Anticipated acquisition by Bauer Radio Limited of TIML Golden Square Limited (Absolute Radio)

The OFT's decision on reference under section 33(1) given on 20 December 2013. Full text of decision published 10 January 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Bauer Radio Limited ('Bauer')** is a UK-based division of Bauer Media Group, a multi-national media group covering print, online, radio and TV. In 2012, Bauer's total UK radio turnover was approximately £[ ]million with advertising revenues accounting for approximately £[ ]million. Bauer currently holds 41 local and eight national commercial radio licences which Bauer transmits on AM, FM, digital audio broadcasting ('**DAB**'), Digital Terrestrial Television ('**DTT**'), satellite, cable and the internet across the UK. Bauer's key brands include Kiss and Magic in addition to multiple local radio stations.

2. **Absolute Radio ('Absolute')** is owned by **TIML Golden Square Limited ('TIML')**, which is in turn owned by TIML Global Limited, a subsidiary of The Times of India Group. Absolute's 2012 UK turnover is £[ ]. Absolute Radio broadcasts across its national AM licence, a London FM licence and national DAB services, all under the Absolute brand.

TRANSACTION

3. On 26 July 2013, Bauer signed a Share Purchase Agreement to acquire the entire issued share capital of TIML, the owner of Absolute Radio (the '**Merger**'). Completion of the Merger is subject clearance by the UK competition authorities.

4. On 25 October 2013, the OFT received an informal submission from the parties concerning the Merger. The OFT's administrative deadline is 20 December 2013.

5. On 29 October 2013, pursuant to section 57(1) of the Enterprise Act 2002 (the '**Act**'), the OFT wrote to the Secretary of State, formally bringing the Merger to her attention, as the OFT considered that the Merger may raise public interest considerations under section 58(2C)(a) of the Act. On 14 November 2013 the Secretary of State confirmed that she had taken the view that the Merger was not sufficiently relevant to the public interest consideration specified in section 58(2C)(a), and accordingly was minded not to issue an intervention notice under section 42 of the Act.

JURISDICTION

6. As a result of the Merger Bauer and Absolute will cease to be distinct. Following the Merger, Bauer will hold a share of more than 25 per cent in the supply of advertising time on commercial radio in the UK meaning that the share of supply test in section 23(4) of the Act is met. The OFT therefore believes that it is or may be the case that a relevant merger situation will have been created.

FRAME OF REFERENCE

Product scope

Commercial radio services

7. The parties overlap in the provision of commercial radio services in the UK; a two-sided market in which suppliers compete both for advertisers and consumers (in this case radio listeners). As regards to listeners, the Competition Commission ('**CC**') in its report on the merger between Global

and GMG[1] (**'Global/GMG'**) considered that, given the presence and content requirements of BBC radio which offered a significant alternative to commercial radio, the interests of listeners were largely protected from the effect of a merger between commercial radio stations. The CC therefore focussed its analysis on the radio advertising side of the market.[2]

8. The OFT did not come across any evidence suggesting that it should diverge from the CC's approach. The OFT therefore concentrates on the effect of this merger on the advertiser side of the market.

Types of radio advertising

9. Commercial radio stations usually have two main revenue streams: the sale of airtime advertising (which may be sold on a contracted or non-contracted basis) and sponsorship and promotions (**'S&P'**).

10. Airtime advertising is broadcast in radio programme commercial breaks. There are two purchasing channels for advertisers seeking airtime: via agencies and direct from the radio station/group. The larger agencies generally enter into periodic contracts with the larger radio groups setting out the terms (including prices for each individual station and/or group of stations) under which the agency may purchase airtime for their clients. This is referred to as 'contracted' advertising. Smaller agencies and advertisers approaching radio stations directly may also buy airtime on a campaign-by-campaign basis which is referred to as 'non-contracted' advertising.

11. Sponsorship involves an advertiser associating its brand with a station or a particular feature of the radio station's programming. Promotions involve integrating the product/service being advertised into the programming (for example, competitions). S&P is also purchased through agencies and direct from the radio station/group. Unlike airtime, S&P is generally purchased on a campaign-by-campaign basis rather than through periodically negotiated contracts.

12. The CC in Global/GMG did not consider the differences between airtime and S&P to be sufficient to lead them to define separate markets. It did

[1] A report on the completed acquisition by Global Radio Holdings Limited of GMG Radio Holdings Limited, Competition Commission, 21 May 2013

[2] Global/GMG para. 5.15.

however consider the effects of the merger on each segment separately. The OFT did not come across any evidence to suggest that it should diverge from this approach in the present case.

13. In regards to contracted and non-contracted airtime advertising, the CC did not define separate product markets but assessed each separately in their analysis. In the present case, the OFT has taken a cautious approach and considered contracted and non-contracted airtime together. Considering them separately may underestimate the degree of overlap between the parties since in many instances the same advertisers or agencies purchase airtime on a contracted basis from Bauer and on a non-contracted basis from Absolute.[3] In any event, the OFT did not need to reach a firm conclusion on this, as no competition concerns were identified on any basis. The OFT therefore assessed the effect on the Merger on the supply of S&P and the supply of contracted and non-contracted airtime.

Demographics

14. Different radio stations broadcast different types of programme, leading to differentiation in the demographics of listeners attracted to each radio station. While the CC found that on the listener side radio stations with similar content are more likely to be close substitutes than those with different content, such distinction was less obvious on the advertiser side since content may overlap different demographics and at least some advertisers seek to achieve a certain level of reach across all adults rather than targeting a specific demographic group. For this reason, the CC in Global/GMG did not consider the distinctions in listener demographic sufficient to define separate product markets.

15. The OFT has not seen evidence to depart from this approach in the present case but has taken differences in content and target audience into account in its assessment of the closeness of competition between the parties.

[3] The OFT in its investigation did not encounter any instances of advertisers purchasing airtime on a contracted basis from Absolute and on a non-contracted basis with Bauer, although the OFT cannot exclude that this could happen.

Competition from other media and the BBC

16. The CC has previously excluded other forms of media from the product market definition[4] and neither the parties nor third parties submitted evidence that suggests that the OFT should depart from this view.

17. As regards the BBC, the CC found that although the presence of the BBC may reduce the number of listeners for commercial radio stations, it did not materially affect the importance of competition between commercial radio stations for advertising.[5] The OFT did not find evidence suggesting that it should diverge from the CC's approach.

18. The OFT has therefore excluded BBC radio stations and advertising on other media from its market definition.

Multiplexes

19. Radio is broadcast in the UK by digital and analogue means. Digital radio is currently broadcast over DAB, the internet and DTT while analogue stations can be broadcast in the UK on either AM or FM frequencies. DAB enables multiple audio signals to be transmitted on the same frequency through a process known as 'multiplexing'.

20. Third parties wishing to provide a multiplex service must apply to Ofcom for a multiplex licence (which typically is for a period of 12 years) for the broadcast of DAB services on a local, regional or national basis. In order to broadcast a digital radio service, a commercial radio operator (or prospective operator) must apply to Ofcom for a Digital Sound Programme licence and separately apply to the multiplex licence holder for access to the multiplex platform.

21. The parties hold shareholding interests in several multiplexes. In particular, Bauer (i) wholly owns 12 local multiplexes outside London[6]; (ii) holds minority shareholding interests in a joint venture with UTV for three

[4] Global/GMG paragraph 5.44
[5] Global/GMG paragraph 5.26
[6] These are in (i) Glasgow; (ii) Edinburgh; (iii) South Yorkshire; (iv) Tyne & Wear; (v) Liverpool; (vi) Leeds; (vii) Teesside; (viii) Northern Ireland; (ix) Central Lancashire; (x) Humberside; (xi) Dundee/Perth; (xii) Inverness.

multiplexes outside London[7] [see end note 1]; and (iii) holds a 50 per cent interest in three multiplex licences through the CE Digital Joint Venture with Global Radio, one of which in the London 1 DAB multiplex in London and two outside London. [8]

22. Absolute Radio holds a minority shareholding interest in two London multiplex operator companies: (i) a 10 per cent ownership interest in Switch Digital (London) Limited which operates the 'London 2' DAB multiplex; and (ii) a 14.25 per cent ownership interest in Digital Radio Group (London) Limited which operates the 'London 3' DAB.

23. While the OFT notes that commercial radio operators seeking to broadcast digital radio may find other routes such as internet and DTT, the OFT has not found it necessary to conclude on market definition, as no competition concerns were identified, regardless of the exact definition of the relevant market. The OFT has analysed the competitive effects of the Merger on the supply of commercial multiplex services, where both parties are active.

Geographic scope

24. Radio stations require a licence which specifies the area to which the station broadcasts (known as the measured coverage area), although in practice radio stations may broadcast to, and measure audiences over a slightly wider area. Generally licensed areas may be divided into national (covering the whole of the UK), regional (including London-wide licences) and local.

25. In regards to advertising, the CC found that regional and local stations may carry national advertising campaigns where the local or regional station is part of a regional or national portfolio of radio stations where the same campaign is broadcast. Similarly, local stations carry regional advertising campaigns. The CC also found that overlapping local and regional stations may both compete for local advertisers.

26. The CC also found that the importance of the station's geographic reach may vary depending on the type of campaign being advertised (i.e. a local

[7] These three licences are held by a UTV-Bauer Digital Joint Venture in which Bauer has the following interests: (i) Bradford & Huddersfield (20 per cent); (ii) Swansea (30 per cent); Stoke-on-Trent (30 per cent)

[8] One in Manchester, one in Birmingham.

business may place more importance on broadcast location). For these reasons the CC considered that the distinction between local, regional and national stations did not necessarily translate to an indication of the competitive dynamics between them. It did not therefore define separate markets by location and instead considered competition between the parties at a local, regional and national level in its assessment.

27. The OFT has not considered it necessary to depart from the CC's approach in this case and has assessed competition between the parties on a national and regional basis (Absolute does not hold any local radio licences).

28. In regards to multiplex services, as the parties overlap in London the OFT has assessed the market for commercial multiplex services in London but has not found it necessary to conclude on the exact geographic scope.

Conclusion

29. The OFT has not obtained evidence to suggest departing from the CC's conclusion on market definition in Global/GMG which defined one market for radio advertising (excluding advertising on other media and the BBC). The OFT will however consider the affects of the Merger separately on the different types of radio advertising supplied by the parties, that is airtime advertising (contracted and non-contracted) and S&P and will take account of listener demographics and local, regional and national aspects of competition in its competitive assessment.

30. The OFT has also assessed the effect of the Merger on the supply of multiplex services in London.

HORIZONTAL ISSUES

Introduction

31. Horizontal mergers give rise to unilateral effects where they increase the ability and incentive of merging parties to increase prices or reduce quality of service post-merger.

32. The Merger has resulted in the combination of two rival suppliers of radio advertising. While Bauer offers radio advertising at national, regional and local level, Absolute only owns national (AM and digital) licences and one regional (FM) licence limited to the area of London.

33. In considering the overlaps between the parties, the OFT considered whether Absolute would be able to compete in regions other than London through:

- broadcasting different advertisements on different transmitters simultaneously;
- creating local and regional DAB opt-outs by purchasing a slot on local multiplexes; or
- offering radio advertising at national level for a sufficiently lower rate to make its offering competitive with regional radio advertising.

34. The parties submitted that Absolute does not currently hold the technology to broadcast on different transmitters simultaneously and that all three options are so prohibitively expensive as to not be viable. For the first two options this is due to the costs involved and, in the case of the third option, due to the extent to which Absolute would have to lower prices in order to make it a feasible option for advertisers looking for regional airtime advertising. Third parties generally confirmed this view. Therefore the OFT considers that Absolute does not currently operate in regions other than London nor would have the ability and/or incentive to operate in regions other than London.

35. The OFT also considers that there is no overlap in the provision of S&P in London. Absolute broadcasts the same programme nationally and in London and, while Absolute can broadcast different adverts in its national AM (and digital) and London FM frequencies during the advert break, since S&P is integrated into a radio programme, Absolute would need to broadcast different programmes in order to broadcast different S&P at a national and London level.

36. Conversely, Bauer offers S&P both in London, through its London FM radio stations Magic and Kiss, and at a national level though its two national radio station portfolios, the Passion Portfolio and the Place Portfolio.

37. For these reasons, the OFT has examined the horizontal effects of the Merger in respect of:

- the provision of airtime advertising (contracted and non-contracted) at a national level.
- The provision of airtime advertising (contracted and non-contracted) at a regional (London) level.
- The provision of S&P at a national level.

38. As mentioned in paragraphs 21 and 22 above, the parties also own shares in three London multiplexes. The OFT has therefore considered whether any horizontal issues arise in the supply of multiplex services in London.

Airtime advertising

National airtime advertising

39. Bauer offers two portfolios of local, regional and national radio stations, the Place Portfolio and the Passion Portfolio. Advertisers seeking to operate a national advertising campaign can procure airtime advertising in either or both of these portfolios or in any digital national station in Bauer's network.

40. Advertisers seeking to operate a national campaign on Absolute's network may advertise on either Absolute's national AM station or on digital stations.

41. Third parties also told the OFT that advertisers seeking to achieve a national reach also have the option of combining regional radio stations of different owners.

Shares of supply

42. The parties were unable to produce reliable market shares for national airtime. The parties submitted (and third parties tended to agree) that the ability of commercial radio operators to attract national advertising tends to correlate relatively closely to their share of UK national commercial radio audience. Table 1 below sets out the parties and their competitors' UK commercial radio audience shares.

Table 1: UK audience commercial radio shares 2013

Owner	Radio station	Commercial radio audience (hours 000s)	Commercial radio audience share (per cent)
Bauer	Place portfolio	63,755	14
	Passion portfolio	47,582	11
	Bauer total	111,337	*25*
Absolute	Absolute Radio Network	27,305	6
Merged Entity		138,642	31
Global (incl.GMG)	Heart*	54,189*	12*
	Capital*	41,075*	9*
	Classic FM	36,137	8
	Gold	12,333	3
	LBC	13,070	3
	Choice	4,586	1
	X FM	5,589	1
	Real*	19,706*	4
	Smooth (Smooth Radio Brand UK and Smooth 70s)*	27,347*	6
	Global / GMG total*	214,032	*48*
UTV	TalkSPORT	19,406	4
	UTV Radio excl. TalkSPORT	13,458	3
	UTV total	32,864	*7*
Orion	Orion Midlands	9,895	2
Others			12
Total			100

Source: RAJAR 2013 Q2 national TSA survey; data for half-year reporting periods. Figures may not appear to sum precisely due to rounding.

*The OFT notes that Global's share may decrease following divestment by Global in accordance with the CC's decision in Global/GMG. The parties submitted that any decrease would not have a material impact on Global's share on a national level.

43. The parties hold a combined audience share of 31 per cent and the Merger represents a small increment in Bauer's market share of approximately six per cent. In the present case, the OFT considers that market shares can only provide a broad overview of the position of the different radio operators but, given the potential differentiation between radio stations, will not provide a sufficient measure of the extent of competition between them. The OFT therefore considers the extent of competition between the parties' radio stations below.

Closeness of competition

44. The price for contracted and non-contracted airtime advertising is determined through individual negotiations with each customer (non-contracted airtime being negotiated on a campaign-by-campaign basis and contracted advertising negotiated at the time of entering into the periodic contract). A merger of competitors prevents customers from playing previously competing sellers off against each other in negotiations, potentially enhancing the ability of the merged entity to raise prices. The degree to which this may happen depends on the extent to which the parties represent a close alternative to each other.[9] Significant differences in the radio stations (for example audience demographic or differences in geographic reach) may limit the ability of an advertiser to play the station owners off against each other and therefore limit the possibility that the Merger affects prices in this way.

45. In line with the CC in Global/GMG, the OFT has assessed the extent to which the parties' customers' negotiation strength is likely to diminish as a result of the Merger. To do so, the OFT has first considered the closeness of substitution between the parties' radio stations and second the extent to which the Merger affects an advertisers' negotiation power.

46. The OFT in this case takes the approach used by the CC in Global/GMG and assesses the similarities and differences of the parties' radio stations based on the following factors, which the CC considered that advertisers take into account when deciding on which radio station to advertise:

- The geographic coverage and the nature of the signal (i.e. the frequency (AM or FM) and whether stations are digital-only);

- The size of the audience;

- The demographics of the target audience[10].

[9] Global/GMG, paragraph 7.10.
[10] Global/GMG para. 6.96.

Geographic coverage and nature of the signal

47. There are currently three national analogue licences in the UK, one of which is held by Absolute. Absolute achieves national coverage through this national AM licence and six digital licences (and can also strengthen its London coverage through its London FM licence) whereas Bauer achieves national coverage through two portfolios of local FM (as well as AM and digital) radio stations.

48. Though the parties can achieve a similar geographic reach, the parties submit that the different nature of the signal (AM versus FM) means that their radio stations are not close substitutes for advertisers. The CC in Global/GMG found that AM stations generally had lower audiences and therefore typically obtained lower advertising prices even after adjusting for audience size. The CC therefore considered that an AM station on its own is likely to be a weaker alternative for advertisers compared to an FM station broadcasting to a similar area.[11]

49. The OFT has considered the advertising prices of Bauer and Absolute and found that overall (and taking into account differences in how prices are set and recorded) Absolute's pricing of national airtime is [ ]. Therefore, taking a cautious approach, the OFT cannot conclude that, on the basis of differences in nature of the signal, Bauer and Absolute are not closely competing and has instead gone on to consider the other factors relevant to closeness of competition.

Audience size

50. The ability of a radio station to attract listeners is a key factor in its ability to attract advertisers. Therefore, other things being equal, the greater a radio station’s audience size, the greater its ability to attract advertisers.[12] The parties’ shares of commercial radio audience are set out in Table 1 above. At national level, Absolute attracts nearly half of the listeners of Bauer's Passion Portfolio and just above 40 per cent of Bauer's Place Portfolio.

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[11] Global/GMG para. 6.98
[12] Global/GMG para. 6.97

51. The parties submit that this difference in audience size should be considered as evidence that there is limited competition between Bauer and Absolute. The OFT considers that the not inconsiderable difference may suggest that Absolute does not pose a particularly strong constraint on Bauer. The OFT considers that, for those advertisers (or campaigns) that seek only to reach a certain number of listeners (with no specification as to which demographics it is reaching), the parties would be unlikely to represent a particularly close alternative to each other. In addition, the OFT notes that other radio station groups are closer to each of the parties in terms of audience size. In particular the audience shares set out in Table 1 above suggest that Global is more likely to provide a constraint on Bauer, and UTV attracts a similar audience size to Absolute.

52. However, third parties suggested that some advertisers may find Absolute's and Bauer's portfolios substitutable where advertisers seek to target a certain audience, of which Absolute attracts a similar or larger number of listeners than Bauer. The OFT has therefore considered below whether the parties provide a constraint on each other for those advertisers which seek to target certain demographics.

Demographics

53. Some advertisers (or campaigns) seek to target a certain audience group which represent the most likely potential customers. For these advertisers, the degree of substitution between radio stations will depend to some extent on whether those stations attract a similar demographic.

54. Other advertisers (or campaigns) seek to target as wide an audience as possible without focussing on a particular demographic. For these advertisers, the radio station’s audience demographics may be a less important factor in deciding between them, although the OFT considers that it would still be taken into account by such advertisers in order to ensure that the wide audience sought is in fact being reached. Demographics would only not be important to the extent that an advertiser (or campaign) sought only to reach certain audience numbers with no specification of the way that audience was distributed across different demographic groups.

55. Some third parties told the OFT that they select a radio station(s) based on its 'purity ratio', that is the proportion of radio listeners that belong to the

target group for that advertiser's campaign. For this reason, in some cases it may be more attractive to an advertiser to run a campaign on a station that attracts a smaller number of listeners if a large number of those listeners are within the demographic that the advertiser is seeking to reach. This is because advertisers pay a price per thousand listeners (called 'cost per thousand' or '**CPT**') regardless of whether those listeners belong to the audience group they seek to target.

56. The parties submit that there is limited overlap between Absolute and Bauer's target demographics. Evidence submitted by the parties indicates that Absolute predominantly attracts a male audience, while Bauer's portfolios mainly attract female listeners. Further, Bauer's Passion Portfolio appears on average to reach a younger audience than Absolute Radio, whereas the Place Portfolio addresses on average older listeners. Third parties generally confirmed that the parties' radio stations attract different demographics. Absolute is generally perceived by third parties as attracting a 25 to 44 year old ABC1 male audience, whereas Bauer's stations are generally perceived as more female focussed.

57. The OFT conducted its own analysis by calculating purity ratios for the parties and their competitors for several audience demographics, using RAJAR[13] data for Q2 2013 provided by the parties. This analysis shows that Absolute and Bauer's portfolios never rank together among the top five radio stations for attracting a particular demographic, no matter what hypothetical target audience was considered.

Conclusion on closeness of competition

58. On the basis of this analysis, the evidence submitted by the parties and the views of third parties, the OFT considers that the parties' national radio stations are unlikely to be regarded as close substitutes by advertisers.

59. In regards to those advertisers seeking to reach certain listener numbers without regard to the demographics those listeners fall into, the OFT considers that, although they may consider the parties to be substitutes, the differences between the parties in audience size, the relatively low combined market share of the parties and small increment suggests that

[13] RAJAR data is generally considered to be reliable by the parties and third parties.

they would be unlikely to be affected by the Merger to any significant extent.

Advertisers and agencies' negotiation power

Large London-based contracted agencies

60. The CC in Global/GMG found that large London-based agencies have sufficient negotiation power to constrain the parties' ability to raise prices[14]. The CC considered that only a small proportion of these agencies' yearly spend was with Global or GMG and that, conversely, large agencies' spend represented a large proportion of Global's and GMG's revenues.

61. In the present case, the parties submitted that the large London-based agencies hold significant negotiation power. Bauer submits that the four largest agency groups (Group M, Opera, Aegis and Vivaki) are [ ], as they accounted for around [ ] per cent of Bauer's total contracted airtime revenue and [ ] per cent of Bauer's total airtime and S&P advertising revenue in 2012. Conversely, Bauer accounts for [ ] per cent of their yearly advertising spend. Even post-merger, [ ].

62. The OFT did not receive concerns from [ ], nor did any consider that their negotiation position would be affected to any meaningful extent by this Merger.

Smaller agencies and direct advertisers

63. Most third parties were not concerned about the Merger. The OFT received some concerns from third parties which appeared to relate to a potential loss of negotiation power resulting from the Merger. However, the OFT considers that none of these concerns amounted to a credible explanation of how this could result from the Merger, particularly given that third parties overwhelmingly considered that Bauer and Absolute were not close substitutes.

64. One third party appeared to prefer the service provided by Absolute (for example in terms of their willingness/ability to create a bespoke solution) and was concerned that this may change or diminish as a result of the

[14] Global/GMG paragraph 7.149 onwards.

Merger. The OFT considers that given the limited substitution between Absolute and Bauer, Bauer would not have the incentive to reduce the quality of service since it cannot be sure of recapturing any lost revenues through its other stations.

65. The OFT was also told that the Merger would be likely to result in an increased spend with Bauer from individual agencies (due to the addition to its portfolio) and that this may result in increased prices. However, the OFT was also told that an agency spending all or a large proportion of its budget with one radio station group is likely to receive more favourable prices. The OFT has in any event considered whether the Merger is likely to give rise to conglomerate effects from Bauer's ownership of the Absolute stations below.

66. Finally, the OFT received a concern that the Merger reduced advertiser's ability to negotiate since it reduced the number of independent radio station owners. However, the third party raising this concern also stated that Absolute and Bauer were not close substitutes. The OFT considers that the Merger is unlikely to significantly reduce the negotiating power of customers as the parties were not previously seen as close substitutes by customers wishing to play radio stations off against each other.

67. To the extent that the parties are currently competing in the supply of national airtime advertising, the OFT considers that Absolute's size and position in the market suggests that the Merger is unlikely to significantly increase Bauer's ability to raise prices or reduce quality of service. Further, the OFT notes that Global was perceived by several customers as both parties' closest competitor[15] and will remain an alternative to the merged entity post-merger.

Conclusion on national airtime advertising

68. For the reasons set out above, the OFT does not believe that the Merger raises competition concerns as regards to the supply of contracted and non-contracted national airtime.

[15] other customers submitted that their preferences depended on a single campaign and did not provide an indication of whether they perceive the parties to be close substitutes.

London airtime advertising

69. In London, Bauer supplies airtime advertising through two FM radio stations, Magic and Kiss. These radio stations broadcast in analogue in London, although Magic is part of the Place Portfolio and Kiss is part of the Passion Portfolio. Part of the airtime advertising on Magic and Kiss is derived from London campaigns, part from wider (multi-regional or national) campaigns.

70. Absolute sells airtime advertising in London through Absolute Radio, which transmits in FM in London. Despite broadcasting the same radio programmes in its London FM and national AM licences, Absolute can broadcast different adverts on its FM station.

Shares of supply

71. The parties were unable to provide reliable data on revenue market shares for the supply of airtime advertising in London. The parties in their submission referred to the data in the CC report in Global/GMG, which is set out in Table 3 below.

Table 3: Share of non-contracted and total revenue in London (local/regional commercial radio)

Owner	Radio station	Non-contracted revenue		Total revenue	
		£m	Per cent	£m	per cent
Bauer	Magic 105.9	[ ]	[ ]	[ ]	[ ]
	Kiss 100 FM	[ ]	[ ]	[ ]	[ ]
	Total	[ ]	[10-19]	[ ]	[20-29]
Absolute	Absolute Radio 105.8	[ ]	[0-4]	[ ]	[5-9]
	Merger entity	[ ]	[10-23]	[ ]	[20-38]
Global	Heart London	[ ]	[ ]	[ ]	[ ]
	LBC 97.3	[ ]	[ ]	[ ]	[ ]
	LBC News 1152 AM	[ ]	[ ]	[ ]	[ ]
	Capital London	[ ]	[ ]	[ ]	[ ]
	Choice FM London	[ ]	[ ]	[ ]	[ ]
	Xfm London	[ ]	[ ]	[ ]	[ ]
	Gold AM London	[ ]	[ ]	[ ]	[ ]
	Total	[ ]	[50-59]	[ ]	[50-59]
	RSL – Smooth Radio London[16]	[ ]	[5-9]	[ ]	[0-4]
	Sunrise Radio AM	[ ]	[10-19]	[ ]	[0-4]
	Premier Christian Radio AM	[ ]	[0-4]	[ ]	[0-4]
	Kismat Radio 1035	[ ]	[0-4]	[ ]	[0-4]
	Buzz Asia 963 and 972 AM	[ ]	[0-4]	[ ]	[0-4]
	Spectrum Radio	[ ]	[0-4]	[ ]	[0-4]
	London Greek Radio	[ ]	[0-4]	[ ]	[0-4]
	TOTAL	**[ ]**	**100**	[ ]	**100**

74. Table 3 indicates that Bauer is and would remain post-merger the second largest player in London and that the increment caused by the Merger is relatively small. However, as explained in paragraph 43 above, market shares can only provide a broad overview of the relative position of different radio stations and may not accurately represent the level of competition between them.

Closeness of competition

75. As with national airtime, the OFT assesses the degree of substitution between the parties' radio stations by assessing their similarities and

[16] RSL is now part of Global following Global/GMG.

differences in respect of geographic coverage and nature of their signal, audience size, position in the market and audience demographics.

Geographic coverage and nature of the signal

76. The parties' radio stations both operate in Greater London and each hold FM licenses in this area. There is nothing to suggest therefore that advertisers would not consider them substitutes on this basis.

Audience size and position in the market

77. The parties' shares of commercial radio audience are set out in Table 4 below.

Table 4: London audience commercial radio shares, year ending in Q2 2013

Owner	Radio station	Commercial radio audience (hours 000s)	Commercial radio audience share (per cent)
Bauer	Kiss 100 FM	40,689	14.2
	Magic 105.4	49,922	17.4
	Bauer total	90,611	31.6
Absolute	Absolute Radio Network	13,438	4.7
Merged Entity		104,049	36.3
Global (incl.GMG)	LBC 97.3	37,294	13.0
	Heart London	37,784	13.2
	Capital London	40,591	14.1
	Choice FM London	11,417	4.0
	Smooth Radio London	10,724	3.7
	Gold London	10,512	3.7
	XFM London	8,900	3.1
	LBC News 1152	7,071	2.5
	Global / GMG total*	164,293	57.3
	Sunrise Radio (Greater London)	8,962	3.1
	Premier Christian Radio	6,458	2.3
	Kismat Radio 1035 (Greater London)	1,993	0.7
	Buzz Asia 963 & 972AM	1,124	0.4
Total		286,879	100.0

78. The parties' market position in London is similar to their position at national level. Absolute attracts approximately one third of the listeners of Kiss and just above one quarter of Magic. As discussed for national airtime advertising, although such difference is considerable, it does not necessarily indicate that Absolute and Bauer's radio stations are not close substitutes.

Demographics

79. The parties submit that there are similar demographic differences in the listeners that the parties attract on their London radio stations as nationally (described in paragraph 56 above) and this was generally confirmed by third parties.

80. Similarly to national advertising, the OFT calculated purity ratios for the parties and their competitors for several audience demographics, using RAJAR[17] data for Q2 2013 provided by the parties. The OFT's analysis shows that Absolute Radio and Bauer's radio stations never rank together amongst the top four radio stations, no matter what hypothetical target audience demographics is considered.

81. It is therefore unlikely that the parties' radio stations would be considered to be close substitutes by those advertisers wishing to target a certain demographic of listener in London.

82. As regards to advertisers (or campaigns) seeking to reach certain listener numbers without regard to the demographics those listeners fall into, the same considerations apply as to national airtime advertising (see paragraph 59 above).

Advertisers and agencies' negotiation power

Large London-based contracted agencies

83. Bauer derives nearly [ ] of its London airtime revenues from contracted agencies. The OFT considers that the commercial conditions under which contracted agencies purchase London airtime from Bauer are determined as part of the same contract as for national airtime. Therefore, the considerations set out in paragraphs 60 to 62 above also apply to London airtime.

[17] RAJAR data is generally considered to be reliable by the parties and third parties.

Smaller agencies and direct advertisers

84. The competitive conditions in the supply of airtime in London are similar to the competitive conditions at a national level. Third parties confirmed that they did not consider the parties close substitutes. Instead, customers generally considered Global to be either party's closest competitor.

85. The OFT also considers that, even if the parties' services were to be regarded as substitutable, for example by those advertisers (or campaigns) seeking to reach certain listener numbers without regard to the demographics those listeners fall into, the disparate audience sizes means that Absolute and Bauer would be considered alternatives only to a limited extent. In addition, there are a number of other radio stations broadcasting in London that could provide an alternative for the supply of London airtime advertising, including Global which remains the market leader and a strong post-merger constraint on Bauer. Finally, the parties' combined market shares are limited and the increment small.

Conclusion

86. For the reasons set out above, the OFT does not believe that the Merger raises competition concerns as regards to the supply of contracted and non-contracted airtime in London.

National S&P

87. As explained above, in regards to S&P, the parties only overlap in the supply of national S&P.

88. The parties submit that advertisers adopt similar criteria for selecting radio stations to run an S&P campaign as they do for airtime campaigns. To the extent that this is correct the same considerations would apply as set out above for airtime advertising. However, the parties submitted that Absolute had a higher share of supply of national S&P than of airtime advertising of around [ ] per cent.[18]

89. Two customers did indicate that Absolute is a stronger competitor in S&P than in airtime advertising by virtue of its flexibility in tailoring campaigns to client's needs and ability to integrate S&P radio campaigns with internet promotions. However, more than one customer considered that Global was

[18] Based on ARRI data which produces estimates of total S&P agency sales on a monthly basis.

Absolute's main competitor in S&P and others confirmed that Bauer and Absolute were not close competitors.

90. The parties also provided data on pitches competed for by each of Bauer and Absolute in the eighteen months from January 2012. Although the OFT notes the limitations of this data[19], it considers it to indicate that the parties are not competing closely for the supply of S&P.

91. Bauer's data set shows that Absolute was present in [ ] per cent of Bauer's pitches but it only won [ ] per cent of them. Similarly, Absolute's data shows that Bauer was present in [ ] per cent of Absolute's pitches and it only won [ ] per cent of them. Conversely, Global was present in [ ] per cent of Bauer's pitches and won at least [ ] per cent of them.

92. For these reasons the OFT does not believe that the Merger raises competition concerns as regards to the supply of S&P on a national basis.

Conclusion on supply of radio advertising

93. For the reasons set out above, the OFT concludes that there is no realistic prospect of a substantial lessening of competition in the supply of radio advertising as a result of the Merger.

Multiplex interests

94. The parties' multiplex interests are set out at paragraphs 21 and 22 above. Currently there are three commercial London DAB Multiplexes, namely London 1, London 2 and London 3. As seen above, Bauer holds shareholding interests in London 1, whereas Absolute holds interests in London 2 and London 3. London 1 is managed by Bauer [see end note 2], London 2 by UTV and London 3 by Global. Absolute does not manage any multiplex but holds the right to nominate one member of the board in London 2 and London 3.

95. Given that cross-ownership of the London multiplexes already exists and Absolute holds only relatively modest shares in London 2 and London 3 alongside competing radio operators, the effect of the Merger is likely to be limited. In any event, the OFT considers that there is currently no

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[19] Bauer's data set is partly incomplete, in that it only covers pitches for value exceeding £50,000 over the period from January to December 2012 but it also contains contracts for value below £50,000 signed in 2013. Further, Absolute does not systematically track competing bidders in its data set.

competition between multiplexes for the provision of frequency slots to DAB radio operators since the three London multiplexes are operating at capacity; nor would there be any competition unless some slots were to become available in the future. In any event,

96. The OFT therefore does not believe that the Merger raises horizontal competition concerns as regards to the supply of multiplex services in London.

Countervailing buyer power

97. The OFT's guidance states that in some cases, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. In particular, an individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, or when it can otherwise constrain the behaviour of the supplier.[20]

98. The OFT considered this in its competitive assessment of the Merger in determining whether it will lessen the negotiation power of customers.

99. In Global/GMG the CC found that the larger agencies hold considerable negotiation power. The OFT notes that since contracts are negotiated individually any buyer power held by a group of customers would be unlikely to protect weaker customers from price rises. In particular, smaller media buying agencies and direct advertisers would be unlikely to be protected by the negotiation power held by the larger London-based agencies.

100. The OFT does not, nevertheless, need to conclude on the extent of buyer power, as no realistic prospect for a substantial lessening of competition was found to result from this Merger.

Barriers to entry and expansion

101. The parties submit that entry into the UK commercial radio market is presently difficult due to the lack of available capacity (and therefore licences) and the significant costs associated setting up a radio station (or group) and a brand that is attractive to advertisers. Bauer considers, however, that there is greater scope for entry via the digital route, especially after the digital switchover.

[20] OFT Merger Assessment Guidance para 5.9.

102. However, the OFT considers that the London multiplexes are currently operating at capacity, so the entry of an additional radio station would either require one of the major operators exiting the multiplex or the creation of a new multiplex. Also, the OFT considers that insufficient information is available around the exact date of the switchover to consider such prospect as sufficiently likely for the purposes of potential entry.

103. The OFT does not however need to conclude on the prospect of potential entry, as no realistic prospect for a substantial lessening of competition was found to result from this merger.

VERTICAL ISSUES

102. The OFT considered whether the acquisition by Bauer of additional multiplex interests (as set out in paragraphs 21 and 22 above) would give Bauer the ability and incentive to foreclose radio operators who are applying for a frequency slot in a London multiplex or to discriminate regarding access to such multiplexes in order to reduce competition in the downstream operation of digital radio stations.

103. The OFT considers the possibility of such foreclosure occurring as a result of the Merger unlikely given that multiplex operators are obliged under the terms of their licence's to not unduly discriminate against digital services connecting to their multiplex. In any event, the London multiplexes are currently operating at capacity. Therefore, any foreclosure strategy could only be undertaken in the event that slots became available in the future.

104. The OFT therefore concludes that there is no realistic prospect of a substantial lessening of competition from the foreclosure of access to London multiplexes to radio stations resulting from this Merger.

CONGLOMERATE EFFECTS

105. Anti-competitive conglomerate effects typically occur where customers have demand for more than one of the products produced by the merging parties, where the products are complements, where one-stop shopping is

common, and where the costs to rivals of providing product variety and one-stop-shopping at a scale to compete are prohibitively high.

106. The OFT has considered the possibility that the Merger may provide Bauer with the ability and incentive to foreclose smaller radio operators by inducing agencies and advertisers to increase their spend on Absolute in exchange for access or for better conditions of access to Bauer's radio stations.

105. This strategy would depend on Absolute having a close competitor from which advertisers would be willing to switch without facing significant costs. The OFT did not receive any concerns about this strategy from smaller competitors.

106. The OFT considers that there is no realistic prospect of a substantial lessening of competition as a result of conglomerate effects arising from the Merger.

COORDINATED EFFECTS

107. The Merger may increase the symmetry between the offerings of Bauer and Global, both in terms of market position/size and programme output. The OFT has therefore considered whether coordinated effects may arise as a result of the Merger, whereby Bauer and Global coordinate to profitably limit their rivalry.

108. The OFT notes that there are certain market characteristics that make coordination more likely, one of which being that firms are able to monitor each other's prices and any relevant competitive variables (i.e. that they are able to monitor the terms of coordination). In the present case, the OFT considers that this characteristic is not present for the following reasons:

- Prices are individually negotiated with agencies and advertisers and there does not appear to be transparency as to the prices paid.
- Prices, especially for contracted advertising, are set using a complex pricing matrix which establishes discounts based on various factors such time of broadcast and time of booking.
- As a two-sided market the ability to attract advertisers depends on a radio station's success in attracting listeners through its content. Any

coordination on pricing would therefore also need to take this into account which the OFT considers to be a difficult proposition.

109. No third parties raised concerns that this merger could increase the ability or the incentives for Global and Bauer to coordinate.

110. For the above reasons, the OFT considers that there is no realistic prospect that this merger may be conducive to coordination.

THIRD PARTY VIEWS

111. The OFT has sought views on the Merger from customers and competitors of the merging parties. Third party comments have been given due consideration by the OFT, and have been referenced in this decision where relevant.

112. Most third parties were not concerned. The OFT did receive some concerns which appeared to relate to loss of negotiation power and this is addressed above. In addition, a competitor raised a concern regarding possible vertical issues on the basis of Bauer acquiring additional ownership in London multiplexes. This is addressed by the OFT in paragraphs 102 to 104 above.

ASSESSMENT

113. The OFT has assessed the horizontal effects of the Merger in the areas in which the parties overlap, namely:

- the provision of airtime advertising (contracted and non-contracted) at a national level;
- the provision of airtime advertising (contracted and non-contracted) at a regional (London) level;
- the provision of S&P at a national level; and
- the supply of multiplex services in London.

111. This broadly follows the approach of the CC in Global/GMG. In line with the CC's approach, the OFT has not considered it necessary to consider the effect of the Merger on listeners who are largely protected by the presence and content of BBC radio stations.

112. The OFT has also considered whether the acquisition of additional multiplex interests gives the merged entity the ability or incentive to foreclose competitors in the downstream radio station market and whether any anti-competitive conglomerate effects could be considered to arise. Finally the OFT considered whether the Merger could be considered to give rise to coordinated effects due to the increased symmetry between Bauer and Global.

Horizontal issues

113. In relation to the provision of airtime advertising both nationally and in London, evidence provided to the OFT by the parties and third parties suggests that the parties' radio stations are not close substitutes due to substantially different audience shares and demographics. The OFT therefore considers that the negotiating strength of customers is unlikely to be significantly affected by the Merger as the parties would not have previously been seen as particularly close alternatives by customers wishing to play radio stations off against each other in negotiations. In addition, and to the extent that the parties may be providing a competitive constraint on one another, the OFT notes that the market position of Absolute, the relatively small increment and the fact that Global (the largest player and the radio station/group perceived by several third parties as both Absolute and Bauer's closest competitor) will remain an alternative to the merged entity suggest that the Merger is unlikely to raise competition issues.

114. The OFT also considers that the parties are not close competitors in S&P based on its analysis of pitching data provided by the parties.

115. As regards to multiplex ownership, the lack of capacity, regulatory protections and Absolute's modest shareholdings suggest that the Merger is unlikely to reduce competition.

Vertical issues

116. The OFT does not consider vertical foreclosure to be likely since multiplex owners are required by the terms of their licence not to unduly discriminate against radio station operators wishing to connect to their multiplex. In addition, the London multiplexes are currently at capacity meaning there is

no prospect of foreclosure occurring until slots became available in the future.

Conglomerate effects

117. The possibility of the Merger giving rise to conglomerate effects depends on Absolute having a close competitor from which advertisers would be willing to switch without significant cost on incentive from Bauer. The OFT did not find any evidence to suggest that this was the case and did not receive any concerns from smaller competitors regarding this strategy.

Coordinated effects

118. Prices and terms are individually negotiated with agencies and advertisers and use a complex pricing structure which is not transparent to other competitors. The OFT therefore considers that there is no realistic prospect that this merger may be conducive to coordination since at least one of the market characteristics that the OFT considers to be conductive to coordination, namely the ability to monitor the terms of coordination, is not present.

Conclusion

119. 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

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

END NOTES

I With regards to paragraph 21, the parties note that on 30 November 2013 Bauer sold its minority interests in the UTV multiplex joint venture for three multiplexes outside London to UTV.

ll With regards to paragraph 94, the parties note that the London 1 multiplex is managed by Bauer on behalf of the joint venture owners.