

# RESPONSE TO COMPETITION COMMISSION'S PROVISIONAL FINDINGS REPORT

## PART 2: GLOBAL'S DETAILED COMMENTS

### A REBUTTAL OF SPECIFIC PARAGRAPHS IN THE PROVISIONAL FINDINGS

#### 1. EXECUTIVE SUMMARY

1.1 In Part 2 of this Response, Global provides detailed comments on specific paragraphs in the Provisional Findings, which challenge the CC's provisional conclusion that a substantial lessening of competition will, or is likely to, arise in the non-contracted advertising sector in the seven regions. In particular, Global considers that the following of the CC's key findings are flawed and should be revisited:

- (i) Market definition: the relevant product market is radio only.
- (ii) Competition with other media: the competitive constraints of non-radio media are limited and should not be taken into account in the regional assessment.
- (iii) Competition between radio stations: the parties compete closely for advertisers.
- (iv) Competitive assessment of the merger: a substantial lessening of competition will, or is likely to, arise in the overlap areas where the radio alternatives are reduced from "3 to 2" or "2 to 1" – this is the case in the seven regions.

1.2 In addition, the CC should refer to (i) Part 1 of this Response for a rebuttal of the CC's theory of harm in respect of pricing and negotiations; and (ii) the Regional Annexes for a rebuttal of the CC's competitive assessment of the seven regions.

1.3 As a result, this Response categorically undermines the CC's provisional conclusion that a substantial lessening of competition will, or is likely to arise, in the non-contracted advertising sector in the seven regions.

#### **Section 2: Market Definition**

1.4 Global challenges the CC's provisional conclusion that the relevant product market is radio only. The CC should conclude that the relevant product market includes non-radio media (or, at least, press) because this is supported by robust, extensive evidence; specifically:

- (i) The Ofcom Reports.<sup>1</sup>
- (ii) The BMRB Survey.<sup>2</sup>
- (iii) The Existing Customers and Lost Opportunities Surveys (together, “**Surveys**”).

1.5 All of this evidence consistently concludes that a hypothetical radio monopolist test would not be satisfied; that is, advertisers would switch to alternative media, including non-radio media (and especially press), in the event of a small but significant non-transitory increase in price (“**SSNIP**”).

1.6 However, the CC has given limited or no weight to this evidence. Instead, it has relied on a single analysis, its price concentration analysis (“**PCA**”), which reaches the opposite conclusion – this PCA is not robust and should be disregarded by the CC.

### **Section 3: Competition With Other Media**

1.7 The CC has not as yet taken account of the competitive constraints of non-radio media in its competitive assessment and, in particular, in its regional assessment. Instead:

- (i) The CC has been unfair in the selection of the results from the Surveys and concluded that the competitive constraints of non-radio media are limited. This is contrary to their most important (and obvious) conclusion that non-radio media are effective competitive constraints.
- (ii) The CC fails to take into account key evidence including, in particular, the parties’ analysis of Real’s entry into North Wales (“**North Wales Event Study**”) which clearly demonstrates that an increase in the number of radio alternatives from 1 to 2 did not result in [X] over an extended period (i.e. it follows that a decrease in the number of radio alternatives from 3 to 2 or 2 to 1 would not result in [X] over an extended period).
- (iii) The CC solely relies on the PCA to justify its focus on radio competitors only – this analysis is not robust and should be disregarded by the CC.

1.8 The CC should expressly conclude that non-radio media are effective alternatives for the vast majority of non-contracted advertisers (having implicitly accepted this) and apply this reasoning in its regional assessment.

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<sup>1</sup> Ofcom, *Radio Advertising Market Research: Assessment of the constraints on the price of direct and indirect radio advertising* (October 2006) (“**RAMR Report**”); Ofcom, *Human Capital Indirect Radio Advertising Market Research Report* (19 October 2006); and Ofcom, *Harris Interactive Radio Advertising Market Research Report* (19 October 2006); together, the “**Ofcom Reports**”.

<sup>2</sup> BMRB Survey (January 2008) (Non-Contracted WP Response 1, Attachment 4).

#### **Section 4: Competition Between Radio Stations**

- 1.9 The CC's provisional approach which considers only radio alternatives is wrong. It is also wrong to consider that the parties' stations do not compete significantly for advertisers. In adopting this position:
- (i) The CC has failed to analyse whether the parties' stations are close competitors as it has not taken into account closer competitive alternatives (including non-radio media) in that analysis.
  - (ii) The CC has given disproportionate weight to the relative strength of radio stations (as measured in particular by share of listeners), which is a limited measure of competitiveness because it fails to take into account geography and demographics.
  - (iii) The CC has failed to apply its own reasoning about geography and demographics to its regional analysis – had it done so, it would have concluded that the parties' stations are sufficiently differentiated in terms of geography and / or demographics so as not to be considered close competitors in the seven regions relative to other alternatives (including other radio stations and other non-radio media).
  - (iv) The CC has been unfair in the selection of the results of the Surveys and concluded that non-contracted advertisers view the parties' stations as next best alternatives. This is contrary to their most important (and obvious) conclusion that the vast majority of non-contracted advertisers do not view the parties' stations as next best alternatives.
- 1.10 The CC should expressly conclude that the vast majority of non-contracted advertisers do not view the parties' stations as being next best alternatives (having implicitly accepted this). In doing so, it should give weight to the extensive body of supporting evidence which demonstrates that the parties' stations target highly differentiated geographies and / or demographics and are therefore not close competitors in the seven regions.

#### **Section 5: Competitive Assessment of the Merger**

- 1.11 On the basis of the PCA, the CC has mechanically applied a "3-to-2" (or even a "2-to-1") analysis in its regional assessment. The CC's approach is not informative because:
- (i) It fails to take into account the competitive constraints imposed by non-radio media.
  - (ii) It cannot be applied to a heterogeneous market (i.e. one which comprises highly differentiated radio brands which also compete extensively with non-radio media) – in doing so, the CC has so far failed to recognise that the parties' stations are highly differentiated in terms of geography and / or demographics and, therefore, should not be considered to be effective radio alternatives.

- (iii) It is solely based on the PCA, which is not robust and should be disregarded by the CC.

1.12 Therefore, the CC's provisional conclusion that a substantial lessening of competition will, or is likely to arise, in the non-contracted advertising sector in the seven regions is unsubstantiated and incorrect.

## 2. MARKET DEFINITION

2.1 The CC has provisionally defined the relevant product market as radio only<sup>3</sup> because:

- (i) It considers radio and non-radio to be sufficiently different so as not to be substitutable.
- (ii) It concludes that a hypothetical radio monopolist would be able to increase prices profitably on the basis of its PCA.

2.2 Global disagrees with this product market definition, and the grounds on which it is based, for the reasons set out in this Section 2; namely:

- (i) The CC has not as yet taken proper account of robust, extensive evidence, which strongly suggests that non-radio media effectively constrain the prices of radio advertising.
- (ii) The PCA, which underpins the CC's provisional conclusions on market definition, is not robust and should be disregarded by the CC.

2.3 The CC should conclude that the relevant product market includes non-radio media (or, at least, press).

### A. Radio and non-radio media are sufficiently different so as not to be substitutable

***“There are significant differences between radio and other advertising<sup>4</sup>...The particular benefits of radio...may mean that an advertiser’s campaign objectives can best be met by radio or that other media are only considered by advertisers to be complementary rather than substitutable.<sup>5</sup>”***

2.4 Global agrees that radio has unique characteristics.

2.5 However, this does not preclude radio from being substitutable with non-radio media on the advertising side. The CC has received extensive evidence which clearly demonstrates that the vast majority of radio advertisers (i) do not view radio as a “must have” medium; and (ii) consider radio and non-radio media can meet the same objectives and are substitutable.<sup>6</sup> In particular, the CC has not given sufficient weight to

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<sup>3</sup> PF, para. 5.25.

<sup>4</sup> PF, para. 5.23.

<sup>5</sup> PF, paras. 6.32-6.33.

<sup>6</sup> See further Global's response to the CC's working paper on non-contracted advertising (Part 1) (“**Non-Contracted WP Response 1**”).

the Ofcom Reports and the Surveys, which clearly evidence that advertisers view radio and non-radio media as substitutable.

Ofcom Reports

- 2.6 After carrying out an extensive market investigation, Ofcom concluded that: “*Direct radio advertisers perceive radio and press advertising as interchangeable*”.<sup>7</sup>

Existing Customer Survey

- 2.7 82% of all respondents said non-radio media could meet the same campaign objectives as radio.
- 2.8 31% of all respondents said that non-radio media would be their next best alternative if the parties’ stations had not been available for their last campaign - around twice the number who chose other radio (18%).

Lost Opportunities Survey

- 2.9 When asked what other types of media could meet the same campaign objectives as radio, 94% of all respondents chose a specific non-radio medium.
- 2.10 45% of all respondents used local press after actively considering but declining a campaign proposal put forward by Global whereas only 34% used other radio.

**B. On the basis of the PCA, a hypothetical radio monopolist would be able to increase prices profitably to advertisers**

***“Our analysis of prices, market share and concentration suggests that prices would be substantially higher under a hypothetical radio monopoly”***.<sup>8</sup>

- 2.11 Global disagrees.
- 2.12 The CC should not rely on the PCA<sup>9</sup> because it is not a robust analysis.<sup>10</sup>
- 2.13 As further detailed in RBB’s PCA Response<sup>11</sup>, the PCA does not satisfy (i) the standard “robustness checks” which are advocated by the CC; and (ii) the alternative (and

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<sup>7</sup> RAMR Report, para. 1.5.

<sup>8</sup> PF, para. 5.23.

<sup>9</sup> Price concentration analysis.

<sup>10</sup> See further RBB, *Non-technical summary of RBB response to the CC’s price concentration analysis*; RBB, *An economic response to the CC Price Concentration Analysis working paper*; RBB, *Meeting between CC and RBB to discuss the alleged robustness of CC PCA Model*.

preferred) model specifications. The CC should refer to RBB's PCA Response for a detailed rebuttal of the PCA, which summarises results presented to the CC on 22 February 2013.

- 2.14 As a result, the CC has no basis on which to claim that advertisers face higher radio prices in those in areas with fewer radio alternatives (i.e. a hypothetical radio monopolist would be able to increase prices profitably to advertisers).

**C. The relevant product market is radio only**

***"We note that a 2006 study by Ofcom suggested that it may be unprofitable for a hypothetical radio monopolist to increase prices because advertisers would switch to other media and/or be unwilling to increase radio campaign spending. However Ofcom did not conclude on whether this was sufficient to widen the market"<sup>12</sup>...We also note that it has been more than six years since this report was published.<sup>13</sup>"***

***"Our provisional market definition is therefore a UK market for radio."<sup>14</sup>***

- 2.15 Global disagrees.
- 2.16 The CC has received extensive, robust evidence which clearly demonstrates that a hypothetical radio monopolist would not be able to increase prices profitably to advertisers because advertisers would switch to alternatives including non-radio media (in particular, the press). On this basis, the CC should conclude that the relevant product market includes non-radio media (or, at least, press).
- 2.17 However, the CC has not as yet taken proper account of this evidence; specifically, the Ofcom Reports (as noted by the CC) but also the BMRB Survey and the Existing Customers Survey.

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<sup>11</sup> RBB, *Further response to the CC's Price Concentration Analysis* dated 7 March 2013 and Dr J.M.C. Santos Silva, *Notes on the use of the fixed effects estimator in the price concentration analysis*, together, the "**PCA Response**" (Annex 8).

<sup>12</sup> PF, para. 5.23.

<sup>13</sup> PF, fn. 61.

<sup>14</sup> PF, para. 5.23.

Ofcom Reports

2.18 Following an extensive market investigation involving a survey of 182 direct radio advertisers, Ofcom concluded that:

*“The pricing of direct radio advertising appears to be constrained by press advertising... a hypothetical monopoly supplier of direct radio advertising would not find it profitable to raise prices by 5-10% for a sustained period of time”.*<sup>15</sup>

2.19 Ofcom carried out its research to assess the competitive constraints faced by radio (not to comment on market definition)<sup>16</sup> in light of the developments in the competitive landscape since 2003 to 2006, such as the growth in online and outdoor – such developments have continued and, in fact, accelerated since the publication of the Ofcom Reports. Ofcom's key conclusions therefore remain directly relevant to assessing the competitive effects of the merger.

2.20 Yet the CC has failed to take account of Ofcom's findings in its region by region competitive assessment, despite these being robust and extensive. In particular:

- (i) Ofcom's surveys were carried out over a two-year period.
- (ii) Ofcom surveyed high samples: 182 direct radio advertisers and 28 indirect radio advertisers in its SSNIP analyses.
- (iii) Ofcom's survey results were consistent: Ofcom concluded that non-contracted advertisers are at least constrained by press and a hypothetical radio monopolist would not find it profitable to impose a SSNIP; and contracted advertisers are at least constrained by television, online and press and a hypothetical radio monopolist would not find it profitable to impose a SSNIP.

2.21 The CC has not given any compelling reason for disregarding Ofcom's evidence; its failure to take proper account of the Ofcom Reports is without basis. Specifically:

- (i) The CC notes that *“Ofcom did not conclude on whether this was sufficient to widen the market”*.<sup>17</sup> However, the primary conclusion of the Ofcom Reports is that *“The pricing of direct radio advertising appears to be constrained by press advertising... a hypothetical monopoly supplier of direct radio advertising would not find it profitable to raise prices by 5-10% for a sustained period of time. This result appears to be robust to a range of sensitivity analyses”*.<sup>18</sup> Therefore, the

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<sup>15</sup> RAMR Report, para. 1.5.

<sup>16</sup> RAMR Report, para. 2.3; Ofcom's objective was not *“to define the boundaries of the relevant product market”*, RAMR Report, para. 2.6.

<sup>17</sup> PF, para. 5.23.

<sup>18</sup> RAMR Report, para. 1.5.

Ofcom Reports clearly conclude that a hypothetical monopolist of radio advertising could not raise prices by a small but significant amount and, as a result, that radio does not constitute a separate product market.

- (ii) The CC notes “*that it has been more than six years since this report was published*”.<sup>19</sup> This is not a basis for failing to take proper account of Ofcom’s careful and authoritative evidence. No factors are referred to which would change the analysis because of the passage of six years. If anything, the constraints from non-radio media, in particular online, have become more significant over that time.

- 2.22 The CC should have given weight to Ofcom, especially because (i) it is a competition authority with specialist radio expertise; and (ii) its survey of radio advertisers was far more extensive than any survey the CC has (or could have) carried out within the constraints of this merger inquiry. In fact, Ofcom’s conclusions have since been supported by the BMRB Survey and the Surveys.

BMRB Survey

- 2.23 Global commissioned a survey of 67 non-contracted radio advertisers at the time of the GCap acquisition. According to this survey:

In the event of a 5% SSNIP on non-contracted advertisers, “*Only 9% would continue to advertise on radio with the same slots/airtime and thus pay the additional amount...Of those who would switch either some or all of their budget to another medium, outdoor, local/regional press and non-contracted mail are the media that people would be most likely to switch to*”.<sup>20</sup>

In the event of a 10% SSNIP on non-contracted advertisers, “*Only 2% would continue to advertise on the radio with same adverts and pay the additional amount...57% of respondents would switch either some or all of their budget to another medium*”.<sup>21</sup>

Existing Customers Survey

- 2.24 When asked hypothetically what they would have done if the campaign proposed by Global or RSL had been:
- (i) 5% more expensive, only 8% of all respondents would have continued to advertise and face the price increase; and

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<sup>19</sup> PF, fn. 61.

<sup>20</sup> BMRB Survey, Section 2.

<sup>21</sup> BMRB Survey, Section 2.

- (ii) 10% more expensive, only 4% of all respondents would have continued to advertise and face the price increase.
- 2.25 Moreover, as discussed in paragraph 2.8 above, many respondents indicated that their next best alternative (i.e. the alternative to which they would be most likely to switch) would be non-radio media.
- 2.26 The CC has stated that these responses may be subject to “*hypothetical bias, where a consumer may indicate a willingness in principle to spend money or change behaviour, which does not reflect their likely real response to the situation described. Such hypothetical bias is a further reason to treat the results to this question with caution*”.<sup>22</sup> Such a “hypothetical bias” may, as a matter of theory, give rise to a degree of overstatement as to the proportion of respondents who claim that they would switch to other alternatives following a price increase. However, that does not undermine the results, which strongly suggest that the vast majority of radio advertisers are highly sensitive to price and would be likely to switch to a non-radio alternative in the event of a price increase. Allowing a reasonable margin of error around those results as a result of potential concerns regarding bias would not therefore affect this result.
- 2.27 Therefore, the CC should give greater weight to the Existing Customers Survey. Instead, the CC has not as yet taken proper account of its results, not even treating them “with caution”. The CC’s grounds for doing so are without basis.

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<sup>22</sup> Appendix H, para. 45.

### 3. COMPETITION WITH OTHER MEDIA

- 3.1 The CC has stated “*we consider it important that our assessment of the competitive effects of the merger should include an assessment of constraints from other media*”.<sup>23</sup> However, the CC has failed to place any weight on the competitive constraints of non-radio media in its competitive assessment, particularly in its regional assessment. In doing so, the CC has:
- (i) considered radio and non-radio media not to be substitutable;
  - (ii) has not been fair in the selection of results from the parties’ key evidence (i.e. the Surveys) or failed to take into account the parties’ key evidence (i.e. the NMR analysis and the event studies); and
  - (iii) relied solely on the PCA and its contracted agency questionnaire.
- 3.2 Global considers that the CC has not as yet taken proper account of the parties’ key evidence, which is robust and consistently concludes that non-radio media are effective alternatives for the vast majority of non-contracted advertisers. Moreover, the PCA and the agency questionnaire are not robust and ought to be disregarded by the CC.
- 3.3 For the reasons set out in this Section 3, the CC’s failure to take into account the competitive constraints of non-radio media is without basis. The CC should expressly conclude that non-radio media are effective competitive constraints on radio advertising (given that it has implicitly accepted this) and apply this reasoning in its competitive assessment, especially in its regional assessment.

#### A. Radio and non-radio are complementary not substitutable

***“Radio stations promote the benefits of using radio advertising as part of a wider campaign...A significant proportion of the parties’ marketing material reflects the potential uplift in impact and cost effectiveness that adding radio to the media mix of a campaign can offer. The Radio Advertising Bureau (RAB) makes similar points about what it describes as the multiplier effect of using radio with other media advertising”.***<sup>24</sup>

- 3.4 Global agrees that the radio industry sells radio based on its “multiplier effect”. As radio is not a “must have” medium, it must compete with non-radio media for a share of an advertising budget. To do so, radio will often market itself as being an effective advertising medium when used alongside other media (i.e. on its “multiplier effect”) in order to persuade advertisers to switch a part of their budget from non-radio media to radio.

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<sup>23</sup> PF, para. 5.25.

<sup>24</sup> PF, para. 6.21.

- 3.5 Given that radio takes budget away from non-radio media, this means it is an economic substitute for non-radio media. This is supported by the RAB research, which is cited by the CC: “if 10 percent of a given television budget was reallocated to radio, the efficiency of the campaign in building awareness increases on average by 15 per cent”<sup>25</sup> (emphasis added)<sup>26</sup> – i.e. the 10% spent on radio would have been spent on TV if the radio company had been unsuccessful. This means that radio is a partial economic substitute for TV (and other non-radio media) where radio is used for its well understood multiplier effect.

**B. The Surveys suggest that non-radio media are not effective competitive constraints on radio**

***“We consider that the aggregate results of the surveys are broadly indicative but have a relatively wide and unquantifiable margin of error”.***<sup>27</sup>

***“The survey results suggest limits to the competitive constraint provided by other media... 15 per cent of existing customers did not consider using any other media at the time of their last campaign...24 per cent said that they ended up using only radio...9 per cent of respondents said that they could not use any other types of media to meet the same objectives as radio”.***<sup>28</sup>

***“The survey results also suggest that it is unlikely that radio advertising and advertising on other media are in all cases substitutes or in all cases complementary...24 per cent of existing customers would have switched at least partly to other radio if the parties’ stations had not been available at the time they planned their last campaign...34 per cent of respondents who turned down a proposal from Global used other radio in the campaign.”***<sup>29</sup>

- 3.6 The CC has implicitly recognised that the vast majority of non-contracted advertisers view (i) non-radio media as effective competitive constraints on radio advertising; and (ii) non-radio media and radio as substitutable. Specifically:
- (i) If 15% of existing customers did not consider using any other media at the time of their last campaign, 85% did consider using non-radio media.
  - (ii) If 9% of existing customers said that they could not use any other types of media to meet the same objectives as radio, 91% said they could use non-radio media.

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<sup>25</sup> PF, para. 6.21.

<sup>26</sup> See further Non-Contracted WP Response 1.

<sup>27</sup> PF, para. 6.37.

<sup>28</sup> PF, para. 6.39.

<sup>29</sup> PF, para. 6.40.

- (iii) By accepting that the Lost Opportunities Survey demonstrates that 34% of advertisers who declined a proposal by Global used another radio station, the CC must also accept that 47% used press and 17% used third party radio stations instead of RSL, i.e. those non-radio media alternatives compete more closely with Global than other radio stations (or, indeed, RSL).
- (iv) By accepting that the Existing Customer Survey demonstrates that 24% of the parties' customers view other radio stations as their next best alternatives (i.e. they would have switched some or all of their expenditure to radio alternatives), the CC must also accept that 39% would have switched some or all of their spend to non-radio media, i.e. those non-radio media alternatives compete more closely with the parties than other radio stations (or, indeed, the other party's stations).

3.7 The CC should reach these conclusions. Instead, the CC has not been fair in the selection of the results from the Surveys. It has placed disproportionate weight on the Surveys' results relating to a very small minority of non-contracted advertisers who regard the parties' stations as each other's next best alternatives.

**C. The Surveys are not sufficiently robust**

***“We do not consider that it is appropriate to attach weight to the local area results because samples were small and there are likely to be significant unquantifiable interviewer differences”.***<sup>30</sup>

- 3.8 The CC's view does not provide any basis for the CC to provisionally conclude that non-radio is generally not an effective alternative to radio across the overlap regions.
- 3.9 Moreover, Global considers that the Surveys' samples at the regional / local level are sufficiently high in a number of overlap regions to draw conclusions from the region-specific results; specifically:
- (i) In seven of the overlap areas – i.e. South Wales, North Wales, the East Midlands, the West Midlands, the North East, the North West and Scotland - the sample size is above 50, the minimum sample size generally accepted in survey analysis.
  - (ii) In two of the overlap areas – i.e. North Wales and South Wales – the sample size is above 90, well above the minimum sample size generally accepted in survey analysis.
  - (iii) The results of the Existing Customers Survey results are consistent across all overlap regions, i.e. in all overlap regions, more respondents chose non-radio media to be their next best alternative than radio.

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<sup>30</sup> PF, para. 6.37

3.10 Given the consistency of the results at the local/regional level and the aggregate level, the CC should give greater weight to the results of the Surveys’ at the local/regional level, in particular, accepting that non-radio media is the closest competitive alternative to the parties’ stations.

***“We also note an issue with the coverage of the lost opportunities survey. We note that 25 per cent of respondents to this survey had not used radio to advertise in the last three years. We consider the responses of these respondents to be less informative of the likely preferences of Global and RSL advertisers”.***<sup>31</sup>

3.11 The Lost Opportunities Survey does accurately reflect the views of radio advertisers. Specifically, if 25% of all respondents had not used radio to advertise in the last three years, 75% of all respondents did use radio in the last three years.<sup>32</sup>

3.12 Excluding these 25% of advertisers from the analysis provides an ample sample for the CC’s competitive assessment. There are 534 “radio users” across the survey regions.

3.13 Moreover, even if the 75% who had used radio to advertise in the last three years are considered in isolation, the results of the Lost Opportunities Survey do not change:

- (i) 46% of “radio users” indicated that they used press instead of Global’s stations. The corresponding figures for outdoor media and magazines are 33% and 27%.
- (ii) This compares to 43% of “radio users” who used third party radio stations, with 14% using RSL stations.
- (iii) A significantly greater number of respondents used press (46%) instead of RSL stations (14% instead of Global’s stations). Press is therefore the closest competitive alternative to Global’s stations rather than RSL’s stations.

**Table 1**  
**Analysis of “radio users”**

	Local Press	Outdoor	Magazines	Other Radio		Number of Respondents
				Total	RSL	
Radio users (last three years)	46%	33%	27%	43%	15%	534

Source: YouGov Lost Opportunities survey. Radio users identified by Q2 and Q5 of survey.

***“The CC’s independent survey moderator reported concerns about the conduct***

<sup>31</sup> PF, para. 6.38.

<sup>32</sup> See further Non-Contracted WP Response 1, paras. 1.8-1.10.

***of the fieldwork for the parties' existing customer survey".<sup>33</sup>***

***"It seems probable however that fieldwork for both [i.e. the Lost Opportunities Survey] would have been similar".<sup>34</sup>***

- 3.14 Global disagrees.
- 3.15 The Survey Moderator's concerns are without basis. The Survey Moderator Report is not a fair or reasonable assessment of the Surveys. The CC should not give weight to the Survey Moderator Report.

*Existing Customers Survey*

- 3.16 The Survey Moderator spent very little time monitoring the interviews. Over a fieldwork period of approximately six months, the Survey Moderator only had "*one full day meeting...limited to post-hoc discussion and analysis rather than ongoing observation*".<sup>35</sup>
- 3.17 The Survey Moderator only listened to five recordings out of a total of 548 interviews (i.e. less than 1%).<sup>36</sup> Before reaching any conclusion, the Survey Moderator should have listened to more interviews (e.g. at least 10%). As each interview was no more than 10 minutes generally, the Survey Moderator could have listened to 50 or so interviews over a few days, which would not have imposed an unreasonable burden on the Survey Moderator or a significant cost on the CC. However, for no evident reason, the Survey Moderator chose not to do so.
- 3.18 The Survey Moderator has almost exclusively focused on the implementation of Question 11 (by her own admission – "*this was the question on which we concentrated*".<sup>37</sup>) She has imputed her concerns about Question 11 to the rest of the Existing Customers Survey, which is unjustified; especially given that her concerns about Question 11 are unsubstantiated:
- (i) Any discrepancies in the fieldwork would not have affected the results of the Existing Customers Survey - i.e. the media alternatives identified by

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<sup>33</sup> PF, para. 6.37.

<sup>34</sup> Survey Moderator Report, Section 2.

<sup>35</sup> Survey Moderator Report, Sections 1 and 7.

<sup>36</sup> Survey Moderator Report, Section 4.

<sup>37</sup> Survey Moderator Report, Section 4.

respondents. Moreover, if there had been any effect on the Existing Customers Survey, it would have produced less favourable results to the parties.<sup>38</sup>

- (ii) This has been confirmed by a full assessment of all interviews by YouGov who undertook a listening exercise covering 467 recordings of the Existing Customers Survey and reported findings from this to the Survey Moderator and the CC. The Survey Moderator however, failed to refer in her report to this listening exercise or to give any reasons for ignoring this information. This evidence should have been given significant weight, given that the Survey Moderators' findings were based on a sample of only five interviews.
- (iii) The YouGov analysis confirms that respondents were provided with the opportunity to identify, in the vast majority of cases, the alternative media that they would turn to in the event that they were unable to use Global or RSL stations. The context of the relevant question was clear, and the Survey Moderators' concerns that the responses were biased are therefore without basis.
- (iv) The interviewing spread should not have been raised as a cause for concern. As the Survey Moderator states, "*there is no formal 'MRS rule' about the interviewing spread*".<sup>39</sup> Moreover, the Survey Moderator failed to take into account analysis presented by YouGov and by RBB to demonstrate that any "interviewer bias" did not result in more respondents choosing non-radio media alternatives – i.e. it did not give rise to a bias that favoured the parties' case.

#### Lost Opportunities Survey

- 3.19 Inexplicably, the Survey Moderator did not listen to any interviews and is therefore not in a position to comment on the Lost Opportunities Survey, particularly because there is no corresponding question to Question 11 of the Existing Customers Survey in the Lost Opportunities Survey.
- 3.20 Moreover, as around twice as many of the interviews were not conducted by Indiefield but by another third party provider, RSM Research, the Survey Moderator cannot reasonably conclude that her concerns about Indiefield's fieldwork in the Existing Customers Survey would "*probably*" apply equally to the Lost Opportunities Survey.<sup>40</sup>

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<sup>38</sup> See further RBB, *Assessment of potential issues arising from phrasing of questions and options (Existing Customer survey Q11a)*; RBB, *Response to CC follow up questions on Q11a of Existing Customer Survey*.

<sup>39</sup> Survey Moderator Report, Section 5.

<sup>40</sup> 452 interviews were carried out by RSM Research; 246 by Indiefield.

**D. The NMR analysis is not sufficiently informative**

***“We attach little weight to the parties’ analysis of NMR data. This is because we do not consider this data to be an indicator of advertisers’ preferences between radio and other media or their propensity to switch between the two in response to changes in price”.***<sup>41</sup>

- 3.21 The CC should not reject the NMR analysis.
- 3.22 The NMR analysis clearly demonstrates that there are very few advertisers who use radio only. Unless there is a significant change in their campaign objectives (which is unlikely for non-contracted advertisers, and for which the CC has no evidence), the fact that so many advertisers on Global and RSL stations choose to switch to non-radio media is consistent with the conclusion that non-radio media exerts effective competitive constraints on radio advertising.

**E. The event studies need to be treated with caution**

***“We note that the parties’ event studies are based on inferences about competition drawn from movements over a fairly short period of time in average price. These need to be interpreted with caution”.***<sup>42</sup>

***“We note also that particular caution is needed in drawing inferences from a lack of response of one station’s average price to factors that caused a change in another station’s average price, unless it is known that those factors affected all the advertisers on the other station”.***<sup>43</sup>

- 3.23 The CC’s concerns are unsubstantiated.
- 3.24 If the CC considers that the levels of radio concentration would not have an effect on the average radio pricing over a reasonably short period, it is unclear why the CC would undertake (and place so much weight on) an analysis aimed at assessing the relationship between quarterly changes in concentration on quarterly changes in the average price of radio advertising (i.e. its PCA).
- 3.25 Moreover, the parties’ event studies covered a very significant time period. In the case of the North Wales Event Study, market outcomes were analysed over a period of 18 months.

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<sup>41</sup> PF, para. 6.51.

<sup>42</sup> PF, para. 6.52.

<sup>43</sup> PF, para. 6.52.

- 3.26 The North Wales Event Study therefore provides important evidence as to whether the existence of radio alternatives impacts upon prices and should have been given serious consideration within the competitive assessment. In particular:
- (i) Real's entry into North Wales increased the number of radio alternatives from 1 to 2. However, it had [X] on Heart's prices or revenues in North Wales.
  - (ii) As a result, the only reasonable interpretation of this North Wales Event Study is that changes in the number of radio alternatives from 1 to 2 did not impact pricing. By inference, it must follow that a move from 3 to 2 radio alternatives would be very unlikely to affect radio pricing.
  - (iii) The North Wales Event Study therefore contradicts the CC's provisional finding that the number of radio alternatives determines prices for non-contracted advertisers (as reached in its PCA).
- 3.27 The CC's reasons for dismissing the event studies so far are unjustified and this should be reconsidered.

**F. The PCA indicates that the competitive constraints of non-radio media are limited**

***"We consider that our price concentration analysis indicates that higher average prices tend to be paid by non contracted customers of Global and RSL stations with fewer radio alternatives. This evidence is not consistent with the view that non contracted prices depend only on competition from other media".<sup>44</sup>***

- 3.28 For the reasons given in paragraph 2.12 to 2.14 above, the PCA is not robust and should be disregarded by the CC.

**G. Agencies have suggested that non-radio media are not effective competitive constraints**

***"Our questionnaire responses from the agencies suggested that...while other media offered a potential substitute in some cases other radio was usually the next best alternative to the parties' stations in a campaign...These results are in line with evidence that there are limits to the extent to which other media may constrain radio advertising".<sup>45</sup>***

- 3.29 The CC should not rely on the agency questionnaire. As set out in the Contracted WP Response 2<sup>46</sup>:

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<sup>44</sup> PF, para. 6.50.

<sup>45</sup> PF, para. 6.53.

<sup>46</sup> Global's response to the CC's working paper on contracted advertising (Part 2) ("**Contracted WP Response 2**"), para. 3.

- (i) The CC should assess the following relevant questions in respect of contracted advertising: (i) will the merger remove outside options for the agencies at the point when the trading directors negotiate prices with Global; and (ii) will this result in a shift in the bargaining power from the agencies to Global?
  - (ii) However, the questionnaire does not provide any insight into either of these questions. As it refers to the closest alternatives to the parties' stations where a decision has already been made to use the parties' stations (i.e. radio), it is already predetermined that radio will be used for that campaign. Therefore, the questionnaire is likely to have been asked at the level of the radio planners who, by definition, will only consider radio options.
  - (iii) To answer the relevant questions, the CC should have directed the questionnaire at the trading directors, who are the ones involved in price negotiations with Global. However, given the wording of the questionnaire, it is unlikely to have reached those trading directors.
  - (iv) Moreover, the questionnaire focuses on the ten largest radio advertisers and includes radio-only agencies. As a result, the results are likely to be biased towards radio.
- 3.30 Notwithstanding the above, the CC has provisionally concluded that no substantial lessening of competition will, or is likely, to arise in the contracted advertising sector on the basis that:
- (i) Contracted advertisers have strong bargaining power<sup>47</sup> (in particular, taking into account the [X]).<sup>48</sup>
  - (ii) Contracted advertisers have non-radio media alternatives.<sup>49</sup>
- 3.31 The CC should not put any weight on its agency questionnaire to conclude that RSL and Global are close competitors or that non-radio media is not an effective constraint when it has found no substantial lessening of competition in relation to contracted advertisers expressly on the basis that non-radio media are good alternatives for contracted advertisers. The CC's provisional conclusion in relation to the contracted sector demonstrates that its agency questionnaire is not robust and should be disregarded.
- 3.32 As a result, the CC has recognised that the merger will not remove the outside options of contracted advertisers (and media buying agencies) who will continue to have non-radio media (and radio) alternatives. As the CC has provisionally concluded that

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<sup>47</sup> PF, para. 6.100.

<sup>48</sup> PF, paras. 6.89, 6.104-6.105.

<sup>49</sup> PF, paras. 6.92, 6.100, 6.102-6.103.

contracted and non-contracted advertising are not separate product markets<sup>50</sup>, it follows that non-contracted advertisers would have the same or similar non-radio media alternatives as contracted advertisers.

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<sup>50</sup> PF, paras. 5.15-5.18.

#### 4. COMPETITION BETWEEN RADIO STATIONS

4.1 The CC has stated that “we consider the way in radio stations compete for advertisers, and the factors which influence how closely they compete in particular circumstances, is important for our assessment of the merger”.<sup>51</sup> In doing so, the CC has taken into account the following three factors (in order of priority):

- (i) Geographic overlap of radio stations.<sup>52</sup>
- (ii) Relative strength of radio stations (measured by share of listeners).<sup>53</sup>
- (iii) Demographics of radio stations.<sup>54</sup>

4.2 Leaving aside the fact that the CC’s focus on radio alternatives only is incorrect, the CC has so far failed to give appropriate weight to demographics and geography in its competitive assessment, whilst giving disproportionate weight to the relative strength of stations measured principally by listening share.

4.3 For the reasons set out in this Section 5, the CC should reassess the competition between radio stations in the overlap areas. If the CC were to focus primarily on demographics as well as geography, which it should do, the CC would conclude that the parties’ stations are sufficiently differentiated in terms of demographics and / or geography in all of the overlap areas so as not to be effective alternatives for non-contracted advertisers (as it has implicitly accepted). For a detailed analysis of each of the seven regions in this respect, the CC should refer to the Regional Annexes.

#### A. Share of listeners is an appropriate measure of the competitiveness of radio stations

***“When considering the available radio options in individual areas we take into account the relative strength of the alternative stations. We measure this primarily by their share of listeners in an area but also take into account their share of advertising revenue”.***<sup>55</sup>

4.4 Global considers that this approach is limited – focusing on share of listeners does not give appropriate weight to the reality that demographics and geography are the two key considerations for advertisers, in particular, non-contracted advertisers.

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<sup>51</sup> PF, para. 6.55

<sup>52</sup> PF, para. 7.7.

<sup>53</sup> PF, para. 7.8 and 7.9.

<sup>54</sup> PF, para. 7.10.

<sup>55</sup> PF, para. 6.69.

- 4.5 Moreover, share of listeners is not necessarily a robust measure to assess the relative strength of radio stations. As the correlation between a radio station's share of listeners and share of revenue can be variable, as demonstrated in Table 2 below, audience size is not always an attraction for advertisers (in particular, it does not take into account demographics and geography) or, further, an indication as to the strength of a radio station. In contrast, share of revenue is an appropriate (and traditional) measure of relative strength in any market according to the well-established practice of competition authorities across the world.

**Table 2**  
**Comparison of share of listeners and share of revenue**

Radio station	Share of listeners (%)	Share of non-contracted revenue (%)
Capital – East Midlands	33	[40-49]
Smooth – East Midlands	27	[10-19]
Capital – Yorkshire	28	[10-19]
Real – Scotland	25	[30-39]

Source: Appendix L.

**B. Geographic coverage affects the degree to which radio stations compete**

***“The geographic area to which a station broadcasts is likely to be an important factor in how radio stations compete but its significance in each case may vary”.<sup>56</sup>***

***“The extent to which stations compete in individual areas where they overlap may also be affected by the ability of some stations to split their signals and transmit different advertisements on different transmitters during the same programming output”.<sup>57</sup>***

***“Stations with limited overlaps...could be substitutes at the margin for local and regional advertisers who are looking to reach customers within an area that is wider than the TSA of either station”.<sup>58</sup>***

- 4.6 Global agrees that differences in geographic coverage significantly affect the degree to which radio stations compete.

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<sup>56</sup> PF, para. 6.70.

<sup>57</sup> PF, para. 6.71.

<sup>58</sup> PF, para. 6.70.

- 4.7 Having reached this conclusion, the CC should have also recognised that many of the parties' stations do not compete closely in the overlap areas due to the differences in their geographic coverage. For example, Global's stations in the East Midlands and North Wales, which can be sold on a split transmitter basis (and therefore offer local coverage), do not compete closely with RSL's stations in the East Midlands and North Wales, which offer regional coverage. However, the CC has so far failed to take this key consideration into account in its regional assessment. For a detailed analysis of each of the seven regions in this respect, the CC should refer to the Regional Annexes.

**C. Demographic differentiation should be taken into account in the competitive assessment**

***“Demographics of individual stations should be taken into account... We consider that the greater the divergence between stations' audiences as measured by RAJAR the weaker they are as substitutes for each other”.***<sup>59</sup>

- 4.8 Global agrees that demographics are highly relevant for non-contracted advertisers.
- 4.9 In fact, this is a key reason why many of the parties' stations do not compete closely in the overlap areas. For example, Capital in the East Midlands, which has a younger demographic, does not compete closely with Smooth in the East Midlands, which has an older demographic. However, the CC has so far failed to give sufficient weight to this key consideration in its regional assessment. For a detailed analysis of each of the seven regions in this respect, the CC should refer to the Regional Annexes which set out brand maps in each of the seven regions illustrating the different demographic targets of the parties' stations in all of the seven regions except for North Wales.

**D. The parties' stations are next best alternatives for non-contracted advertisers**

***“We note that, of respondents to the parties' lost opportunities survey, 12 per cent of those who had used Global at some point in the last three years, said that they had used RSL stations instead of the proposal from Global. Based on the parties' existing customers survey, we estimate the proportion of respondents' non contracted revenue, accounted for by customers with one of the other party's stations as their closest alternative, to be between 9 and 11 per cent”.***<sup>60</sup>

- 4.10 The CC has not been fair in the selection of results from the Surveys, and concluded that there is closeness of competition between the parties' stations.
- 4.11 However, the CC is unjustified in using the Surveys' results to suggest that the parties compete for advertisers while failing to take into account that the same Surveys' results

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<sup>59</sup> PF, paras. 6.74-6.75.

<sup>60</sup> PF, para. 6.77.

clearly demonstrate that non-radio media compete more closely with the parties' stations. In particular:

- (i) By accepting that the Lost Opportunities Survey demonstrates that 12% of advertisers that declined a proposal by Global used an RSL station instead, the CC must also accept that 47% used the press and that 17% used other third party radio stations, i.e. those non-radio media alternatives compete more closely with Global than RSL.
- (ii) By accepting that the Existing Customers Survey demonstrates that 9% to 11% of the parties' customers view their stations as next best alternatives, the CC must also accept that 89% to 91% do not view the parties' stations to be next best alternatives.
- (iii) By using the Existing Customers Survey results to infer the degree of competition between the parties' stations, the CC must also accept that those same survey results demonstrate that non-radio media is a closer competitive alternative to the parties' stations than the parties' stations are to each other. The CC has not presented the proportion of advertisers that chose non-radio media as their next best alternative using its revenue weighted approach - Global urges the CC to provide this number, particularly given that Global has been unable to replicate the CC's analysis. Global notes, however, that the previous (unweighted) results submitted by the parties following methodological comments from the CC identified that 39% of respondents indicated that they would switch some or all of their spend to non-radio media alternatives (excluding "don't know" responses). This compares to 24% that would have switched some or all of their spend to the other party's station, i.e. non-radio media is the closest competitive alternative to the parties' stations.

4.12 Global notes that the CC has failed to use the most recent data from the Lost Opportunities Survey, which clearly that demonstrates that only 8% of respondents used an RSL station having declined a proposal by Global, with 45% using press and 26% using other third party radio stations.

**5. ASSESSMENT OF THE COMPETITIVE EFFECT OF THE MERGER: THE IMPACT OF THE MERGER ON COMPETITION IN THE OVERLAP AREAS**

5.1 The CC has provisionally concluded that a substantial lessening of competition is likely to arise in the non-contracted advertising sector in each of the seven regions on the basis that the parties' stations are next best alternatives. In reaching this provisional conclusion:

- (i) The CC has applied a "3-to-1" or even "2-to-1" analysis.
- (ii) The CC has only considered radio alternatives.
- (iii) The CC has focused on the relative strength of radio stations.

5.2 The CC's provisional conclusion is wrong because:

- (i) The "3-to-2" and "2-to-1" analyses are not informative in a heterogeneous market - i.e. one which has highly differentiated radio brands which compete more closely with non-radio media. In particular:
  - (a) this framework is solely based on the PCA, which is not robust and should be disregarded by the CC; and
  - (b) this framework does not take account of the competitive constraints of non-radio media.
- (ii) It fails to apply its own reasoning that geography and demographics are important to advertisers – had it done so, it would have concluded that the parties' stations are sufficiently differentiated in terms of geography and / or demographics in the seven regions so as not to be next best alternatives.

5.3 Global provides detailed comments on the competitive effects of the merger in the seven regions in the Regional Annexes (as summarised in Part 1 of the Response).

**A. The parties compete with each other for some advertisers**

***"We provisionally found that the parties' stations are next best alternatives to each other for some customers; and that they compete with each other."***<sup>61</sup>

5.4 Global agrees that the parties' stations only compete with each other for some customers. The number of such customers is limited to the small proportion identified by the CC.

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<sup>61</sup> PF, para. 7.6.

- 5.5 As discussed in paragraphs 4.10 to 4.12 above, the CC has relied on the Surveys to conclude that the parties are next best alternatives for some advertisers. However, the CC has not been fair in the selection of the results from the Surveys. The correct conclusion of the Surveys is that the parties' compete more closely with non-radio media alternatives than each other (and, otherwise, with other third party radio stations). The CC's decision to provisionally exclude these closer competitive alternatives from its analysis is unjustified and should be reconsidered.

**B. Demographic differentiation is less relevant than geography for the competitive assessment**

***"We consider geographic overlap to be the most important factor<sup>62</sup>...We consider in each overlap area the relative strength of competing radio stations<sup>63</sup>...We consider [demographics] to be less important than geographic overlap and the relative strength of competing stations.<sup>64</sup>"***

- 5.6 Global disagrees.
- 5.7 In particular, the CC's decision is inconsistent with its own provisional conclusion that demographics should form an important aspect of its competitive assessment:

*"We provisionally conclude therefore that demographics should be taken into account when considering the available radio options. We consider that the greater the divergence between stations' audience, as measured by RAJAR, the weaker they are as substitutes for each other. Therefore, in considering areas where the parties' stations overlap we would consider that Smooth, which reaches an older audience, would be a relatively weaker substitute for Capital, which reaches a younger audience".<sup>65</sup>*

- 5.8 Having reached this provisional conclusion that, for example, Capital and Smooth do not compete closely due to their differentiated demographics, it is inconsistent for the CC to place no or less weight on demographics in its competitive assessment.

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<sup>62</sup> PF, para. 7.7.

<sup>63</sup> PF, para. 7.8.

<sup>64</sup> PF, para. 7.10.

<sup>65</sup> PF, para. 6.75.

**C. The transaction will, or is likely to, result in a substantial lessening of competition when the number of radio alternatives is reduced from 3 to 2**

***“We note that, in a number of overlap areas, the effect of the merger will be to reduce the number of good radio alternatives from three to two. We do not approach these areas in a mechanistic way. Nevertheless, in light of our price concentration analysis, we would, in general, expect the reduction in the number of good radio alternatives in an area from three to two to have an effect on advertisers’ bargaining power”.<sup>66</sup>***

- 5.9 As explained in Section 2 above, the CC should not rely on the PCA because it is not a robust analysis.
- 5.10 Moreover, a “3-to-2” analysis is not an informative framework to apply when assessing the competitive effects of the merger in the seven regions because:
- (i) It fails to take into account the competitive constraints imposed by non-radio media on radio advertising in the overlap areas.
  - (ii) It cannot be applied when assessing competition in a heterogeneous market comprising highly differentiated radio brands which also compete extensively with non-radio media.
- 5.11 Nevertheless, the CC has applied this “3-to-2” (or even a “2-to-1”) analysis mechanistically in the seven regions.<sup>67</sup> No weight has been given to the competitive constraints imposed by non-radio media in any of the seven regions. For detailed comments by region, the CC should refer to the Regional Annexes.

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<sup>66</sup> PF, para. 7.9.

<sup>67</sup> PF, paras. 7.22, 7.40, 7.48, 7.60, 7.69, 7.79, 7.86.