



GLOBAL/GMG

RESPONSE TO THE COMPETITION COMMISSION'S PROVISIONAL FINDINGS

BAUER MEDIA GROUP

1. INTRODUCTION

- 1.1 This submission sets out the comments of Bauer Media Group ("Bauer") on the Provisional Findings ("Provisional Findings") published by the Competition Commission ("CC") on 15 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").
- 1.2 Bauer has sought to comment on those issues which appear key to the analysis undertaken by the CC at this stage. In not commenting on any specific findings Bauer should not be taken to either accept or reject the position adopted by the CC.

2. THE CC'S USE OF BAUER'S BUY-AROUND ANALYSIS

- 2.1 Bauer welcomes the fact that the CC finds that Bauer's buy around analysis illustrates that it is generally more difficult to buy around both Global and RSL stations than it is to buy around just Global or just RSL stations (Appendix N, paragraph 16), and that Global and RSL stations can be substitutes for each other in national campaigns (paragraph 7.112 and Appendix N, paragraph 16).
- 2.2 Bauer does not comment here on all points raised by the CC in relation to the buy around analysis. However, Bauer wishes to highlight to the CC a significant apparent inconsistency between the CC's findings on the counterfactual in relation to RSL's national sales agency agreement, and the treatment of that agreement in the CC's review of the buy around analysis.
- 2.3 In its provisional conclusions on the counterfactual with respect to the national sales agency agreement, the CC finds that it does "not consider it can necessarily be assumed that the Agreement would remain in place and operate in much the same way beyond [date redacted]" (paragraph 4.37). The CC provisionally concludes that it "should take into account the possibility that the Agreement is not retained beyond [date redacted]"



(paragraph 4.41). The CC later confirms: “It is possible that, in the absence of the merger, RSL would in future sell its airtime independently of Global...” (paragraph 7.131).

- 2.4 In its discussion of Bauer’s buy around analysis, the CC opens with a comment that the buy around analysis has been considered in the context of the point that “under the Agreement, Global sells RSL’s airtime to contracted customers and media buyers are already unable to threaten to use RSL stations to ‘buy around’ Global in order to obtain lower prices from Global” (paragraph 7.110, emphasis added). In Bauer’s view, this is an inappropriate context in which to analyse the buy around analysis and assess the competitive effects of the transaction. The effects of the merger should not be judged against the situation that prevails today, but should instead be compared against the correct counterfactual. The CC has, quite rightly, noted that the counterfactual with respect to the sales agreement is that, absent the merger, at a future date RSL’s national airtime may not be sold by Global. Logically therefore, in the counterfactual scenario, media buyers may be able to use RSL stations (perhaps in conjunction with stations owned by other parties) to ‘buy around’ Global in order to obtain lower prices from Global.¹ The fact that they may be unable to do so today, due to the existence of a temporary sales arrangement, is irrelevant to the assessment of the merger. It is this loss of bargaining power relative to the counterfactual scenario which may, over time, result in increased prices for national advertisers following the transaction.
- 2.5 The CC’s inconsistency between its provisional findings on the counterfactual and its analysis of the competitive effects of the merger also arises at other points in the Provisional Findings, notably where the CC states: “Media buyers are therefore unable to ‘play off’ Global against RSL in order to negotiate lower prices; this will not change following the merger.” (paragraph 7.101, emphasis added.) These strong statements to the effect that nothing in the bargaining position of media buyers will change post-transaction are inconsistent with the CC’s findings on the counterfactual and should be corrected in the CC’s final decision.
- 2.6 Later in the Provisional Findings the CC deals with competition for contracted advertising outside the national sales agency agreement. The CC concludes provisionally that such sales are not immaterial (paragraphs 7.115 and 7.117) and that it was necessary to assess the effect of the merger on these sales. Whilst the CC’s analysis is redacted there appears to be no discussion of the buy around analysis in this context.

¹ The Provisional Findings contain evidence that indicates that some media buyers do so today. Agency [N] told the CC that it sometimes used “*a combination of one or two stations (including one RSL station) to offer a similar weight and power alternative to the more expensive Global station*” (Appendix J, paragraph 35).



2.7 Finally, there is no discussion of the buy-around analysis where the CC considers the impact of the merger on possible future competition for contracted advertising between Global and RSL (paragraphs 7.122 – 7.133); yet this is the very scenario which aligns with the counterfactual contemplated by the CC and to which the buy-around analysis is most pertinent. The CC's provisional conclusion that the loss of competition is not significant (paragraph 7.130) is predicated on the difficulty that RSL would face selling contracted airtime independently of Global. However, this ignores the possibility that (i) contracted advertising could be sold by another third party on behalf of RSL (a possibility explicitly contemplated by the CC at paragraph 4.38), such as Bauer, or (ii) as noted above advertisers could buy RSL airtime in conjunction with stations owned by other parties. Both cases would allow advertisers to buy around Global and therefore would represent a credible option for those advertisers.

3. GLOBAL'S USE OF SURVEY DATA

3.1 Bauer agrees with many points of the CC's critique of Global's survey analysis and makes the following observations on these findings:

- 3.1.1 The surveys did not focus on those advertisers at greatest risk of being adversely affected by the transaction – that is, those advertisers who have demonstrated a preference for using radio and hence actually advertise on radio. As the CC notes, 25% of respondents to the lost opportunities survey had not used radio advertising in the last three years (paragraph 6.38). Bauer agrees with the CC's finding that the responses of these respondents are less informative of the likely preferences of Global and RSL advertisers.
- 3.1.2 The survey results suggest limits to the constraints provided by other media (paragraph 6.39). This is consistent with Bauer's understanding of the marketplace and its analysis of where its lost clients go.
- 3.1.3 Contrary to Global's initial submission that advertisers do not view Global and GMG stations as particularly close substitutes, the CC finds that "for a material proportion of Global's customers, RSL is the next best alternative" (Appendix H, paragraph 49). The CC also finds that it is unlikely that radio advertising and advertising on other media are in all cases substitutes or in all cases complementary (paragraph 6.40).

4. FINDINGS IN RELATION TO GLASGOW AND MANCHESTER

Glasgow

4.1 It is not clear from the Provisional Findings whether the CC considers there to be an SLC in respect of Glasgow in addition to Central Scotland.



- 4.2 Bauer agrees with the CC's conclusion that there is a SLC in respect of Central Scotland. However, it also considers that there is an issue in Glasgow which needs to be addressed. As the CC found, pre-merger Real sold advertising to the Central Scotland region including Glasgow; Real XS and Smooth targeted the Glasgow area; Capital supplied Glasgow via split transmission and Bauer supplied Glasgow via Clyde 1 and 2 (Appendix L, paragraph 166ff). Post-merger there will only be two competing entities remaining. At paragraph 7.86 of the Provisional Findings the CC seems to suggest that there is a risk of a SLC in relation to Glasgow. However, at paragraph 7.88 the CC refers only to Central Scotland. Bauer acknowledges that there is redacted text which may provide further detail on the CC's reasoning but asks that the CC provides further clarity on its thinking in this regard.

Manchester

- 4.3 The CC appears to focus on the overlap in Greater Manchester and as a result does not consider the regional stations, Smooth and Real North West. Bauer submits that this would be an error. Bauer considers that even though the overlap between Global's Manchester stations and Smooth and Real is more limited² they should still be taken into account by the CC when considering the effect of the merger in the Greater Manchester area. Advertisers wishing to target the Manchester area do still consider advertising on Smooth and Real as viable options irrespective of wastage because the primary target audience (Manchester) is wholly covered by these stations. In failing to consider the significance of these stations Bauer believes the CC under-estimates the impact of the merger in this area. In particular the loss of competition is not limited to Real XS but also Smooth and Real North West.

5. DATA DISCREPANCIES

- 5.1 Bauer has identified a potential discrepancy in the data used for the analysis of overlap areas in Appendix L to the Provisional Findings. Contained in Table 1 is RAJAR data relating to shares of listening, reach and non-contracted and total revenue in London. In this table Absolute is recorded as having 4% of total listening hours, a non-contracted sales revenue share of [20-29%] and a total revenue share of [5-9%]. Bauer believes that, whilst the total listening hour figure looks appropriate, the non-contracted share of sales figure may be incorrect as it appears to be improbably high. Bauer's understanding is that Absolute does not have a direct sales team. Whilst Absolute has a London FM licence it primarily operates as a national operator and its focus is on national and contracted airtime sales.

² Whilst there is an overlap in the Greater Manchester area, Smooth and Real cover a wider region – see Figure 6, Appendix L.



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- 5.2 If it were the case that the figure for Absolute's non-contracted sales was incorrect then this may have an impact on Global and RSL's shares of sales and as a result the CC's analysis in respect of the London area.

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