OFFICE OF FAIR TRADING

Anticipated acquisition by Capital Radio Plc of the remaining shares of Tainside Limited

The OFT's decision on reference under section 33 given on 23 February 2004

Please note square brackets indicate actual figures excised at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Capital Radio plc ('Capital'**) owns and operates 20 commercial radio stations across the UK, including three London-wide services: Capital FM, Capital Gold and Xfm. Capital also either owns outright, or has a shareholding in consortia that own, 14 local/regional commercial digital radio multiplexes, as well as 50 digital sound programme service licences. In the year to September 2002, Capital had a turnover of £120m.

2. **Tainside Limited ('Tainside'**) owns 100 per cent of the issued share capital of **Soul Media Ltd (Soul Media**). Soul Media is the Tainside subsidiary which holds the two Choice radio licences in London and operates the two London Choice radio stations. Choice FM broadcasts in South London and Choice 107.1FM in North London. Both Choice stations are primarily targeted at listeners of African and Afro-caribbean origin, with some cross-over appeal to other listeners who appreciate urban contemporary black music. In the 15 months to September 2002, Tainside had a turnover of £2.5m.

TRANSACTION

3. In 2001 Capital acquired 19 per cent of the equity in Tainside together with an option to acquire the remaining 81 per cent. That acquisition gave Capital a right to appoint one director to sit on the Board of Tainside, which in effect gave Capital material influence over Tainside (the 'Initial Transaction'). Following the Initial Transaction, Capital assumed the sale for Choice's national advertising airtime, while Choice continued to sell its local advertising airtime.

4. On 19 November 2003, Capital announced its intention to exercise the put and call option to acquire the remaining 81 per cent of shares in Tainside.

JURISDICTION

5. As a result of this anticipated transaction, Capital and Tainside will cease to be distinct. The transaction will create a relevant merger situation under section 23(1) of the Enterprise Act 2002 (the Act).

BACKGROUND

6. The Initial Transaction was notified to the OFT on 26 October 2001 and cleared on 4 December 2001.

RELEVANT MARKET

7. The parties overlap in the sale of radio advertising within the London area. In January 1998, the Monopolies and Mergers Commission investigated the proposed acquisition of Virgin Radio Holdings Limited by Capital Radio plc (the 'MMC report'). The MMC report on Capital/Virgin concluded that radio advertising was a market distinct from other forms of media advertising. The report also concluded that there were separate markets for London and for the UK as a whole. As with other media industries, the parties' radio stations potentially compete both for audience as well as advertisers, and these two aspects of competition are linked, although the activities of the BBC mean there is an additional significant entity competing for audience which is not active in advertising.

8. Commercial radio stations generate revenue by selling their airtime to advertisers. Commercial stations broadcasting within the same coverage area will therefore compete to attract advertisers. In selecting the station to place their advertisements, advertisers will take into account a number of factors. These include the profile of listeners, audience reach and the cost of placing an advertisement.

9. In respect of competition for audience, Choice represents less than a 2 per cent share of audience within London; post transaction, the parties' combined audience share would be 13 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

10. 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. Radio advertising was therefore considered to be distinct from other forms of advertising.

11. 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.

12. Both the OFT and the CC have previously drawn a distinction between local and national advertising. 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. Other advertisers seek to reach a more local audience reflecting the location of their customer base. To target such customers it would be inefficient to buy airtime that covers an area larger than their requirements.

13. Given these factors, it would seem appropriate to examine this merger in the context of the supply of local and national advertising airtime.

Geographic market

14. Radio stations are limited by their licences to specific geographic broadcast areas. 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. The area of overlap between the parties' radio stations is London. The parties' have informed the OFT that the two Choice stations cover 57 per cent of adults within the Capital Total Survey Area (TSA).

15. The impact of the merger is therefore considered in relation to the sale of local and national radio advertising in the London area.

HORIZONTAL ISSUES

Market shares

16. Shares of national and local advertising revenue and audience within London post-merger will be in the region of [per cent], with an increment between [per cent]. The combined entity's share of local commercial radio audience will rise to around 30 per cent.

17. In terms of the Herfindahl-Hirschmann Index (HHI), the industry within London is highly concentrated and the increment is significant according to OFT guidelines. However, the HHI alone is not a reliable indicator of the effects of a merger where competition is between differentiated products. Here, an assessment of the closeness of competition between these radio stations, as well as the reduced incentive in respect of pricing strategies found in a change from material influence to sole control when compared with a change from no shareholding, needs to be taken into account.

Local Advertising

18. The parties represent around [per cent] (increment around [per cent]) of local advertising revenue across London. However, it appears that these shares overemphasise the competitive impact of this transaction. When previously examined, third parties indicated that Capital and Choice were not closely related in product space. Evidence, both ways, in this respect is as follows:

    - Tainside radio stations appear mainly to appeal to a different audience to the other Capital radio stations in London (recognising that different types of

audience may still be considered substitutes for at least some advertisers[1]);

- Examining existing overlap by the top 30 advertisers, it appears over 70 per cent are of the same type, such as car and home improvement advertisers. However, the type of advertiser is not always a good guide to substitution given that even within types of advertisers differences can occur.[2] For example, both attract hair advertising: for Capital this is companies offering clinical services in hair restoration and removal, for Choice it is a PR company for black hair products;
- Capital's website includes presentations which include their view of Radio stations within product space; this does show some overlap between Choice and Capital but emphasises the complementarities and the sale of airtime as a bundle;
- Reach and audience numbers suggest that advertisers on Capital are interested in gaining a broad, large audience whilst Choice seems to appeal to a smaller niche audience likely to attract specific types of advertisers. This does not mean they are not substitutes especially if Choice is bundled with other stations; however, other stations such as Heart and Virgin appear to be more direct substitutes for Capital.

19. Although all these factors, of themselves, are not conclusive, they are given more credence by comments of third parties who also drew a distinction between advertisers attracted to Choice and Capital. Indeed, one third party noted that the inclusion of Choice within the Capital offering may bring them into closer competition with Kiss 100 (whose audience profile is closer to Choice).

20. Given this transaction is one of a move from partial ownership to full control, any incentive to increase price will be lower than if Capital had no current share ownership. This is because they already benefit from increased profitability from customers switching from Capital to Tainside following a hypothetical price increase by Capital through their 19 per cent shareholding. The Office has considered whether this has a material impact on our analysis through the use of the modified HHI to take account of this lower price incentive. On the facts of this case, this transaction would not appear to raise any significant concerns with regard to pricing strategy incentives.

21. Overall it appears that the acquisition by Capital of Tainside would not lead to a substantial lessening of competition for local advertising.

National Advertising

22. Capital Radio represents around [per cent] of national radio advertising revenue within London. The increment to this share by the addition of Choice is very small. Capital's share of national advertising revenue has also been declining over time and third parties have drawn attention to this as an indicator of the competitiveness of London radio advertising. In addition, the national airtime sales

---

1 For example, many products appeal to a wide diversity of potential buyers and consequently if one radio station appeals to a radically different audience to another, this does not of itself imply they are not substitutes.

2 For example, film promoters may be advertising films attractive to different audiences, hence whilst two radio stations may both attract film advertisements, they may not be substitutable.

of the Choice stations are already sold through the Capital sales house. For these reasons, it is not believed that the merger will lead to a substantial lessening of competition for national advertising.

Barriers to Entry and Expansion

23. Entry into the provision of radio airtime is controlled by the Radio Authority, which issues licences. We understand from Ofcom that there is little spare spectrum in London and consequently it is unlikely there will be any new London analogue licenses in the foreseeable future. These factors would suggest that entry barriers are high.

24. The radio licences also specify the format of the radio station (i.e. dance music). Whilst this does not appear to prohibit changes in the type of content broadcasted (and consequently the type of audience attracted), it does limit their ability to respond to competitors.

25. In terms of digital radio, licences are not so limited and entry is consequently easier. However, the recent CC decision in respect of the proposed acquisition of Galaxy Radio Wales and the West Limited by Vibe Radio indicated that it was unlikely that digital radio stations would act as a significant constraint within the time period over which the effects of the merger are examined.

Buyer Power

26. Advertisers both purchase directly from the radio station's sales house and through media buyers. Some media buyers are large sophisticated organisations who may retain some degree of countervailing buyer power. Nevertheless, given the existing position of Capital Radio, it would seem inappropriate to rely on this to counter any possible substantial lessening of competition.

VERTICAL ISSUES

27. No vertical issues arise from this transaction.

VIEWS OF GOVERNMENT BODIES

Ofcom

28. Ofcom considers that Capital and Choice are attractive to different types of advertisers and consequently find it unlikely that the merger would have an adverse impact on competition in this sector.

THIRD PARTY VIEWS

29. Few customers responded to our requests for information which in itself indicates a lack of concern. Those who did respond were generally unconcerned. The one competitor who responded with a view on the transaction also expressed no concerns in regard to the impact of this transaction on competition within this sector.

ASSESSMENT

30. This transaction results in Capital increasing its shareholding in Tainside from material influence to sole control. The increment to overall share of advertising revenue in London is small, indeed less than the loss of market share by Capital over the last couple of years, and as Capital assumed all national advertising sales for Choice in 2002, this transaction only impacts on sales for local advertising in London.

31. The increment to share of local advertising sales is very small but as Capital's share is high, the HHI increase suggests potential concerns. However, this is a highly differentiated product market and the stations operated by Capital and Choice do not appear to be close competitors. Choice is a niche station that promotes contemporary urban music that attracts a distinctively different audience and advertiser than the traditional Capital audience. Secondly, the change of control is one of material influence to sole control. For both reasons, the HHI is likely to overstate the impact of the transaction. In addition, Capital has been losing both listeners and advertisers since the Initial Transaction in 2001, which suggests a competitive market place.

32. These factors are reinforced by the lack of concern shown by third parties. 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

33. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.