- 11.100 As such, we provisionally find that the Lincs Acquisition has not resulted, and may not be expected to result, in an SLC in the supply of local radio advertising in Yorkshire.

²⁶⁰ As stated in paragraph 11.95, these customers would mostly switch to Heart or Global rather than the Lincs Stations.

West of England

Background

11.101 In the West of England, Celador's The Breeze South West FM (Bristol/Weston/Bath and West Wilts) and Sam FM (Bristol), each overlap with Bauer's Kiss West FM. In its phase 1 investigation, the CMA found that the overlaps between the Parties' stations raised significant competition concerns. Figure 14 shows the Parties' stations in the West of England.


Figure 14: Broadcast areas – Kiss West, Sam FM (Bristol) and The Breeze (South West)

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


The Breeze

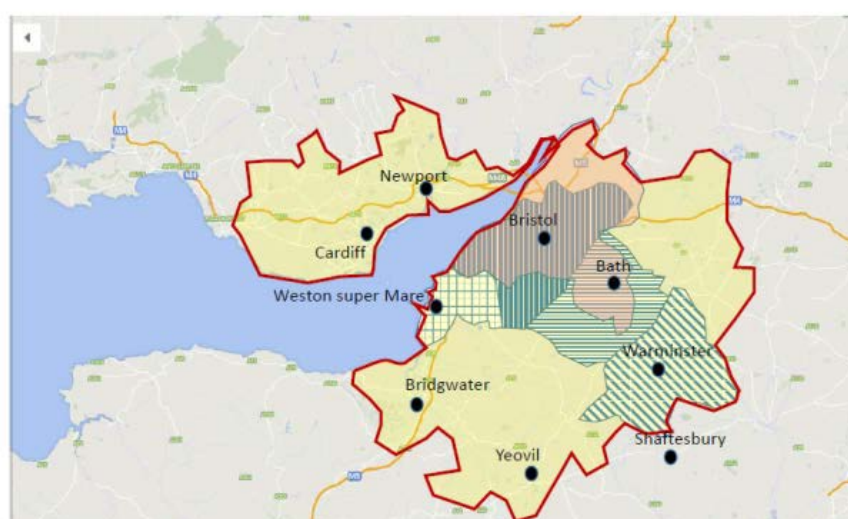
-  Bristol
-  Weston-super-Mare
-  Bath
-  Warminster

Sam FM

-  Bristol

Kiss (West)

-  Severn Estuary



Source: The Parties²⁶¹

Parties' submissions

11.102 The Parties submitted that there would not be an SLC in the West of England for the following reasons:

- (a) Kiss West does not compete to any significant degree with the Celador stations because of differences in geographic coverage, audience shares and audience demographics.²⁶²

²⁶¹ [Bauer response to phase 1 decision](#), 27 August 2019, Figure 1

²⁶² [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.2.

(b) Kiss West is [REDACTED]²⁶³ and its ability to offer local advertising is limited, which is reflected in the low revenues it generates from local advertising and the fact that it [REDACTED].²⁶⁴

(c) Both Kiss West and the Celador stations are constrained by Global as well as out-of-market non-radio advertising.²⁶⁵

Views of third parties

11.103 11 out of 13 local advertisers who expressed a view did not have concerns about the Celador Acquisition, for example, because they thought the stations have ‘completely different audiences’, as one of these advertisers explained.²⁶⁶ Two local advertisers expressed concerns, although these did not appear to be directly related to a reduction in competition in the area:

(a) One advertiser said it would be concerned ‘if Sam FM was closed’.²⁶⁷

(b) The other advertiser said that ‘Kiss is already an expensive option, which is why our spend is already limited. Its broadcast area is so vast that spend against impact in our area is difficult to justify.’²⁶⁸ However, it also said that there were no alternatives to Kiss for it.

Shares of supply

11.104 As set out in paragraphs 11.8 and 11.9, we calculated shares of supply in each of the TSAs of interest for both listening and local advertising revenue. These shares are set out in Table 10.

Table 10: Local radio stations' shares of supply Q2 2019

				(%)
<i>Share of supply of commercial radio by listening hours</i>				
<i>Radio station</i>	<i>Sam FM TSA</i>	<i>The Breeze (South West) TSA</i>	<i>Kiss West TSA</i>	
Global	52	52	57	
Nation Broadcasting	-	-	6	
Communicorp	-	-	11	
Celador	32	34	15	
Bauer*	16	14	10	
Combined Bauer and Celador	48	48	25	
<i>Share of supply of commercial radio by revenue</i>				
	<i>Sam FM TSA</i>	<i>The Breeze (South West) TSA</i>	<i>Kiss West TSA</i>	

²⁶³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.17.4.

²⁶⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.17.4.

²⁶⁵ [Bauer response to phase 1 decision](#), 27 August 2019, paragraphs 5.22–5.24.

²⁶⁶ [REDACTED].

²⁶⁷ [REDACTED].

²⁶⁸ [REDACTED].

Global	[REDACTED] [50–60]	[REDACTED] [50–60]	[REDACTED] [50–60]
Nation Broadcasting	-	-	[REDACTED] [10–20]
Communicorp	-	-	[REDACTED] [10–20]
Celador	[REDACTED] [30–40]	[REDACTED] [30–40]	[REDACTED] [10–20]
Bauer	[REDACTED] [5–10]	[REDACTED] [5–10]	[REDACTED] [0–5]
Combined Bauer and Celador	[REDACTED] [40–50]	[REDACTED] [40–50]	[REDACTED] [10–20]

Source: RAJAR and Ofcom data and CMA calculations.

Note: Kiss West's shares of supply have been adjusted to reflect only FM transmission, as Kiss West's DAB listeners can only be reached with national advertising.

11.105 We estimate that the Parties will have a combined share of supply of 48% by listening hours and [REDACTED] [40–50]% by revenue in Sam FM's TSA, with a modest increment to Celador's previous share of supply. Shares of supply are similar in The Breeze (South West)'s TSA. In Kiss West's TSA more competitors are present, and the Parties have lower shares of supply. As noted in paragraph 11.10, the differentiation in stations' offerings mean that market shares need to be interpreted with caution.

11.106 Kiss West's local advertising revenue (£[REDACTED]) is low compared to Sam (£[REDACTED]) and The Breeze (£[REDACTED]).²⁶⁹ Furthermore, we note that:

- (a) Even this local revenue is overstated as many of Kiss' 'local' advertisers are regional or national but have been booked as local since they were generated by other Bauer local sales teams.
- (b) Kiss West's digital service (as broadcast via DAB, IP and DTV) is national and therefore carries only national advertising. In Q2 2019, 44% of Kiss West's listening hours as recorded by RAJAR were via digital platforms which do not carry any local advertising.²⁷⁰

Closeness of competition

Differences in geographic coverage

11.107 Kiss West covers a much broader area than Sam FM and The Breeze, which cover just 33% and 43% of Kiss West's broadcast area respectively and less than 50% if combined.²⁷¹

11.108 We considered the similarity of the stations' broadcast areas. Kiss West cannot split transmission so broadcasts the same content and advertising across its whole broadcast area, while Sam FM and The Breeze can separately target four areas serving specific towns.²⁷² Local advertisers

²⁶⁹ Bauer response to phase 1 decision, 27 August 2019, paragraph 5.16.

²⁷⁰ Bauer response to phase 1 decision, 27 August 2019, paragraph 5.17.5.

²⁷¹ Bauer response to phase 1 decision, 27 August 2019, paragraphs 5.9–5.10 and Table 1.

²⁷² Bauer response to phase 1 decision, 27 August 2019, paragraphs 5.5–5.6.

wishing to target the smaller areas served by Sam FM and The Breeze would incur significant wastage by advertising on Kiss as they would be paying to reach listeners across a wider area including South Wales.²⁷³

Other differences

11.109 The Parties submitted that Kiss West is less attractive to local advertisers because of its younger audience and lack of local content. They submitted that in contrast to Kiss West, Celador's stations are locally focused, and their local nature is potentially an important factor of differentiation for their local advertisers.²⁷⁴

11.110 As noted in paragraph 11.15, the significance of differences between radio stations depends on the importance of those differences to local advertisers. In this area, ten out of 13 local advertisers who responded to our questions said that demographics played a role in their choice of stations in this area.

11.111 In terms of local content, we found that local advertisers had mixed views on how important it was, so we put limited weight on this factor.

Views of third parties

11.112 We asked local advertisers to rate how close the stations are as alternatives.²⁷⁵ The small number of local advertisers that gave ratings typically did not consider the stations as close alternatives.

11.113 Among the local advertisers who explained the reason why they advertised on the Parties' stations, most of them reported the geographic area as the main reason, eg because these stations match the locations of their stores. We also asked advertisers to rate how similar the Parties' stations were in terms of broadcast area. The views of advertisers who used the Celador stations differed from those that used Kiss West:

(a) The three Celador stations' advertisers who gave ratings considered the Parties' stations to be very similar or quite similar in terms of broadcast area. However, they also suggested that the similarity either did not affect

²⁷³ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.8.

²⁷⁴ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.13.

²⁷⁵ 'In terms of your advertising, how close an alternative, if at all, do you consider The Breeze and/or Sam FM to be to Kiss West? Please explain your answer including whether it would vary depending on the type of campaign or other factors' (1=not at all, 5=very good alternatives).

their choice between the stations or was not sufficient to make the two stations alternative options.

- (b) The one Kiss West advertiser who gave ratings considered the Parties' stations to be not similar at all in terms of broadcast area.

Competitors

Radio competitors

11.114 The Parties submitted that there is strong competition in the West of England between Global's Heart stations and Celador's stations, and that Global is the closest competitor of the Celador stations and will continue to constrain them following the Celador Acquisition.²⁷⁶

11.115 The Parties submitted analysis to show how similar the offerings of the Global and Celador stations are and how this is reflected in the significant degree of advertiser overlap between them (as compared to Kiss West)²⁷⁷

- (a) Of the 194 local advertisers across The Breeze (South West) and The Breeze (West Country) only five also advertise on Kiss West. By contrast, from this set 35 also advertise on Global's stations in the area.

- (b) Similarly, of the 76 local advertisers on Sam FM (Bristol) only five advertise on Kiss West while 21 advertise on Global's stations.

11.116 Global's Heart stations have similar geographic coverage to The Breeze and have a high share of listening hours in The Breeze's TSA. They also have a physical presence in the areas served by the Celador stations and are supported by dedicated local sales teams.²⁷⁸

11.117 We asked local advertisers to list the stations they used for advertising and to explain why they used those stations. The clear majority of the advertisers of both Kiss West and Celador's stations used Global's Heart stations as well.

11.118 We also asked local advertisers how they would reallocate their advertising spending if the Parties' stations were unavailable. We found that four out of the five advertisers who answered the question would allocate a

²⁷⁶ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.20 and 5.24.

²⁷⁷ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.20.

²⁷⁸ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.20.

portion of their current radio spend with the Parties' stations to Global's stations.²⁷⁹

Non radio alternatives

11.119 The Parties submitted that Kiss West will continue to be constrained by the ability of advertisers to switch to non-radio advertising, in particular local online, newspaper and outdoor advertising.²⁸⁰

11.120 We asked a sample of local customers what they would do if the Parties' radio stations were unavailable. The one Kiss West customer that answered this question said it would switch 50% of its spending to non-radio advertising. Two of four Celador customers who responded suggested they would move spending to non-radio advertising, one said it would move all of it and another just a portion of it.

11.121 Due to the limited amount of evidence, we put less weight on evidence specific to the West of England. However, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expect that non-radio alternatives would exert some constraint on the Parties in the West of England.

Provisional finding on competition in West of England

11.122 Based on the evidence above, we provisionally find that Kiss FM is a limited competitor for local advertising in the narrower areas of the Celador stations, and Global is and will remain a more important constraint. This is because of the combination of the following reasons:

- (a) the nature of the geographic overlap, particularly the much larger area covered by Kiss West and its inability to split its transmission;
- (b) Kiss West sells very little local advertising;
- (c) the differences in demographics between the stations' audiences, particularly the substantially younger audience for Kiss;
- (d) Global's stations will remain as closer competitors to the Celador stations than Kiss West;

²⁷⁹ Only two of these specified how much of their spending they would allocate, 50% and 100%.

²⁸⁰ [Bauer response to phase 1 decision](#), 27 August 2019, paragraph 5.21.

- (e) the presence of non-radio advertising alternatives that potentially constrain these stations to some extent; and
- (f) the low level of concern from local advertisers about the impact of the Celador Acquisition on competition.

11.123 As such, we provisionally find that the Celador Acquisition has not resulted, and may not be expected to result, in an SLC in the supply of local radio advertising in the West of England.

12. Countervailing factors

12.1 In this section, we consider whether entry by a new entity to represent independent radio stations to national advertisers, and/or entry by new radio stations, and/or the exercise of buyer power by the Parties' customers might prevent or counter the SLCs we have provisionally identified.

12.2 As the Parties put it to us that the effect of the Acquisitions could be pro-competitive, we also consider whether the Acquisitions give rise to rivalry-enhancing efficiencies, which would be timely, likely and sufficient to prevent SLCs arising in the markets for the representation of independent radio stations for national advertising, and in the supply of local radio advertising in the Wolverhampton area.

Entry into the representation of national advertising to independent radio stations

12.3 We considered whether there would be potential for entry into the market for representation of national advertising to independent radio stations, post-Acquisitions. If so, the entrant could, as a competitor to, or replacement for, FRS offer representation to independent stations and therefore potentially prevent the SLC provisionally identified in relation to representation.

12.4 Pre-Acquisitions, we have seen no evidence that any party was considering entry into the market for representation of national advertising to independent radio stations. The Acquisitions will make any such entry even more challenging because the scale of business available to such an entrant based on the remaining independent stations would be limited. It would face the same challenges as FRS in terms of achieving sufficient commissions from advertising to cover costs. Such an entity would be of limited attractiveness to national advertisers given that the extent of geographic coverage it could offer would be substantially reduced compared to the situation faced by FRS prior to the Acquisitions, even if the entrant were able to agree representation with all the remaining independent stations. Therefore, the quantity of advertising

and the rates it could achieve would be limited, and so independent stations might be more ready to consider BCL agreements with the large radio groups.

- 12.5 We also considered whether there were alternative, lower-cost models for representing independent radio stations, for example using an on-line booking tool which did not require as many sales staff. In our view this is unlikely to be attractive to media buying agencies who have stressed their preference for dealing with larger networks, especially if the on-line booking tool did not have any active sales representation, and so is likely to be used only where advertisers have very specific geographic targeting requirements.
- 12.6 Therefore, based on the evidence we have seen, we provisionally conclude that entry into the market for representation of independent radio stations for national advertising would not be likely to occur so as to prevent the provisionally identified SLC from arising.

Entry into radio broadcasting

- 12.7 We now address the prospects for entry into radio broadcasting. First, we consider whether large-scale entry (ie on a sufficient scale) could prevent the SLC provisionally found in the market for representation of independent radio stations for national advertising, and second, we consider prospects for entry into the Wolverhampton area.

Large-scale entry

- 12.8 Entry into the market for the representation of national advertising to independent radio stations is addressed in paragraphs 12.3 to 12.6. Here, we consider whether entry into broadcasting would be on a sufficient scale to establish a significant new competitor in national advertising sales, providing an alternative to Bauer and Global in representing independent radio stations. Large scale entry would be necessary to create an entity able to compete effectively for national advertising and so avoid the pressures that have applied to FRS because of its scale (see paragraphs 6.62 to 6.64). We have looked at whether such entry would be feasible, likely and sufficient to prevent an SLC.
- 12.9 Ofcom told us that no new analogue commercial radio licences are being issued. This is an absolute barrier to entry to creating new analogue AM/FM services. It is feasible that a licensee may not renew a licence so the licence could be re-advertised by Ofcom, however, this is very unlikely to occur, and even then would likely only apply to a single local licence. Therefore, it is very unlikely that there could be potential for large-scale new entry in analogue broadcasting. A new entrant could attempt to purchase analogue stations to

build scale, however, given that independent radio stations (ie excluding Global and Bauer) have a small overall market share, there seems little opportunity to build significant scale in this way.

- 12.10 There are opportunities for entry via DAB or IP broadcasting. As noted at paragraph 2.15, the majority of commercial radio listening is now on digital rather than analogue broadcasts. Bauer and Global operate several digital-only stations, broadcast either jointly on DAB and IP, or IP only. In the main, these are variants of established brands, eg in Bauer's case Magic, Absolute, Kiss and Heat. There have been stand-alone stations launched, eg Bauer launched Scala Radio in 2019.
- 12.11 Looking at internet broadcasting, Bauer submitted that for IP services, capacity is limitless (and low cost) and so as IP grows it will become more economic for new services to be offered via IP. It said that there are a vast number of IP-only radio stations available to UK listeners, many of which originate in the UK. It also said that distributing these services online does not require either expensive infrastructure nor an Ofcom licence. However, it also acknowledged that due to the limitless capacity and much greater competition (both UK and overseas stations), it is also harder for radio broadcasters on IP platforms to build audiences.
- 12.12 Given that online-only stations have not tended to achieve large audiences, we do not consider that relying on IP-only broadcasting is likely to facilitate large scale entry, such that the entrant could establish itself as a significant competitor in the provision of national radio advertising.
- 12.13 We next look at whether entry into DAB broadcasting could facilitate large scale entry. As at August 2019 there was no spare capacity on either of the two national multiplexes open to commercial radio. Therefore we considered whether significant entry could be achieved through use of multiple local multiplexes.
- 12.14 We have not identified any non-cost barriers to launching local stations on DAB, except where the local multiplex is full. This appears to be the case in some areas, such as Manchester, Birmingham, and South Yorkshire.
- 12.15 In these cases, there may be opportunities to utilise small-scale DAB multiplexes, although Ofcom told us that the necessary legislation to enable it to roll out a network of small-scale multiplexes is yet to be approved.²⁸¹ When these are introduced, it is anticipated that the costs of broadcasting on them

²⁸¹ See [Summary of Hearing with Ofcom](#), 11 September 2019.

will be considerably lower than existing standard multiplexes, although their transmission area is expected to be only around 40% of that of existing local multiplexes.²⁸² The cost of DAB transmission through existing multiplexes is significant. For example, Bauer said in a submission on the benefits arising from the transaction, that most of the stations forming part of the Acquired Businesses were not broadcast on DAB 'likely because DAB distribution is a significant expense...as such, DAB distribution may be prohibitively expensive to many stations'.

- 12.16 The next question is whether an entrant could attract sufficient radio audiences so as to make itself an attractive option for national advertisers. We have not seen examples of DAB-only entrants establishing large audiences. Nation told us that given the current industry parameters and available spectrum, it was impossible for anyone to build a business that could rival Global or Bauer in share or influence. Whilst it is possible that new entrants may use individual (or a combination) of small-scale DAB licenses to expand, Nation considered it most likely that these multiplexes will be filled with hyper-local or niche services and therefore unlikely to have a significant impact on a BCL network audience.
- 12.17 Wireless further submitted that small-scale DAB multiplexes are by their very nature 'small-scale'. Consequently, it did not anticipate these networks having the ability to attract a significant proportion of commercial radio listening, either within specific local advertising markets or in aggregate.
- 12.18 Global submitted that in its view, it is likely to be very difficult to make a profit from broadcasting a stand-alone local digital-only station outside London which does not benefit from cost savings and joint marketing with an existing national or analogue station.
- 12.19 Bauer, in its response to a CMA working paper, said:

In view of the capacity constraints on national DAB multiplexes and on some local DAB multiplexes, Bauer agrees with the assessment ...that there is limited scope for new national DAB entry. As such, the main channels for new entry are launches on specific local DAB multiplexes ... and on small scale DAB multiplexes ... In addition ... online radio is expected to continue to be a major channel for entry and expansion. Stations entering via these means are likely to be either highly locally targeted or focused on a particular audience segment. As such, they are

²⁸² See [Summary of Hearing with Ofcom](#), 11 September 2019.

likely to be structured around a funding model that does not depend on national advertising.

- 12.20 We have not heard of any party intending to enter into radio broadcasting in the UK on a large scale, using this to establish itself as a competitor in the provision of national radio advertising, and then offering representation to independent radio stations.
- 12.21 Because of the limited availability of DAB capacity, the costs of widespread DAB broadcasting, and the challenges in attracting large audiences to new digital-only stations, we provisionally conclude that we do not expect that there will be significant large scale entry into broadcasting, such that the entrant could establish its own national advertising sales function which could then offer representation of national advertising to independent radio stations which would provide effective competition to prevent the provisionally identified SLC from arising.

Entry in Wolverhampton

- 12.22 We also looked at prospects for new entry in the Wolverhampton area, which might prevent the SLC we have provisionally found regarding competition in local radio advertising in the Wolverhampton area.
- 12.23 As new analogue entry is not possible, we considered potential digital entry on DAB. The Wolverhampton and Shropshire multiplex has limited unused capacity, meaning there is not enough current capacity to launch a music radio station, although a talk-based station which requires a lower sound-quality may be possible (see paragraph 2.4). However, both Signal 107 and Free Radio FM carry substantial music content. We received no indication from any party that any stations are intending to withdraw from use of the Wolverhampton multiplex, thus enabling capacity to be freed up, nor that there are any known plans for new entry. Because of this limited availability of broadcast capacity, we provisionally conclude that we do not expect the possibility of entry to form a sufficient constraint to prevent the SLC we have provisionally found in the Wolverhampton area.²⁸³

²⁸³ We have not evaluated whether a digital-only entrant would be an effective competitor.

Buyer power

- 12.24 The CMA's Merger Assessment Guidelines identify the possible existence of countervailing buyer power as a factor in making an SLC finding less likely.²⁸⁴ Bauer submitted that media buyers [§].
- 12.25 Our Guidelines note that countervailing buyer power applies where 'an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices',²⁸⁵ and state 'typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch, or the customer has the ability to sponsor new entry or enter the supplier's market itself by vertical integration.'²⁸⁶
- 12.26 We have seen no evidence to suggest that these factors apply in the case of media buying agencies purchasing radio advertising. Rather, we have seen evidence of agencies and advertisers having a limited number of choices for procuring radio advertising, and we have not identified any separate, additional constraints in this regard that are not already factored in to the competitive analysis of the theories of harm.
- 12.27 In any event, the SLC we have provisionally found in representation relates to the market for representation of national advertising to independent radio stations, and in the provision of local advertising services in the Wolverhampton area. We have seen no evidence that independent radio stations have buyer power in this market. Rather, the evidence indicates that they perceive that they have few options (and those may include having to accept a BCL) and little negotiating power.
- 12.28 Nor have we found or received evidence or representations to suggest that local advertisers in the Wolverhampton area possess buyer power.
- 12.29 In light of the above, we provisionally conclude that buyer power is unlikely to prevent the SLCs that we have provisionally identified.

Potential benefits from the Acquisitions

- 12.30 Bauer has argued that the effect of the Acquisitions will be to allow it to compete more effectively against the market leader, Global, and in consequence will enhance competition and create benefits for customers. The

²⁸⁴ [CC2 Revised](#), paragraph 5.9.1.

²⁸⁵ [CC2 Revised](#), paragraph 5.9.1.

²⁸⁶ [CC2 Revised](#), paragraph 5.9.3.

CMA Merger Guidelines recognise that ‘Efficiencies arising from a merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms’.²⁸⁷

12.31 Bauer’s rationale for the Acquisitions and its strategy to achieve this are set out in paragraphs 4.9 to 4.19. In summary, Bauer submitted that in order to compete more effectively with Global and persuade media buying agencies [X].

12.32 We acknowledge that Bauer’s intended short-term strategy is to offer a larger network and [X]. We also acknowledge that Global might be expected to respond to any prospective loss of business and this could include price cuts.

12.33 Our Guidelines state:

To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC ... on the basis of compelling evidence, [we] must expect, that the following criteria will be met:

- the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and
- the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.²⁸⁸

12.34 We note that Bauer’s submissions on benefits of the Acquisitions appear to relate to competition in the market for national advertising. This is not a market in which we have provisionally found an SLC. As a result, any such benefits cannot prevent the SLCs we have provisionally found.

12.35 We are also unpersuaded that we can necessarily expect a persistent reduction in prices and that customers will benefit in the longer term. We consider that given the concentrated nature of the market for commercial radio broadcasting, and for national radio advertising, there may be limited incentives to pass efficiencies through to customers.

²⁸⁷ CC2 Revised, paragraph 5.7.2.

²⁸⁸ CC2 Revised, paragraph 5.7.4.

12.36 Bauer submitted that the Acquisitions would help ensure the survival of the acquired stations in the light of the long-term decline in local radio listening and advertising revenues. Bauer submitted that further consolidation of the industry is the only way that these local radio stations will survive. It also submitted that Bauer would invest in the acquired stations to allow them to remain relevant and viable. For example, [§].

12.37 Bauer submitted that, therefore, the Acquisitions will deliver demonstrable benefits to advertisers, listeners and the acquired stations in the near term, and in the longer term, will safeguard the continuing commercial viability of the acquired stations.

12.38 Our Guidelines describe how the CMA will take efficiencies in the form of relevant customer benefits into account, including benefits to customers arising in markets other than where the SLC is found, and benefits to future customers.²⁸⁹ Relevant customer benefits are limited to benefits to relevant customers (at any point, not just final consumers) in the form of:

- 'lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not in the market(s) in which the SLC has occurred or may occur) or
- greater innovation in relation to such goods or services'.²⁹⁰

12.39 The CMA takes account of possible relevant customer benefits in deciding on the question of remedies, and will normally do so by considering the extent to which alternative remedies may preserve such benefits.²⁹¹

12.40 We will therefore consider the potential benefits raised by Bauer in the context of any remedies considered to address the SLCs we have provisionally found. In this context, we note that the Act provides that a benefit is only a relevant customer benefit if it accrues from the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period from the creation of that merger situation and would be unlikely to accrue 'without the creation of that situation or a similar lessening of competition'²⁹².²⁹³

²⁸⁹ [CC2 Revised](#), paragraph 5.7.3 and CMA [Merger Remedies](#) (CMA87, 2018) paragraphs 3.14-24.

²⁹⁰ Section 30 of the Act.

²⁹¹ CMA87 [Merger Remedies](#) paragraph 3.15 (based on sections 35(5), 36(4) and 36(6) of the Act).

²⁹² Section 30(2) and 30(3) of the Act.

²⁹³ CMA87 [Merger Remedies](#) paragraph 3.19.

13. Provisional conclusions

- 13.1 As a result of our assessment, we have provisionally found that each of the Acquisitions has resulted in the creation of a relevant merger situation.
- 13.2 We provisionally conclude that the Acquisitions, as a result of each of Bauer's acquisition of the ability to exercise material influence over FRS and its acquisition of a large proportion of FRS' customers, have resulted, or may be expected to result, in an SLC in the market for the supply of representation for national advertising to independent radio stations in the UK.
- 13.3 Because we expect that FRS would have eventually exited the market absent the Acquisitions, the SLC provisionally identified in paragraph 13.2 is expected to apply for a period of up to ten years.
- 13.4 In addition, we provisionally conclude that the Wireless Acquisition has resulted, or may be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.