

## REFERENCE RELATING TO THE COMPLETED ACQUISITION BY GLOBAL RADIO HOLDINGS LIMITED OF GMG RADIO HOLDINGS LIMITED

### Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

#### Introduction

1. On 11 October 2012 the Office of Fair Trading (OFT), in the exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the completed acquisition by Global Radio Holdings Limited (Global) of GMG Radio Holdings Limited (GMG Radio).
2. In its provisional findings on the reference notified to Global and GMG Radio (the main parties) on 12 February 2013, the CC Inquiry Group (the Group) concluded provisionally that the acquisition had resulted in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) arising from competitive overlaps in the provision of radio advertising in the following geographic areas:
  - (a) the East Midlands;
  - (b) Cardiff;
  - (c) North Wales;
  - (d) Greater Manchester;
  - (e) the North-East;
  - (f) South and West Yorkshire (the Real Yorkshire TSA); and
  - (g) Central Scotland.
3. The Group expects the merger to lead to a worsening of the competitive offering (in the form of higher prices) to advertisers purchasing non-contracted airtime and sponsorship and promotion (S&P) at a local and regional level.
4. This notice sets out the actions which the Group considers might be taken by the CC for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings. The CC invites comments on possible remedies by 5pm on 27 February (see [Notes](#)).

#### Criteria

5. In choosing appropriate remedial action, the Group shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>1</sup> When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs. The Group will also consider whether a combination of meas-

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<sup>1</sup> Section 35(4) of the Act.

ures is required to achieve a comprehensive solution, and will evaluate the cumulative impact of any such combination of measures on the SLC identified. The Group will have regard to the principle of proportionality and will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction. For completed mergers, the CC will not normally take account of the costs or losses that may be incurred by the merged parties as a result of a divestiture remedy.

### **Possible remedies on which views are sought**

6. In merger inquiries, the CC will generally prefer structural remedies, such as divestiture or prohibition, rather than behavioural remedies because:
  - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
  - (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and
  - (c) structural remedies do not normally require monitoring and enforcement once implemented.<sup>2</sup>
7. In paragraphs 8 to 23, we set out the structural remedy options that the Group currently considers as potentially effective in addressing the SLC. In paragraphs 24 to 26, we set out the Group's current view that a behavioural remedy by itself is unlikely to be an effective remedy but might be required in a supporting role to safeguard the effectiveness of any structural remedy.

### **Structural**

8. The Group has identified the following structural remedy options as having the potential to be effective in remedying the SLC which has been provisionally identified:
  - (a) full divestiture of the acquired business GMG Radio (now Real and Smooth Limited (RSL)) to a suitable purchaser (see paragraphs 10 to 13);
  - (b) divestiture of RSL excluding its operations in local areas where no SLC is expected to arise (see paragraphs 14 to 17); and
  - (c) partial divestiture of certain local operations to address individual areas of overlap where an SLC is expected to arise (see paragraphs 18 to 23).
9. In evaluating possible divestitures as a remedy to the SLC, the Group will consider the extent to which each divestiture option would address the loss of rivalry between Global and RSL that gives rise to the SLC, the likelihood of achieving a successful divestiture and the risks associated with each divestiture. The Group will have regard to the following elements of the design of divestiture remedies:
  - (a) *The scope of the divestiture package.* In considering the scope of an appropriate divestiture package, the CC will have particular regard to the risk that the scope

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<sup>2</sup> Competition Commission Merger Remedies Guidelines, CC8, [paragraph 2.14](#).

of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market (composition risks). Therefore the CC will normally take, as its starting point, divestiture of all or part of the acquired business. The CC will consider a divestiture drawn from the acquiring business if this is not subject to greater risk in addressing the SLC. If divestitures were to arise from the acquired business, the Group notes that RSL currently comprises three radio station brands (Real, Smooth and Real XS) with radio stations within each of these brands sharing some content and services across locations. At present, the Group does not have a preference for whether a partial divestment (ie option (c) in paragraph 8) should comprise stations from the same or different brands across locations.

- (b) *Identification of a suitable purchaser.* The Group will wish to minimize purchaser risk by satisfying itself that a purchaser or purchasers are likely to come forward that are independent of Global, have the necessary capability to compete, are committed to competing in the relevant market and that divestiture to such a purchaser or purchasers will not create further competition concerns.
- (c) *Effective divestiture process.* The Group will consider the appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimize the risks associated with divestiture. In the case of options (b) and (c) in paragraph 8, the Group will also consider whether the risks in respect of divestiture require the identification of an upfront purchaser and for it to be contractually committed to the transaction before it allows integration of Global and any RSL operations that it is permitted to retain.

#### *Full divestiture*

10. This remedy option would involve divesting the whole of RSL to a suitable purchaser.
11. This remedy option would represent a comprehensive solution to the SLC as it would fully address all areas of overlap including each of the problematic areas that give rise to the provisional SLC finding.
12. Full divestiture is likely to involve relatively low composition risk, as RSL continues to be operated independently as a stand-alone business and contains all of the assets necessary to broadcast radio services and sell radio advertising across its area of operations. Full divestiture may involve some purchaser risk, though we note that there were other interested bidders when RSL was originally put up for sale.
13. The Group invites views on this remedy option.

#### *Divestiture of RSL excluding operations in local areas where no SLC is expected to arise*

14. This remedy option would involve divesting the whole of RSL excluding RSL's operations in London and the West Midlands.
15. If effectively designed and implemented, this remedy option could represent a comprehensive solution to the SLC as it would fully address each of the areas of overlap that the Group expects to give rise to the SLC.
16. We note that compared with full divestiture, this remedy option may involve somewhat higher composition and purchaser risks, as the business to be divested would

not have previously traded on a stand-alone basis. However, we also note that this divestiture would account for the majority of RSL's operations.

17. The Group invites views on this remedy option.

*Partial divestiture of local operations*

18. This remedy option would seek to identify a package of divestitures that would resolve competition concerns in each of the areas in respect of which we have identified competition concerns, and thereby remedy the SLC that we have identified.
19. This remedy option would involve divestiture of one or more of the stations in each area to a suitable purchaser. The suitable purchaser may be the same for all local areas or there may be different purchasers in each or some of the problematic overlap areas. Some possible options would remove the entire overlap between Global and RSL in a particular geographic area (ie divestiture of all relevant local RSL stations or Global stations), others would remove some, but not all, of the overlap (eg divesting a Real station in an area but not a Smooth station). Global's AM station Gold has been excluded from the list of possible divestitures as currently the Group does not consider it likely to be an effective divestiture in any local area either on its own or in combination with other divestitures, in light of its relatively low share of listeners and low share of advertising revenue, the fact that it is only broadcast on AM within the overlap areas and that it is a Global station, rather than part of the acquired business.
20. In the table below, we set out RSL's and Global's FM radio stations which operate in each of the areas where an SLC is expected to arise. Further details of these stations can be found in Appendix L (Analysis of overlap areas) in the provisional findings.

**RSL and Global stations present in overlap areas**

Area	RSL			Global*		
	Real	Smooth	Real XS	Capital	Heart	Xfm
East Midlands		X		X		
Cardiff	X			X		
North Wales	X				X	
Greater Manchester	X	X	X	X		X
North-East	X	X		X		
South and West Yorkshire (Real Yorkshire TSA)	X			X		
Central Scotland	X	X	X	X		

\*Global's Gold stations have been excluded from these tables.

21. Compared with full divestiture, partial divestiture is likely to involve significant additional composition and purchaser risks. In particular, the individual local radio stations operated by Global and RSL may not operate entirely on a stand-alone basis, and may depend on the wider business to which they belong for important aspects of their operations, such as branding, programming or support services. The resultant composition risk may in turn limit the pool of potential acquirers, thereby increasing purchaser risks.
22. Given these risks, the Group's preference in relation to possible partial divestiture options would be to divest local radio stations complete with all the necessary broadcasting assets, including brands, licences, personnel and contracts needed in order to compete effectively (together 'the station'). The Group would also need to ensure that any divested operations were likely to be sufficiently attractive to potential purchasers and also to advertisers to represent a credible alternative option, thereby

restoring the competition that we have provisionally found to be lost as a result of the merger. In this context, the Group will take into consideration the composition of the divested operations and its attractiveness from the perspective not just of local/regional advertisers but also national advertisers.

23. The Group invites views on the likely effectiveness of possible packages of partial divestitures in remedying the issues identified in each area and also on whether particular combinations of divestitures are more or less likely to be effective in addressing the SLC as a whole and in mitigating the risks associated with this option. In this context, the Group invites views on how such a divestiture package could be constructed to ensure that the divested business would have sufficient assets, capabilities and incentives to compete effectively in the relevant market on a stand-alone basis or combined with another business and on how any practical difficulties in separating retained and divested businesses could be overcome.

### ***Behavioural and other remedies***

24. The Group's current view is that a behavioural remedy by itself is unlikely to be an effective remedy to any element of the SLC that it has provisionally identified. Nor does the Group consider that any recommendation it might make for action on the part of others is likely to be an effective remedy.
25. The Group will consider whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any divestiture (for example, whether access to existing contracts and/or advertiser relationships should be included alongside any divestiture package), and over what period.
26. The Group would consider any other practicable remedies that Global, or any interested third parties, may propose in order to address the expected SLC and any resulting adverse effects.

### **Relevant customer benefits**

27. The Group will have regard to the effects of remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger situation. Such benefits might comprise lower prices, higher quality or a greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit to relevant customers in the UK has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition. In the context of this merger, relevant customers include both listeners and advertisers.
28. The Group welcomes views on the nature of any relevant customer benefits (on either or both a local/regional and national level) and on the scale and likelihood of such benefits and the extent to which these would be preserved by the different remedy options we are considering. In particular, the Group notes the following benefits which Global has submitted would arise as a result of the merger:<sup>3</sup>

(a) the ability to offer radio listeners an improved range of differentiated stations appealing to distinct audiences;

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<sup>3</sup> Global's initial submission, Sections 3(c) & 4:  
[www.competition-commission.org.uk/assets/competitioncommission/docs/2012/global-radio-gmg/global\\_rsl\\_initial\\_submission\\_.pdf](http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/global-radio-gmg/global_rsl_initial_submission_.pdf).

- (b) better-quality programming, an improved radio experience including better station 'sounds' (eg better jingles and positioning messages) and better presentation;
- (c) access to Global's superior systems and infrastructure;
- (d) greater geographical reach for both listeners and advertisers;
- (e) a simpler purchasing process for advertisers with a more defined target demographic based on high-quality, coherent recognizable brands;
- (f) provide an enhanced dedicated Welsh news service; and
- (g) an enhancement of radio's credibility as an advertising medium.

29. The Group invites views as to:

- (a) whether the benefits claimed are relevant customer benefits as defined by the Act;
- (b) the timing and relative certainty of the proposed benefits;
- (c) the scale of the benefits including the extent to which the benefits will be passed on to listeners and/or advertisers;
- (d) whether any remedy should be modified to take account of any benefits to listeners and/or advertisers; and
- (e) whether there are any other benefits not included in the above which we should take into account.

### **Next steps**

30. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **5pm on 27 February 2013**.
31. A copy of this notice will be posted on the CC website.

*[Signed]*

SIMON POLITO  
*Group Chairman*  
13 February 2013

*Notes:*

- (i) This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings announced on **13 February 2013**. Parties have until **5pm on 6 March 2013** to respond to the provisional findings and until 27 February 2013 to respond to this remedies notice. The Group's findings may alter in

response to comments it receives on its provisional findings, in which case the Group may consider other possible remedies, if appropriate.

- (ii) All correspondence relating to either the provisional findings or this remedies notice should be received by the Inquiry Manager on behalf of the Group by email to [Global-GMG@cc.gsi.gov.uk](mailto:Global-GMG@cc.gsi.gov.uk); or in writing to:

The Inquiry Manager  
Global/GMG Radio inquiry  
Competition Commission  
Victoria House  
Southampton Row  
LONDON  
WC1B 4AD