



GLOBAL/GMG
THIRD PARTY SUBMISSION TO THE COMPETITION COMMISSION
BAUER MEDIA GROUP

1. INTRODUCTION

- 1.1 This submission has been prepared by Herbert Smith Freehills LLP as instructed by Bauer Radio Limited ("**Bauer**"). It is not intended to be a standalone document but should be read in conjunction with Bauer's original submission to the OFT (the "**OFT Submission**"), a confidential version of which is annexed at **Annex 1**. This submission draws on the substantive arguments set out in the OFT Submission and provides supplementary material, where relevant, following the OFT's findings in its decision on the merger.¹
- 1.2 Bauer Media Group is a multinational media and publishing company comprising over 400 magazines, more than 100 websites, and 50 TV and radio stations. Bauer is the second largest commercial radio provider in the UK with 42 stations on AM, FM, digital, satellite and the internet in England, Scotland and Northern Ireland. Bauer operates 41 local analogue radio licences and 12 DAB multiplex licences. The UK Bauer radio network reaches 13.3 million adults each week according to RAJAR Q2 2012.
- 1.3 Bauer considers that the merger represents an unprecedented consolidation of the commercial radio sector. It therefore largely supports the OFT's findings in its decision.
- 1.4 As the CC will see from the OFT Submission, Bauer has undertaken a detailed analysis of the competitive effects of the merger in the commercial radio market. In particular, it submitted to the OFT a buy around analysis at a national level and a detailed analysis of the impact of the merger on a local and regional level.² On this basis, Bauer strongly believes that the merger gives rise to a substantial lessening of competition in the supply of airtime and the supply of sponsorship and promotion ("**S&P**") to advertisers at a national, regional and local level.

2. THE COUNTERFACTUAL

- 2.1 Bauer agrees with the OFT's assessment that the merger results in a change to the competitive structure of the national commercial radio market.³ For the reasons set out in Section 3 of its OFT Submission, Bauer believes that the correct counterfactual is one where Global and GMG competed independently for the sale of advertising airtime and S&P at all geographic levels. To the extent that there is any doubt that this is the correct counterfactual, Bauer submits that a full review by the CC is warranted with respect to the specific terms of the sales agreement.

3. MARKET DEFINITION

Impact of the BBC

- 3.1 It appears from the OFT decision that Global has argued that its main competitor for listeners is the BBC.⁴ Whilst Bauer accepts that the BBC competes to a degree with commercial radio operators for audience share, it does not agree with the OFT's view that the BBC may credibly exert some form of indirect constraint on the supply of commercial radio advertising and does not understand how this could be the case. The OFT does not explain the mechanism through which the BBC might plausibly constrain the pricing of

¹ ME/5561/12 - Completed acquisition by Global Radio Holdings Limited of GMG Radio Holdings Limited, decision dated 26 October 2012 (the "**OFT decision**").

² OFT Submission, paragraphs 5.5-5.40 and Annex 3 to the OFT Submission.

³ OFT decision, paragraph 95.

⁴ OFT decision, paragraphs 35-36. Clearly, the BBC does not compete with commercial radio operators for advertising.

commercial radio advertising except to say that the possibility arises from the observation that there is a two-sided market. Further, the OFT noted the absence of any empirical evidence relating to this argument. Contrary to the possibility raised by the OFT, a more likely impact of the competition for audience share from the well-funded BBC would be an increase in Global's incentive to raise prices in order to maximise advertising revenues. Moreover, the ability of listeners to switch to the BBC is one reason why competitors of Global/GMG could not increase their advertising minutage.⁵

- 3.2 For this reason, Bauer does not consider it appropriate for the CC to include the BBC in the relevant product market definition, nor should it be considered an indirect but significant competitive constraint on the radio advertising market.

Constraints from other media

- 3.3 Bauer agrees with the OFT that other types of media should not form part of the relevant product market.⁶ For the reasons set out in its OFT Submission,⁷ Bauer submits that radio is an important and distinct media form, both from the perspective of listeners and advertisers, offering unique features that other types of media do not provide.

Product segmentation

- 3.4 Bauer accepts that the OFT's product segmentation into non-contracted advertising, contracted advertising and S&P is a meaningful basis in which to assess competition for advertising in the commercial radio market.

- 3.5 Bauer does not consider that segmentation by demographic reach is a plausible delineation of the market for the reason already highlighted by the OFT, namely that advertisers frequently purchase airtime for campaigns without targeting a specific demographic.⁸ It is clear from Bauer's experience that the primary considerations of an advertiser in choosing a local radio station are by reference to volume and positioning of spots available, cost, coverage (reach) and the relative position of the station in the market. Unless a station were to have a specific minority target (for example, by targeting an older audience, or only offering a narrow music genre), Bauer does not accept that demographic reach is a main factor for an advertiser in its purchasing decision.

S&P

- 3.6 Bauer notes Global's assertions that S&P requires that advertisers build up a long-term association with a radio station provider,⁹ that competition from radio providers is less intense than competition from alternative media owners, and that joint-bidding does sometimes occur to enable radio providers to compete more effectively with other media.¹⁰ Bauer disagrees with each of these assertions.
- 3.7 Competition for S&P is fierce between radio providers not least since S&P attracts a premium price (typically around 20% above the cost of airtime advertising) which advertisers are willing to pay because S&P is a tailor-made creative solution where advertisers are actively involved in the process.¹¹ Pitches are won or lost on the strength of the creative solution (a long-term relationship between the station and advertiser will not outweigh a superior creative solution). Moreover S&P represents a significant share of commercial radio advertising.¹² Bauer competes aggressively with Global (and with GMG

⁵ OFT Submission, paragraphs 6.10-6.14.

⁶ OFT decision, paragraphs 37-40.

⁷ OFT Submission, paragraphs 4.4-4.8.

⁸ See further paragraph 4.5 below.

⁹ OFT decision, paragraph 41.

¹⁰ OFT decision, paragraph 103.

¹¹ See OFT Submission, paragraphs 4.9-4.11.

¹² RAB figures for 2011 show that commercial radio receives approximately []% of advertising revenue from S&P.

pre-merger) having won/lost a number of recent pitches.¹³ Joint bidding currently accounts for only a small (and declining) proportion of S&P pitches, estimated to be less than []%.

4. UNILATERAL EFFECTS

National effects

4.1 Bauer notes that the OFT did not consider it necessary to conclude whether the merger gives rise to a realistic prospect of a substantial lessening of competition on a national level given its conclusions with respect to non-contracted radio advertising.¹⁴ However, Bauer believes that the merger gives rise to significant competition concerns on a national level. The parties have high combined market shares of commercial revenues and audience with respect to national advertising. Post-merger, it will be virtually impossible for national advertisers to avoid purchasing from the combined entity. The merger will moreover lead to higher prices to advertisers as a result of an increase in price of the GMG stations and the decreased bargaining position of agencies and advertisers. The lost competition in the provision of S&P will also be likely to result in higher prices for national advertisers.

4.2 Bauer refers the CC to the OFT Submission at paragraphs 5.5-5.28 for its detailed assessment of national effects in the commercial radio sector.

Regional/local effects

4.3 Bauer refers the CC to the OFT Submission at paragraphs 5.29-5.40 and Annex 3 for its detailed assessment of regional and local effects. It considers that the merger gives rise to a substantial lessening of competition in all the areas in which Global and GMG overlap.¹⁵

4.4 Bauer broadly agrees with the OFT's findings in its decision.

4.5 With respect to the East Midlands, however, Bauer notes that the OFT has agreed that Global and GMG do not appear to be each other's closest competitors in terms of average demographic audience.¹⁶ Although Bauer does not dispute this assertion, it notes that Global and GMG still overlap in the supply of S&P and airtime for campaigns where advertisers do not have regard to specific demographics but prefer their adverts to be aired to as wide an audience as possible. This is typical of local and regional advertisers. In fact Bauer's internal figures show that []% of its total local revenues were achieved from the purchase of advertising without reference to a specific demographic, that is, those advertisers did not request anything other than an "all adults" audience.¹⁷

4.6 Bauer notes that the OFT's regional / local segmentation in its decision differs somewhat to the segmentation set out in Bauer's OFT Submission.¹⁸ Should the CC require further data or analyses on a different geographic basis from that previously provided, Bauer would be happy to assist the CC.

Vertical effects

4.7 The OFT recognises the potential adverse effects the merger creates with respect to RadioCentre, RAJAR and IRN.¹⁹ Bauer provided a summary of its concerns for each of these areas in paragraphs 5.42-5.47 of the OFT Submission, and cross-referred to the extensive submissions which were provided to OFCOM. Although the merger has not been

¹³ Bauer provided examples of win/loss data in a supplementary response to the OFT on its request. Bauer would be willing to provide these to the CC, along with further examples of more recent competitive pitches for S&P, but would also suggest that the CC seeks this data from the merging parties since Bauer has no visibility of pitches won/lost between Global and GMG unless it was involved in the same pitch process.

¹⁴ OFT decision, paragraphs 99 and 101.

¹⁵ Bauer notes that an analysis of every regional/local area was not provided by the OFT in its decision so it is unclear what data and arguments were provided by Global with respect to these areas and what the OFT's assessment and conclusions were.

¹⁶ OFT decision, paragraph 70.

¹⁷ Bauer [].

¹⁸ The OFT decision assesses competition in South Yorkshire and Cardiff whereas Bauer's analysis looks at Yorkshire and South Wales.

¹⁹ OFT decision, paragraphs 126-133.

referred to the CC on plurality grounds, the arguments set out in Bauer's OFCOM submission remain relevant for the purposes of the CC's assessment of the merger on competition. Bauer therefore refers the CC to paragraphs 6.6-6.14 and 5.1-5.12 of its OFCOM submission.²⁰

5. HOLD SEPARATE UNDERTAKINGS

- 5.1 Bauer would urge the CC to ensure that, until it has adopted a decision with respect to the merger, no further steps are taken by Global to integrate the GMG business to such a degree that these measures cannot be unwound and / or the value of the GMG business is degraded and / or rendered less attractive to suitable purchasers.
- 5.2 Bauer was concerned that soon after the merger was announced, Mark Lee (Global's Managing Director for the Regions) was seconded to GMG as acting CEO and Colin Everett (Global's Group finance Controller) was seconded to GMG as COO. Bauer notes that further steps have been taken during the hold separate period that the CC may wish to examine, for example, in July 2012, the decision was taken by GMG post-merger to axe popular football "phone-in" shows, which were local to the regions in which they were broadcast, from the Real Radio stations in Scotland, the North East and Wales. Instead, listeners now hear a networked music show which is broadcast from London and has no local or regional content.²¹
- 5.3 More recently, Bauer is aware from public sources that Global intends to network its mid-morning and afternoon slots on Real radio from 5 November 2012.²² In theory, if a station such as a Real Radio station is networked, it could be de-linked from the network at a later date. In practice, however, once "talent" (i.e. radio presenters) has been lost, the task of running the station as an independent entity becomes more difficult than if the station had not been networked in the first place, and the station's attractiveness to independent potential purchasers will be reduced.²³

6. CONCLUSION

- 6.1 For the reasons set out in this document and the OFT Submission, Bauer considers there is strong evidence to conclude that the merger gives rise to a substantial lessening of competition in the supply of airtime advertising and S&P on a national, regional and local level.
- 6.2 Bauer is keen to assist the CC during the course of its inquiry. It engaged with the OFT throughout its first phase investigation. In particular, senior executives of Bauer along with its advisers, Herbert Smith Freehills LLP and Charles River Associates met with the OFT to discuss Bauer's views on the merger, and later, discussed the data and analyses provided. It would be happy to discuss the same with the CC case team if helpful. Bauer will be providing a full response to the CC's questionnaire by the stated deadline. It also looks forward to discussing its views further in its oral hearing.

Herbert Smith Freehills LLP

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²⁰ Bauer's written submission to OFCOM is annexed to the OFT Submission at Annex 1.

²¹ See Bauer's submission to OFCOM at Annex 1 to the OFT Submission, paragraphs 4.25-4.27.

²² See <http://www.imediamonkey.com/2012/10/15/real-radio-announces-introduction-of-two-networked-daytime-shows/>.

²³ Bauer notes from public sources that a Global has already replaced a number of Scottish DJs at GMG's Real Radio Scotland, replacing them with English hosts - <http://www.dailyrecord.co.uk/entertainment/tv-radio/real-radio-could-be-off-the-air-by-spring-1413802>.