



GLOBAL/GMG

RESPONSE TO THE COMPETITION COMMISSION'S REMEDIES NOTICE

BAUER MEDIA GROUP

1. **INTRODUCTION**

- 1.1 This submission sets out the views of Bauer Media Group ("**Bauer**") on the Notice of Possible Remedies ("**Remedies Notice**") published by the Competition Commission ("**CC**") on 13 February 2013 in relation to the completed acquisition by Global Radio Holdings Limited ("**Global**") of GMG Radio Limited ("**GMG**") now renamed Real and Smooth Limited ("**RSL**") (the "**Acquisition**"). Bauer looks forward to discussing and developing these points further with the CC.
- 1.2 Bauer will respond separately in relation to the Provisional Findings, published by the CC on 15 February 2013, by the deadline of 6 March 2013. These submissions on remedies are therefore without prejudice to Bauer's further submissions on the Provisional Findings.
- 1.3 The outline of this submission is as follows:
- 1.3.1 Comments in relation to the structure of RSL which is relevant to the design and effectiveness of any divestitures (section 2);
 - 1.3.2 Comments on full divestiture of RSL (section 3);
 - 1.3.3 Comments on full divestiture of RSL excluding London and West Midlands (section 4);
 - 1.3.4 Comments on partial divestiture of local operations with regard to the following key factors (section 5):
 - (A) which assets will need to be divested in order to address the substantial lessening of competition ("**SLC**") resulting from the Acquisition.
 - (B) which assets will need to be divested in order to ensure that any divestment is effective.
 - 1.3.5 Relevant factors for an effective divestment process (section 6).
- 1.4 The CC also sought views concerning relevant customer benefits (Remedies Notice, paragraphs 27-29). Bauer considers that the benefits identified are not relevant in the



sense that they are not merger specific nor is it certain that they would even arise. Moreover, the benefits that have been identified are at best small and would not offset the SLC identified by the CC or merit any modification of remedies to address the SLC.

- 1.5 Bauer agrees with the CC that behavioural remedies alone would not address the anticipated SLC. However, should the CC be minded to consider any behavioural remedies as an alternative to the structural remedies already outlined in the Remedies Notice, Bauer would seek an opportunity to comment on these.

2. **GENERAL COMMENTS ON RSL**

- 2.1 The structure of RSL is relevant to the effectiveness of any divestitures. In particular it is likely to be relevant to the severability of assets within the RSL group and the scope of the divestiture package to ensure an effective remedy. Bauer has set out below its understanding of the structure of RSL. It does not comment on the structure of the Global business which would be relevant if Global were to propose divestments of Global stations (for example, local Capital stations) however, similar issues are likely to arise.

- 2.2 RSL operates two brands: Smooth and Real. Smooth operates (with one local exception) as a single national network with programming and content generated in London by staff located at its London premises which is networked across the Smooth network stations.¹ It is understood that Smooth stations in Scotland, the North West and the North East do not have their own premises or infrastructure associated with each of the local FM licences on which the national network rests and they rely on the resources of the local Real stations. The Smooth Network has its own local (non-contracted) sales teams. Where relevant these are co-located with the Real sales teams at the Real station premises and they may go on client calls together. The RSL national S&P sales team based in London represents both Real and Smooth. The London Smooth station is important to the network as it is not just the source of content and programming but also represents the "shop window" of the Smooth network to the advertiser/agency community which is largely based in London. A London station within the network allows Smooth to compete more effectively for contracted advertising campaigns and this in turn provides an important source of revenue which increases the station's viability.

- 2.3 Smooth broadcasts on six local FM licences and the D1 national digital multiplex.² Access to national digital capacity is particularly important to the Smooth network. First, to avoid the FM licence being re-advertised by Ofcom at the end of its term a licence holder can

¹ Smooth Glasgow is the exception which must still offer 7 hours a day of local programming.

² Smooth is still carried on some local digital multiplexes for historical reasons, but most of this will end when MXR closes later in 2013 or when other contracts come to an end.



simulcast the content on a relevant digital platform (including in the case of Smooth on D1).³ Two of the six Smooth licences already benefit from this digital "protection" and Smooth London will shortly benefit from this protection.⁴ Secondly, the requirement in five of the six Smooth FM licences to include locally generated content is suspended by being simulcast on D1.⁵ In the event that national digital capacity could not be secured, continued operation of the Smooth licences would result in a need to return to a local output strategy (and would in turn require access to local digital capacity to secure licence protection). Thirdly, a growing proportion of the audience listens via digital and operators would not want to lose that audience. Finally, access to digital capacity will be increasingly important as radio switchover to digital approaches. Broadcasters will need to maintain their digital presence as the audience moves from analogue.

2.4 These aspects of the Smooth network have a number of implications. First, it will be complex to divest only a part of the Smooth network because it operates as a single network. For example, it would be necessary to have on-going networking arrangements between the purchaser and Global. Secondly, if the Smooth network is to be divested as a whole then the assets package will need to include (or the purchaser will need to have access to) national digital capacity.

2.5 The Real stations operate as a series of local stations. They each offer a substantial proportion of local programming (7 hours per day) and therefore each have the ability to generate local content and programming. They also have their own local sales teams. They have a greater local focus than the Smooth network stations. Five of the Real FM licences also benefit from digital protection.⁶ For the same reasons as above if any of these stations are to be divested the assets package will need to include access to digital broadcasting capacity (or the purchaser will need to have access to such capacity).⁷

³ Sections 104A, 104AA, 104AB and 104B, Broadcasting Act 1990. See also Provisional Findings, Annex B, para 23.

⁴ In addition to Smooth London, Smooth North West and Smooth West Midlands are "protected"; the FM licence for Smooth East Midlands will need protection from February 2015 either by continued carriage on D1 or the relevant local multiplex. Smooth Glasgow would need protection by digital carriage from September 2016.

⁵ Under the Digital Economy Act (s.32), these licences are exempt from producing local content as long as national digital carriage is maintained. The exception is Smooth Glasgow which is still required to produce 7 hours a day of local content. National digital carriage can be achieved on D1 or via all local digital multiplexes.

⁶ These are North East, Central Scotland, Yorkshire, South Wales and North West. Real XS in Paisley also requires protection.

⁷ Following a decision of the owners of MXR the DAB regional licences for the North East, North West, and Severn Estuary were not renewed and as a consequence these services will cease in mid-2013 along with the automatic protection for the relevant Real licences. A new owner would need to secure digital capacity in order to avoid re-advertisement. It is understood that Global have acquired capacity which they could sub-let to a purchaser. It should be noted that sub-letting arrangements are not subject to any fair and effective competition obligations.



3. FULL DIVESTITURE

3.1 Bauer agrees with the CC's conclusion (at paragraphs 10-13 of the Remedies Notice) that full divestiture would address the concerns of a SLC. In particular Bauer considers the following to be the key advantages of this option:

3.1.1 There is a low risk that the divestment package would be insufficient to effectively address the SLC. However, there remains some risk that by the time RSL is divested under this scenario it will have been under the ownership of Global for nearly 18 months and it is inevitable that a purchaser will need to make further investment in RSL to restore its competitive position. In order to protect the competitive position of RSL the CC should consider expediting the sales process.

3.1.2 Full divestiture would be easy to implement with no separation issues, Bauer notes that Global has given hold separate undertakings and as such there ought to be no need for post-sale transitional arrangements.

3.1.3 It could be undertaken very quickly. On the basis of the original GMG sales process Bauer considers it likely that there would be a number of interested bidders and the transaction would be simple to execute.

3.1.4 Keeping the Real and Smooth networks under common ownership is also the simplest approach to dealing with shared infrastructure between Smooth and Real and the network structure of Smooth.

3.2 On the basis of the factors outlined above Bauer considers that full divestiture is the option which is most likely to address the SLC most effectively and in the shortest time period.

3.3 Bauer notes that the existence of the National Sales Agency Agreement may act as a deterrent to some potential bidders (for example, those with their own national sales function or who would seek the flexibility to develop their own). Therefore the divestment package should at least include the option for the purchaser to terminate the contract, should they wish to do so, within a short time frame.

4. DIVESTITURE OF RSL EXCLUDING LONDON AND WEST MIDLANDS

4.1 Bauer agrees that divestiture of RSL excluding London and the West Midlands is also likely to remedy the anticipated SLC (subject to the comments below concerning the extent of the Smooth London and Smooth West Midlands operations Global should be permitted to retain so as to ensure the effectiveness of the divestment) and that this approach (subject to the comments below) represents a viable option. However, Bauer notes that there are greater risks associated with this approach than with full divestiture.



- 4.2 The effect of this option would be to allow Global to retain Smooth London and West Midlands. As noted above, Smooth is currently a national network with the large majority of its assets based in London (this includes premises, content and programming staff and facilities). Currently Smooth has one programming and news content stream across the network (except Glasgow) which is simulcast on D1 thereby protecting some of the FM licences held by the network.
- 4.3 In order to ensure the effectiveness of any divestment it would be necessary for Global to divest assets which are needed for the operation of the Smooth network as a whole regardless of whether these are located in London or the West Midlands or not. Given that the effect of this divestiture option is to require Global to divest the bulk of the Smooth network, Bauer considers that it would not be an effective remedy in terms of addressing the SLC or the independence of the purchaser if Global were to continue to control the Smooth network particularly as it would make any purchaser of the divested Smooth stations reliant on Global on a long term basis. This is unlikely to be attractive to potential purchasers and therefore liable to undermine the divestiture process.
- 4.4 The divestiture package would therefore need to include the following assets which are necessary to the operation of the Smooth network (but it should be noted that this is not necessarily an exhaustive list):
- 4.4.1 Access to D1 capacity;
 - 4.4.2 Relevant analogue licences and associated digital capacity along with the Smooth brand;
 - 4.4.3 The Smooth premises, staff and programming and content assets based in London since this generates content for the entire Smooth network; and
 - 4.4.4 The National S&P sales team.
- 4.5 There will also be issues as to the viability (and attractiveness) of the Smooth network without a London "shop window" and without a station in the West Midlands. The presence of a London station within a network increases the strength of the network's offering to national advertisers and therefore increases the viability of the station in this regard. Indeed a London station may be necessary to ensure the effectiveness of the divestiture for these operations to continue within the Smooth network. Insofar as Global wished to continue to own the Smooth London and West Midlands stations, Bauer considers that one way of addressing this issue would be for Global to enter into an arms-length network affiliation arrangement with the purchaser in respect of Smooth London and Smooth West Midlands on terms acceptable to a purchaser pursuant to which Global licences the



Smooth brand and acquires the network programming from the purchaser and which regulates the operation of the Smooth London and West Midlands stations within the Smooth network.

5. **PARTIAL DIVESTITURE OF LOCAL OPERATIONS**

5.1 This option will inevitably be more complex and time consuming to implement and carries greater risks for effective divestment. In particular there is a risk that particular disposals would not be sufficient to address the SLC.

5.2 If the CC is minded to pursue this option then Bauer has set out below what it considers to be relevant considerations. For the reasons set out above there will be complexities in the divestiture of individual Smooth stations.

Divestitures to address the SLC

5.3 In order to address the SLC Bauer has set out the local operations that it considers would need to be divested. It agrees that Gold AM would not be suitable (Remedies Notice, 19). Bauer does not address whether more generally there are suitable Global (as opposed to RSL) assets that could be divested to address the SLC. However, it considers that the sale of Global assets are likely to raise more complex separation issues as a result of the high level of integration in the Global network. It is likely that a "mix and match" package of Global and RSL assets is less likely to be attractive to purchasers. For these reasons any sale process is also likely to take much longer which would be undesirable.

5.4 Based on the Provisional Findings it is clear that in order to address the SLCs identified it would be necessary for Global to divest:

5.4.1 Real Radio Yorkshire;

5.4.2 Real Radio South Wales;

5.4.3 Real Radio North and Mid-Wales; and

5.4.4 Smooth Radio East Midlands.

5.5 In the case of Smooth East Midlands a purchaser has two options: either to rebrand the station and focus on a local content strategy or continue it as a part of the national Smooth network. The former course is less likely to be attractive to potential purchasers as it will require considerable investment (unless it fits within a purchaser's existing network). However, if Global continues to operate the Smooth network and in particular controls content/programming then if the purchaser wishes to keep the station within the Smooth network the purchaser will have to enter into a network affiliation arrangement with Global. The terms of that arrangement will be very important to ensuring the effectiveness of



divestment. It will necessarily be a long term arrangement pursuant to which Global will have control over the content of the station output. The CC will need to have careful oversight over such an arrangement to ensure that the purchaser is independent of Global and that such networking arrangements do not undermine the effectiveness of the divestment in addressing the SLC.

- 5.6 The position in the North East is less straightforward. The merger gives rise to SLC in the region by reducing the options for local advertisers from 3 to 2 (Provisional Findings, 7.77-7.80). To address the SLC the issue is whether Global should be required to divest both Real and Smooth or only one of these and, if so, which one.
- 5.7 Bauer's primary position is that Global should be required to divest both stations. The CC recognises that audience share is the principal measure of a station's relative competitive strength in an area and, to a lesser extent, share of non-contracted sales revenue (Provisional Findings, 6.69). Allowing Global to retain one station would mean that any purchaser would have a much smaller share of audience and revenue and would not be regarded by advertisers as credible an option as Bauer or Global. There is a clear risk that this would not address the SLC.
- 5.8 Alternatively, if the CC considers that the divestiture of only one station is sufficient to address the SLC then Bauer submits that it should be Real since it is likely to be a better option for local advertisers on a standalone basis and less complex and time consuming to divest. In particular:
- 5.8.1 Real is a more locally focussed station than Smooth with 7 hours of local content (including news, sport and local events) and therefore well connected to their local communities and attractive to local advertisers. As a result its non-contracted revenue is likely to be higher per audience hour than for Smooth. Consistent with this it appears to have a similar share of non-contracted sales revenue to Smooth even though its audience share is lower.⁸
- 5.8.2 The average Real audience age is closer to that of Capital and Bauer's Metro and TFM stations.⁹
- 5.8.3 Divestment would not have any of the complexities associated with the sale of individual Smooth stations. The Real station is more likely to have the necessary premises, staff and content to operate on a standalone basis.

⁸ Provisional Findings, Annex L, Table 15.

⁹ Provisional Findings, Annex L, Table 16



- 5.8.4 Real is likely to be a more attractive proposition to potential purchasers, including non-radio operators.
- 5.9 In the North-West it is clear from the Provisional Findings that the CC's concerns relate to the Greater Manchester area and focus on the overlap between Real XS and Global's Xfm (Provisional Findings, 7.62-7.71). Bauer does not consider that the divestment of Real XS alone would be an effective remedy for the following reasons:
- 5.9.1 It is unlikely to be a viable station on a standalone basis. According to its statutory accounts¹⁰ it has made losses in the 2009/10 – 2011/12 period. Real XS offers niche content and Bauer would expect it to attract lower non-contracted revenue per audience hour than its competitors.¹¹
- 5.9.2 It does not have sufficient assets to operate on a standalone basis. Bauer understands much of the relevant infrastructure is shared with Real North West.
- 5.9.3 The Real XS audience within the Greater Manchester area is very small compared to that of Bauer and Global. It's unlikely to be considered on its own as a viable alternative option to advertisers. Pre-merger RSL had a broadly equivalent audience share to that of Global (approximately 34%)¹² in the Greater Manchester area through the combination Real XS, and the regional offerings of Smooth and Real North West (Real in particular is attractive to advertisers in the Manchester area notwithstanding their regional coverage).¹³ The divestment of Real XS would create a third choice with only a 6% market share. This is, on its own, unlikely to be regarded by advertisers as a credible alternative to Bauer or the enlarged Global.
- 5.10 An effective remedy would include the divestment of Real North West in addition to Real XS as the combined offering would be better placed to compete with Global in Manchester (Real North West with Capital and Real XS with Xfm) and would have an audience share which would make it more credible to local advertisers.¹⁴ On a combined basis these stations would be financially viable and are more likely to have the necessary staff, programming and infrastructure to operate on a standalone basis.

¹⁰ Bauer notes that statutory accounts for a station are not always a reliable reflection of a station's viability depending on how network and intra-group costs are accounted for. However, Bauer considers that in this case the statutory accounts are an accurate reflection of the fact that Real XS is not viable on a standalone basis. In particular it has a low revenue base compared to other Real stations.

¹¹ [X]

¹² See Bauer submission to the OFT, Annex 2, Table 10 and Annex 3, Table 14.

¹³ Its sales team is based in Manchester and it is understood that its pricing levels means that wastage is less of a concern to advertisers.

¹⁴ Approximately 14%; see Bauer submission to the OFT, Annex 2, Table 10 and Annex 3, Table 14.



- 5.11 In relation to Scotland the CC has identified two concerns in the Provisional Findings. First, the reduction in options from 3 to 2 for those advertisers wishing to target Glasgow (Paragraph 7.86) and second, the reduction in options from 3 to 2 for non-contracted advertisers targeting the Central Scotland region (Paragraph 7.87).
- 5.12 In relation to the second issue the only effective divestment would be the divestment of Real Scotland. However, this does not address the first issue because Real Scotland does not, and Bauer considers it could not, effectively provide independent coverage of Edinburgh and Glasgow.¹⁵
- 5.13 In order to address the reduction of choice in the Glasgow area, Global will need to divest either Real XS or Smooth Glasgow. In this regard Smooth Glasgow still offers local content so divestment may not have the same complexities as the divestment of other Smooth network stations. To the extent that Smooth Glasgow has a greater audience share than Real XS it would be a more credible option for advertisers and would therefore be a more effective divestment.

Ensuring Effective Divestment

- 5.14 Each local asset package will need to be sufficient to allow it to compete effectively. In Bauer's submission Global should, in each case, divest the relevant broadcasting licences, brand, analogue and digital broadcast capacity, all local staff including staff relating to sales,¹⁶ content and programming etc. including relevant content intellectual property rights. The brand is important as it enables the new owner to compete immediately with Global relying on the goodwill of the brand rather than having to incur the cost (and spend the time) building up a new brand. There are likely to be complex issues in relation to contractual rights and obligations relating to carriage, content and staff as these are likely to be held by RSL and divestiture may well require these rights and obligations to be devolved to the individual stations which could be a time consuming and complex exercise.

6. ENSURING AN EFFECTIVE DIVESTMENT PROCESS

- 6.1 Whatever option the CC adopts Bauer has the following comments on the sale process to ensure that it is effective:

¹⁵ Provisional Findings, 7.81. Bauer submits that separate coverage of Glasgow and Edinburgh cannot be achieved because of the location of the transmitters. The primary Real transmitters are located at Blackhill and Craighelly. The former is located roughly mid-way between Glasgow and Edinburgh and the pattern of this transmitter is directed to both Glasgow and Edinburgh. The latter largely serves central Edinburgh and further east. The combined effect is that it is not possible to cleanly target Real coverage only to Glasgow or only to Edinburgh as there is a significant area to the west of the Edinburgh market which is served by the main Glasgow transmitter.

¹⁶ It may be necessary to include "essential" RSL staff where they perform functions for the benefit of local stations.



- 6.1.1 Global should be under an obligation to complete the sale within 6 months of the CC's final report. This is feasible; separation issues are potentially complex but are in the hands of Global. GMG was able to complete the RSL process very rapidly. It is important to complete the sale quickly to avoid damage to the goodwill of the business being sold; uncertainty is likely to affect employee relations and therefore there is the risk of the loss of key staff; it may also affect advertisers who will take business elsewhere if the future direction of the business is unclear.
- 6.1.2 Pending the sale Global should be subject to the usual undertakings to protect the parts of the business to be divested and these undertakings should be subject to a monitoring trustee.
- 6.1.3 The CC should review any post-sale agreements between purchaser and Global to ensure that Global retains no influence over the content or non-contracted airtime sales of the divested operations (or obtains competitively sensitive information).
- 6.1.4 Given the complexity of the local sales option and the risks around the marketability of certain stations because of their financial viability, Bauer is concerned that Global should have a strong incentive to complete the sales within the specified time period if this option is adopted. It suggests that the CC should specify an alternative and more attractive divestment package that Global should be required to sell if it fails to make the specified local divestments.
- 6.1.5 In order to maximise the number of potential purchasers the divestiture assets need to be widely marketed by Global [✂] and purchasers should be able to bid for whatever mix of assets is attractive to them.