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## Completed acquisition by Emap plc of a 27.8% shareholding in Scottish Radio Holdings plc

The OFT's decision on reference under section 33 given on 13 May 2004

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### **PARTIES**

**Emap plc (Emap)** publishes magazines, organises exhibitions and operates radio stations. Emap's principal radio operations cover the North of England and London. For the year ended 31 March 2003, the UK turnover of Emap was £650m.

**Scottish Radio Holdings plc (SRH)** operates two principal businesses: the publishing of regional newspapers and the operation of commercial radio stations. SRH owns, either wholly or partly, 23 analogue radio services and 6 digital radio multiplexes in Scotland, Northern Ireland and England. For the year ended 30 September 2003, the UK turnover of SRH was £63.8m.

### **TRANSACTION**

Through a private sale and purchase, Emap acquired a minority shareholding of 27.8 per cent of SRH directly from the vendor, Scottish Media Group plc. Emap has stated that it would not be granted any rights in relation to SRH above and beyond those afforded by statute, nor any representation on the SRH board. The statutory deadline expires on 14 May 2004 and the administrative deadline is 13 May 2004.

### **JURISDICTION**

A shareholding conferring on the holder 25 per cent or more of the voting rights in a UK company generally enables the holder to block special resolutions; consequently, consistent with OFT Guidelines, the OFT considers that Emap's acquisition may give it the ability materially to influence the policy of SRH. Therefore, they may be treated under s.26(1) and (4) of the Enterprise Act 2002 (the Act) as ceasing to be distinct.

Post merger, SRH and Emap will supply 25 per cent of all radio advertising in the UK and 27 per cent of national radio advertising in the UK. The transaction therefore meets the share of supply test in 23(4) of the Act.

## **RELEVANT MARKET**

The parties overlap in the supply of radio broadcasting and the sale of radio advertising. In relation to radio broadcasting, the parties' analogue local radio stations are complementary as their broadcast footprints do not overlap, although in aggregate they cover a significant part of the UK. In respect of competition for audience nationally, Emap represents 7 per cent share of audience within the UK, while SRH represents 4 per cent. Given the minor increment to a modest audience share, competition for listeners does not appear to be an issue in its own right and is therefore not considered further.

### **Product market**

The Competition Commission (the CC) has previously concluded that there are certain characteristics of radio advertising that distinguish it from other forms of advertising. For instance, while television, press and other visual display advertising are useful for developing brand images, advertising on radio is useful for building frequency and reinforcing the message of other forms of advertising. This suggests that radio advertising is appropriately considered as a complement to, rather than a substitute for, television and press advertising. In its most recent case on radio (Galaxy/ Vibe), the CC found that while advertisers considered they would switch from radio advertising to other forms of media advertising in the event of an increase in price, in practice many continued to advertise on radio (even where price increases exceeded 5-10 per cent). Furthermore, the need for a licence (and specified frequency) imposes a supply-side constraint. Radio advertising was therefore considered to be distinct from other forms of advertising.

The parties believe that competition occurs across other types of media but also accept, in light of recent CC reports, that the merger should be assessed in relation to radio advertising.

Both the OFT and the CC have previously drawn a distinction between local and national radio advertising. On the demand side, national advertisers aim to advertise across all regions of the UK either by advertising on a national radio station, or by using a collection of local or regional radio stations to reach the required areas/audience. Typically, they deal with sales houses (which may be in-house or which have contracts with a range of local and national commercial radio stations) rather than directly with individual radio stations. The remainder of radio advertising is local, being aimed solely at the footprint of the local station.

Given these factors, it would seem appropriate to consider both the supply of local and of national advertising airtime.

### **Geographic market**

On the supply side, radio stations are limited by their licences to specific geographic broadcast areas; topography limits the footprint of analogue radio broadcasts. The OFT and the CC have previously found that geographic reach of a radio station affects its ability to attract different advertisers as well as its ability to constrain competing stations.

Emap's principal radio operations cover the North of England and London while SRH's radio operations are concentrated in Scotland and Northern Ireland. There are no overlaps between the analogue radio services provided by Emap and SRH. Within the UK, there is a limited overlap of digital radio services. As these services do not carry local advertising, this transaction appears unlikely to affect competition for local radio advertising and that frame of reference is therefore not considered further.

The appropriate frame of reference in this case appears to be the sale of national radio advertising in the UK.

### **HORIZONTAL ISSUES**

#### **Market shares**

The parties combined account for about a quarter of national radio advertising sales in the UK. This puts them on a par with Capital and ahead of Chrysalis, GWR and Classic FM each between 5 per cent and 15 per cent of national advertising sales. The two other independent national stations, TalkSport and Virgin, together with three other local radio groups each account for between 1 per cent and 5 per cent of sales, although they have a slightly stronger position in sponsorship. The remainder of sales are accounted for by some 11 other groups and 52 independent stations, which amount to less than 5 per cent of sales combined, although around 15 per cent of sponsorship.

Calculation of the Herfindahl Hirschmann Index (HHI) reveals that these markets are concentrated. In national advertising, post transaction the HHI will be 1,632 (increment 256), and 1,056 (increment 198) for sponsorship. As the OFT guidance notes, however, the HHI is simply an initial indicator of potential concerns.

In respect of national advertising, post transaction, the parties will have considerably better national coverage than any other radio station, primarily because there is no geographic overlap between their existing stations. Being a radio group with better

national coverage might allow the parties more negotiating power against media agencies purchasing airtime for national radio advertising campaigns.

National advertising revenue accounts for most (around per cent)<sup>1</sup> of Emap's revenue and about per cent of SRH's revenue. The increase in coverage might allow Emap to increase its share of total national advertising revenues. Emap has however argued that this acquisition will not affect sales of national radio advertising because Emap and SRH have no plans to integrate their sales force and their minority shareholding gives them neither the ability nor incentive to influence the operation of SRH's sales houses.

Emap's position notwithstanding, some third parties have expressed a concern that the sales forces of the two sales houses might explicitly or implicitly coordinate their behaviour, particularly through conditional selling (i.e. bundling of advertising airtime on competing stations). Given that SRH has a strong position in Scotland and Emap has significant coverage of England and Wales this may raise concerns.

The parties will have the largest share of national radio advertising which may reduce the negotiating power of media buying agencies. These media buyers purchase advertising space on a number of different media in order to design a mixed media campaign on behalf of their advertiser clients. These are sophisticated purchasers operating in a transparent market with annual contract rounds. As radio advertising is complementary to other forms of media advertising, media buyers may rebalance the proportion of radio advertising in a national campaign or the number of local stations it wishes to use when faced with a significant price increase. The threat of switching to other modes of advertising, in addition to switching to one or more of the parties' competitors, would appear to provide the major media buyers with a significant degree of leverage in their negotiations with the parties.

### **Barriers to Entry and Expansion**

New entrants require a broadcasting licence. Ofcom has announced plans to invite bids for six new FM local commercial radio licences but has not yet given details about new multiplex licences. The limited number of licences suggests barriers to entry on a national scale are currently significant. The growth of digital radio may change this and the large number of existing local licences gives some scope for expansion in terms of national advertising sales.

### **Buyer Power**

National advertising is bought by specialist media agencies from national sales houses. There has been considerable consolidation among media buyers such that the top seven agencies represent approximately 70 per cent of all media spend and 75 per cent of all national radio advertising. Emap submits that the volume of advertising purchased by

media agencies permits them to wield considerable purchasing power. Emap also notes that approximately 75 per cent of advertising airtime is pre-sold through annual contracts and the discounts that agencies are able to negotiate for their clients can be substantial. In the context of the number of competitors and the parties' relatively small share of national advertising airtime sales, buyers for national radio advertising would appear therefore to have a credible threat of switching to outlets other than the parties.

## **VERTICAL ISSUES**

No vertical issues arise from this transaction.

## **VIEWS OF GOVERNMENT BODIES**

### **Ofcom**

Ofcom considers that the acquisition will not raise competition concerns and does not expect the parties to initiate joint selling.

## **THIRD PARTY VIEWS**

A minority of the customers contacted expressed concern about conditional selling in the event of Emap being able to influence the operation of SRH's sales house. No competitors raised any concerns about this acquisition, although several shared the customer concerns about any increase in shareholding. No third party considered that this acquisition of material influence over SRH by Emap merited further investigation by the CC.

## **ASSESSMENT**

Emap has acquired a 27.8 per cent share of SRH, which has not given Emap board representation or other rights beyond those granted by statute. The merger qualifies for investigation by virtue of the share of supply test. The OFT's analysis does not rely on Emap's statement that it has no intention of increasing its shareholding in SRH, nor any intention to integrate the programming or advertising sales activities of the two businesses.

The parties' analogue radio stations do not overlap but the merger increases their national coverage beyond that of their competitors. This may lessen competition through an increased ability of the parties to co-ordinate their national airtime sales. However, the presence of the larger radio broadcasters such as Capital, Chrysalis and GWR, and the fact that this market is generally characterised as a transparent one in which sophisticated media buyers exhibit buyer power, would appear to impose a significant constraint on the parties, who represent about a quarter of national

advertising revenues. Third parties did not express concerns in relation to the actual transaction at issue, i.e. the acquisition of a minority stake. The weight of the evidence, therefore, suggests that any lessening of competition caused by this acquisition is not substantial. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

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<sup>1</sup> Actual figures excised at the request of the parties for reasons of commercial confidentiality