Completed acquisitions by Bauer Media Group of certain businesses of Celador Entertainment Limited, Lincs FM Group Limited, Wireless Group Limited, and the entire business of UKRD Group Limited

Final report

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The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Summary

1. On 7 August 2019, the Competition and Markets Authority (CMA) referred the completed acquisitions by Heinrich Bauer Verlag KG (trading as Bauer Media Group (Bauer)), through subsidiaries, of the following:

   (a) From Celador Entertainment Limited (Celador), 16 local radio stations and associated local FM radio licences (the Celador Acquisition);

   (b) From Lincs FM Group Limited (Lincs), nine local radio stations and associated local FM radio licences, an interest in an additional local radio station and associated licences, and interests in the Lincolnshire and Suffolk digital multiplexes (the Lincs Acquisition);

   (c) From Wireless Group Limited (Wireless), 12 local radio stations and associated local FM radio licences, as well as digital multiplexes in Stoke, Swansea and Bradford (the Wireless Acquired Business) (the Wireless Acquisition); and

   (d) The entire issued share capital of UKRD Group Limited (UKRD) and all of UKRD's assets, namely ten local radio stations and the associated local FM radio licences, interests in local multiplexes, and UKRD's 50% interest in First Radio Sales Limited (FRS) (the UKRD Acquisition);

   (together the Acquisitions) for an in-depth (phase 2) merger inquiry. Celador, Lincs, the Wireless Acquired Business and UKRD are collectively referred to as the Acquired Businesses and each is an Acquired Business.

2. Under section 35 of the Enterprise Act 2002 (the Act) and by our terms of reference (see Appendix A) we are required to answer the following questions:

   (a) whether the Acquisitions each constitute a relevant merger situation; and

   (b) if so, whether the Acquisitions, together or in isolation, have resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.

3. Bauer is a multi-media company with interests in print, radio, television and digital operations. In the UK Bauer owns and operates a portfolio of commercial radio stations that broadcast locally and nationally under brands including Kiss, Absolute, Magic, Hits and Greatest Hits (although many of its local stations retain their own individual listener-facing identity).

4. Prior to the Acquisitions: Celador owned and operated local commercial radio stations, mainly in the South and East of England; Lincs interests in radio broadcasting were largely in the Lincolnshire / South Yorkshire area, as well as a 40% interest in Ipswich 102 FM; Wireless operated 32 national and local radio stations across the UK and Ireland – most of its local radio businesses were included in the Wireless Acquisition (but it retains ownership of its national radio stations, some local stations, and a 50% share in FRS which were not included in the Wireless Acquisition); the UKRD Acquisition included its ten local radio stations. Various digital multiplexes were also acquired by Bauer from these businesses. Throughout these findings we refer to Bauer and the Acquired Businesses collectively as ‘the Parties’.

5. Commercial analogue and DAB broadcasting services are regulated and licensed by Ofcom. Revenue for commercial radio stations comes largely from local and national advertising and associated sponsorship and promotion. Commercial radio revenues in the UK were £572 million in 2018. Commercial radio listening has been growing in recent years with national commercial stations increasing their share while local station audiences have declined. Ofcom has recently relaxed localness regulations for local radio, allowing radio groups to make savings and share most of their programming over larger areas. There has been considerable industry consolidation since 2007. Global Media & Entertainment Limited (Global) is the largest commercial radio group in the UK, operating under the brands Capital, Heart and Smooth, and various other stations. It accounts for 49.4% (including Communicorp)[1] of commercial radio listening hours. Bauer (including the Acquired Businesses)[2] has a 37.7% share, while Wireless has 6.9% and others account for 6%.[3]

6. Smaller advertisers and regional or, more commonly, local advertising campaigns are typically booked directly by the advertiser with a radio station, usually via the station’s local sales team. We refer to this as ‘local advertising’. However, major advertisers, whose requirements include the ability to reach consumers across a wide geographic area, are typically represented by a media buying agency. Media buying agencies do not normally negotiate directly with local stations for this ‘national advertising’, due in part to the complexity this would involve. Instead, they contact either a national radio group’s own sales house[4] or a third-party sales house, who offer a network of

[1] Communicorp UK (Communicorp), although independently owned, operates seven regional stations as part of Global’s Capital, Heart and Smooth networks under a brand and content licensing arrangement. Communicorp also own one local station, XS Manchester.
[2] The Acquired Businesses continue to be operated separately from Bauer in accordance with the CMA’s initial enforcement orders.
[3] Source: Bauer based on RAJAR listening data for Q3 2019. ‘Wireless’ refers to the Wireless national stations (and those local stations that were not acquired by Bauer).
[4] ie Bauer and Global, and also Wireless and GTN (who provide traffic bulletins to radio stations in exchange for advertising airtime).

radio stations to these agencies. The main media buying groups (who may own several agencies) negotiate terms, usually annually, with the radio station's sales houses. We refer to this as 'contracted advertising'.

7. FRS is a sales house that sells national advertising, sponsorship and promotion and digital campaigns on behalf of independent local radio stations. As at 19 September 2019 it represented 118 local radio stations across the UK.[5] FRS is jointly owned by Bauer (following its acquisition of UKRD) and Wireless.

The Acquisitions

8. Bauer completed the Acquisitions between 31 January 2019 and 31 March 2019. In January and February 2019, Bauer sold three radio stations which it had acquired as part of the Acquisitions to Nation Broadcasting Limited (Nation). Bauer explained that it sold these stations immediately in order to avoid any competition concerns because of geographic overlaps with Bauer stations.

9. Bauer told us that its core rationale for the Acquisitions was to integrate the stations from the Acquired Businesses into the Bauer station network, while enhancing their appeal to listeners and therefore advertising customers. It said this would in turn enable Bauer to compete more effectively with Global. Bauer submitted that Global (with Communicorp) wins a disproportionate share of national advertising revenue. Bauer said it expected the four Acquisitions to immediately increase its national share of commercial listening, and that it considered this necessary to increase its share of national radio advertising revenue. In addition, it said that the Acquisitions would allow it to significantly increase its reach in areas, like the south of England, where its reach had been considerably lower than Global's. It also planned to increase the audiences for the stations forming part of the Acquired Businesses.[6]

10. It said that it completed the Acquisitions in very close succession, [✄].

11. Bauer has also submitted that it aims to represent and sell inventory of radio stations currently represented by FRS (and not acquired by Bauer), which would help it further increase its share of commercial listening.

[5] FRS website as at 19 September 2019. Data provided by UKRD shows that as at 26 September 2019 FRS represented 107 local stations. This is following the loss of Quidem and Connect stations which are now represented by Global and JACKfm, which is a national station.
[6] Bauer also said that its strategy included launches of new stations (such as Country Hits and Scala) [✄].

12. We concluded that each of the Acquisitions was a separate relevant merger situation.

13. In our findings, we focussed our assessment on the effect of the Acquisitions on the advertisers' side of the market, and not on radio listeners. This is because, while the Acquisitions could impact on local radio listeners' range of choice, radio listeners can turn to national commercial stations, and also BBC national and local radio stations which do not carry advertising but account for around 51% of radio listening in the UK.[7] Also, Ofcom's licensing requirements include a requirement to protect the interests of listeners.[8] Further, insofar as the Acquisitions may reduce competition and choice in regard to local radio stations, our analysis of competition for local advertising can act as a proxy for assessing this effect.

The counterfactual

14. The assessment of the effects of a merger and the application of the SLC test involves a comparison of the prospects for competition with the merger against the counterfactual, which is the competitive situation we would expect to apply absent the merger.[9] Against this framework, and in light of the Parties' submissions, we considered the most likely future situation of Bauer, each of the Acquired Businesses, and FRS in the absence of the Acquisitions.[10]

15. We concluded that it is appropriate to assess the competitive effects of the Acquisitions by considering them together against a counterfactual where none of the Acquisitions had gone ahead, rather than assessing them individually or sequentially. This is because Bauer viewed the Acquisitions as part of an 'overarching strategy', [✄].

16. Our approach, employing a counterfactual where none of the Acquisitions had gone ahead, enables us to properly consider the impact of a series of parallel completed transactions involving the same purchaser, and carried out as part of a common acquisition strategy designed to achieve a cumulative impact on competition in a market. This approach avoids an artificial and speculative exercise of considering the Acquisitions individually or sequentially, which would result in the cumulative effect of the Acquisitions on the relevant

[7] Media nations: UK 2019, Ofcom, Figure 4.8.
[8] Ofcom's statutory duties include ensuring that: a wide range of high-quality radio programmes are provided, appealing to a range of tastes and interests; and television and radio services are provided by a range of different organisations. From Ofcom website.
[9] CMA Merger Assessment Guidelines, *CC2 Revised*, paragraph 4.3.1.
[10] *CC2 Revised*, paragraph 4.3.6.

markets not being adequately assessed. Our approach also enables us to consider the impact of the Acquisitions without importing into our assessment any spurious claims to accurate prediction or foresight[11] and means that it is not necessary to engage in undue speculation in the counterfactual by attempting to assess every potential hypothetical permutation of the four Acquisitions.

17. We considered the future of the Acquired Businesses absent the Acquisitions. In each case, we concluded that the most likely counterfactual is the pre-merger conditions, ie for the foreseeable future, each of them would have continued to operate in the market as they did pre-Acquisitions.

18. We next considered what would have happened to FRS absent the Acquisitions. Bauer told us that FRS would be expected to exit the market. It said that the Acquired Businesses would have been likely to be sold relatively quickly in the absence of the Acquisitions, and that likely purchasers would have then taken representation away from FRS. Bauer also argued that even if this had not happened FRS would have ceased to be profitable in the short to medium term, due to station loss and declining revenues, and that it could not compete effectively for national advertising, and so would have exited the market.

19. FRS has lost some of its client stations, and [✂]% of its listener reach from 2015 to 2018, and [✂]% of its revenue from 2016 to 2018. Some of its client radio stations have sought representation elsewhere: Quidem has agreed a representation deal with Global, and [✂] with Bauer. We were told that FRS stations achieve a far lower share of national advertising revenues than their share of radio listening. In part, FRS is disadvantaged because of its relatively small size and its stations are of disparate identity and limited geographic coverage, meaning it is relatively less attractive to national advertisers compared to Bauer and Global.

20. However, we noted that FRS is currently profitable, and its pricing is stable.

21. As set out in paragraph 17, we considered that the Acquired Businesses would not have been sold in the foreseeable future in the counterfactual. We also considered they would have continued to use FRS as their national advertising representative for the foreseeable future. Even if the Acquired

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[11] CC2 Revised, paragraph 4.3.6: […] '*the* [CMA] *will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary for the* [CMA] *to make finely balanced judgements about what is and what is not the counterfactual.*'

Businesses were sold, it does not follow that they would have left FRS unless the acquirer had its own national advertising representation service in house. In our view, the most likely prospective acquirers would normally be expected to be Bauer or Global. Given the existing size and market share of Bauer and Global, any significant acquisition of radio stations in the UK would be likely to qualify as a relevant merger situation (within the meaning of the Act) and could give rise to the likelihood of an SLC. Accordingly, whilst we cannot anticipate the outcome of such an investigation, it is not possible for us to form an expectation that such an acquisition would be cleared such that it would be sufficiently certain to be able to be considered as the relevant counterfactual.[12]

22. Most of FRS' client stations, apart from the Acquired Businesses, are small, so we consider there would be no substantial impact on FRS' profitability if a small number of individual stations left. In addition, while most of FRS' costs are fixed, we found some evidence of possible potential cost savings which might partly offset any substantial decline in turnover.

23. Consequently, we found that FRS is not a failing firm.[13] At least in the foreseeable future of the counterfactual, we concluded that FRS would have remained active providing national advertising sales representation to radio stations.

24. We therefore concluded that absent the Acquisitions, the most likely counterfactual is that FRS would continue as an independent business owned by UKRD and Wireless, operating on the same basis as pre-merger.

Competitive effects of the Acquisitions

25. To evaluate the competitive effects of the Acquisitions, we first defined the relevant markets in which we are considering these effects. We then assessed the possible competitive effects of the Acquisitions with reference to four theories of harm,[14] which we address in turn:

   (a) horizontal unilateral effects in the supply of representation for national advertising to independent radio stations;

   (b) horizontal unilateral effects in the supply of national advertising;

[12] We acknowledge that there are smaller radio stations and groups of stations currently with FRS that may not raise the same level of concerns if acquired by Bauer or Global. However, such stations would not represent a significant proportion of FRS' revenues and so are unlikely to affect its ability to continue to operate in the longer term.
[13] See *CC2 Revised* paragraphs 4.3.8-4.3.18.
[14] As set out in our issues statement and issues statement addendum.

(c) vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house; and

(d) horizontal unilateral effects in the supply of local radio advertising.

Market definition

26. We have assessed the effects of the Acquisitions with regard to the following relevant markets:

(a) The supply of radio advertising in:

(i) Local markets (corresponding to the transmission areas of analogue radio stations by individual transmitters or combinations of transmitters and also combinations of co-owned stations); and

(ii) The national market; and

(b) The supply of representation for national advertising to radio stations in the UK.

27. Bauer told us that radio advertising is part of a wider audio advertising market, and that radio was in competition with a variety of other media for advertising revenues, and in particular that radio is competing heavily for advertising spend with digital platforms such as Facebook and Google.

28. We found that while there is widespread use of alternatives to radio advertising, customers do not see other forms of advertising as close alternatives. We also found evidence of advertisers moving spending to other forms of media, particularly digital, but we have not received evidence that this is in response to pricing changes which would indicate that they are in the same market.

29. There was little direct evidence of a competitive constraint, sufficient to mean that non-radio advertising should be included in the same market. Therefore, we concluded that the product market is radio advertising. Nonetheless we recognised that non-radio advertising can form an out-of-market constraint, given that it is a readily available and widely used alternative to radio advertising. We have therefore taken account of this out-of-market constraint within our competitive assessments and given it appropriate weight where relevant.

30. We found that there is a market for representation services, ie representing independent radio stations to national advertisers and large media buying agencies. Independent radio stations contract with a sales house (such as

FRS or the large radio groups, ie Bauer and Global, who represent themselves in-house and who could offer representation to independent radio stations) to book national advertising in exchange for a commission. Based on the evidence we received from independent radio stations, we found that neither self-supply or other options, such as digital exchanges, were part of this market.

Horizontal unilateral effects in the supply of representation for national advertising to independent radio stations

31. This theory of harm relates to the possibility that the Acquisitions could result in an SLC in the representation for national advertising to independent radio stations, due to (1) the possibility of the Acquisitions together leading to FRS being weakened or becoming economically unviable due to the loss of a large proportion of its customer base (ie those stations acquired by Bauer), and (2) Bauer acquiring a 50% share in FRS as part of the UKRD Acquisition and therefore the ability to exercise material influence over FRS.

32. At the moment, FRS is the only sales house providing independent radio stations (ie those without a brand and content licensing agreement with a large radio group) with representation to national advertisers and media buying agencies. Together, the stations forming part of the Acquired Businesses currently account for the majority of FRS' business: [✂]% of its revenue and [✂]% of its retained commission. Our analysis is that FRS would be significantly loss-making without the commission revenue it receives from these businesses, even allowing for some possible potential cost savings. Therefore, we expect that FRS would be closed by its owners Bauer and Wireless post-Acquisitions.

33. Independent radio stations would then no longer be able to secure representation from their currently preferred option of FRS and would instead only have the options of seeking representation from Bauer or Global. No other potential suppliers are apparent. We have also discounted any possibility of entry by a new entity representing independent radio stations, given that it would face the same business challenge as FRS post the Acquisitions.

34. Bauer has provided representation in the past, but last did so in 2016 and appears to have declined other opportunities to do so. There is also some evidence that Bauer has been perceived as a competitor by FRS. We concluded that prior to the Acquisitions, Bauer was at least perceived as a potential competitor to FRS; although the constraint it exercised was limited because of its past preference to acquire stations rather than represent them.

35. We found no direct evidence on Bauer's likely position absent the Acquisitions and so explored Bauer's ability and incentive to provide representation.

36. In terms of Bauer's ability to provide representation, we found that Bauer does not appear to face any significant barrier to starting to offer representation to independent radio groups and could quickly and at little cost compete to provide representation. Further, we found that potential customers would be sufficiently open to Bauer as a supplier for it to be able to compete. As a result, we concluded that Bauer would have the ability to compete to provide representation.

37. Bauer submitted that while it would have the incentive to represent independent radio stations following the Acquisitions this was only as a result of the Acquisitions. However, we concluded that this was not the case as absent the Acquisitions Bauer would still have an incentive to increase its commercial share of listening and representation would contribute to this goal. [✂]. As such, we concluded that Bauer would have the incentive to represent independent radio groups absent the Acquisitions.

38. Therefore, we concluded that while Bauer does not currently represent independent stations, absent the Acquisitions it would have the ability and incentive to do so. As such, we concluded that absent the Acquisitions Bauer would have been a credible and growing competitor to FRS.

39. We heard from Global that it was only interested in representing stations who would enter into a brand and content licensing agreement with it, and then only in areas where its brands were not already present. However, many of the independent stations told us they would be unwilling to do this as it would mean surrendering their own identity and programming. Therefore, for many independent FRS stations, Global is unlikely to be an attractive or possible option.

40. Consequently, absent the Acquisitions, the main remaining representation option for some stations would be Bauer. The risk arises from this that the terms of representation or quality of service offered could deteriorate in the absence of competition from alternatives.

41. We also considered the effect of the UKRD Acquisition alone. This Acquisition gives Bauer a 50% shareholding in and material influence over FRS. Bauer may be able to take advantage of this to further its intention to represent independent radio stations currently represented by FRS. As a result, Bauer would have the ability to materially influence, and impede, FRS' corporate and strategic decision-making, ultimately weaken FRS and eliminate it as an independent competitor in the market.

42. By removing the principal route of choice for independent radio stations to sell advertising slots to purchasers of national advertising, the Acquisitions would reduce the number of separate options for independent stations from three to two. Furthermore, one of the remaining options, Global, appears more limited because it is unlikely to wish to serve some stations and other stations are unlikely to want to accept its branding and content conditions. In consequence, customers for representation, ie independent radio stations, could be harmed through higher commission rates and/or the worsening of other terms. We also found that the impact is substantial for the following reasons: the independent radio stations told us that revenues from national advertising are very important to their financial health; the existing preferred option of radio stations is removed; the number of possible suppliers falls from three to two; and all the residual-FRS independent stations across the UK could be affected; and because this will apply to stations across the UK.

43. Subject to any countervailing factors, we therefore concluded that the Acquisitions, as a result of each of: (1) Bauer's acquisition of the ability to exercise material influence over FRS; and (2) its acquisition of a large proportion of FRS' customers (by share of business), have resulted, or may be expected to result, in an SLC in the market for the supply of representation for national advertising to independent radio stations in the UK.

Horizontal unilateral effects in the supply of national advertising

44. We considered whether the Acquisitions would result in a lessening of competition in the supply of national advertising, arising as a result of the loss of competition between Bauer and FRS.

45. Bauer submitted that FRS was at best a fringe player in the supply of national advertising due to its limited audience share, reach and geographic coverage, and that it is used by media buying agencies in situations where Bauer or Global cannot act as a substitute, such as to reach particular geographic audiences covered by FRS stations.

46. On the basis of evidence, including the views of media buying agencies, price and sales comparisons and Bauer's internal documents, we found that FRS imposes only a limited constraint on Bauer in respect of national advertising. While FRS told us it viewed Bauer as one of its major competitors, third-party views (including media buying agencies and advertisers who used FRS) and other evidence did not tend to support this. We found no evidence of substitution between them based on pricing, and no significant concerns were expressed by media buying agencies or advertisers.

47. We concluded that the Acquisitions have not created and may not be expected to create an SLC in the provision of national advertising.

Vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house

48. We also considered whether, if FRS exited the market, Bauer might have the ability and incentive to foreclose (ie refuse to represent) independent radio stations for national and contracted advertising, and if so whether this would result in SLCs in local advertising markets.

49. We considered the balance of incentives for Bauer to foreclose the residual FRS stations. The potential benefits include: the diversion of national advertising from the residual FRS stations to Bauer; the diversion of local advertising from them to Bauer; and the savings in cost for representing advertising for the residual FRS stations. The costs of foreclosure include the foregone commission on national advertising if Bauer did represent the residual FRS stations, and the foregone incremental benefit that Bauer might achieve in renegotiating national advertising deals and gaining additional advertising based on the additional listener share and coverage it would have from also representing the residual FRS stations. Bauer also told us foreclosure could risk its rivals buying these stations.

50. We reviewed Bauer’s estimates of the costs and benefits of a foreclosure strategy and undertook our own analysis. There are large margins of uncertainty in the quantification of substantive parts of this evaluation, but we found that the range of potential costs of foreclosure and the potential benefits are likely to be broadly similar. However, significant parts of the benefits of representation (ie the commission stream from representing advertising) are likely to be more certain and immediate compared to uncertain and speculative benefits from foreclosing the independent residual FRS stations as a whole. This indicates that Bauer would be unlikely to have the incentive to engage in total foreclosure of the residual FRS radio stations as a whole.

51. Therefore, we concluded that the Acquisitions have not created and may not be expected to create an SLC through the total foreclosure of the residual FRS stations.

Horizontal unilateral effects in the supply of local radio advertising

52. This theory of harm relates to the possibility that the Acquisitions may result in an SLC because of a loss of competition in local radio advertising between radio stations in local areas where the Parties overlap. Following on from

areas of concern identified in the CMA's phase 1 investigation,[15] we examined three local areas:

- *(a)* In the West Midlands with regard to the overlaps between Wireless's Signal 107 and Bauer's Free Radio FM (Birmingham & Black Country) and Free Radio FM (Shropshire), especially in Wolverhampton and Shropshire;
- *(b)* In Yorkshire with regard to the overlaps between Lincs' Trax FM, Dearne FM, and Rother FM and Bauer's Hallam FM; and
- *(c)* In the West of England with regard to the overlaps between Celador's Sam FM and The Breeze (South West) and Bauer's Kiss West.

53. Horizontal unilateral effects are more likely when the merging parties are close competitors. To assess how closely the Parties' local radio stations compete in the local areas of potential concern, we considered the following:

- *(a)* Their shares of supply both in terms of listener hours and local advertising revenue.
- *(b)* Geographic coverage, particularly the extent to which radio stations' geographic broadcast areas overlap.
- *(c)* Whether there are other relevant differences between the stations' offerings, for example in terms of demographics, local content and pricing.
- *(d)* Whether local advertisers regarded these stations as being close alternatives, including considering evidence of past switching.
- *(e)* The availability and importance of competitors; both alternative radio stations and local non-radio advertising options.

Overlaps in the West Midlands

54. In the West Midlands, we considered a potential loss of competition between Bauer's Free Radio FM and Wireless's Signal 107. In particular, we examined the overlap of the Parties' transmitters in Shropshire and Wolverhampton.

55. Regarding the Parties' overlapping transmitters in the Wolverhampton area, we found that there are sufficient differences between the Parties' offerings in Wolverhampton, particularly in terms of the geographic area covered (and the related differences in the advertising options provided by the two stations), to

[15] CMA, Decisions to refer, 30 August 2019.

mean that at present they compete with each other to only a limited degree and to some extent they will remain constrained by non-radio advertising.

56. As such, we concluded that the Wireless Acquisition has not resulted, and may not be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.

57. In terms of the Parties' overlap in Shropshire, we found that competition may be reduced as a result of the Wireless Acquisition. In particular, the Parties' offerings in Shropshire overlap significantly and are the only radio options for customers wishing to specifically target the area. However, although there may be some lessening of competition, we considered that competition between the Parties in Shropshire is likely to be more limited than in the Wolverhampton area because of the limited use of the combination of Signal 107's Shrewsbury and Telford transmitters in comparison to Free Radio (Shropshire) and the absence of any concerns relating to Shropshire from local advertisers.

58. We found that the Wireless Acquisition did not create nor was it expected to create an SLC in the supply of local advertising in the Shropshire area.

Overlaps in Yorkshire

59. In Yorkshire, we considered a potential loss of competition between Bauer's Hallam FM and Lincs' Trax FM, Dearne FM and Rother FM. In particular, we considered the overlap between the combination of the Lincs stations and Hallam FM.

60. We found that there is limited competition between these options because of the limited use of the Lincs Stations; differences in their offerings; low levels of customer concern and switching; and other competitive constraints from radio and non-radio options.

61. We found that the Lincs Acquisition did not create nor was it expected to create an SLC in the supply of local advertising in Yorkshire.

Overlaps in West of England

62. Kiss West covers a large area across South Wales and South West England (in Somerset, Avon, Wiltshire), whereas Sam FM serves the Bristol area alone, and The Breeze covers Bristol, Weston-Super-Mare, Bath and Warminster areas.

63. We found that competition between Bauer's Kiss West and the Celador stations is limited due to Kiss West's larger broadcast area limiting it as a local

option, differences in listener demographics, low levels of customer concern and other competitive constraints from radio and non-radio options.

64. We found that the Celador Acquisition did not create nor was it expected to create an SLC in the supply of local advertising in the West of England.

Countervailing factors

65. We considered whether entry and expansion could provide relevant constraints in relation to our theories of harm. Given the likely small scale of opportunities for representation following the loss of the stations forming part of the Acquired Businesses, we do not see that there is any likelihood of a new entrant into representation for national advertising to independent radio stations being able to operate profitably.

66. We also considered whether large-scale new entry into radio broadcasting could allow the entrant to establish itself as a significant competitor in national radio advertising, and so be able to offer representation services to other stations. However, in the absence of new FM licences or national multiplex capacity, and because of limited availability of local multiplex capacity (and that we have not seen indications that digital-only stations are likely to attract significant listenership in the short-term), we do not consider this to be likely.

67. We concluded that there were no countervailing factors that would prevent the identified SLC from arising.

Findings on SLC

68. We concluded that the Acquisitions, as a result of each of: (1) Bauer's acquisition of the ability to exercise material influence over FRS; and (2) its acquisition of a large proportion of FRS' customers (by share of business), have resulted, or may be expected to result, in an SLC in the market for the supply of representation for national advertising to independent radio stations in the UK.

Remedies

69. Having concluded that the Merger has resulted, or may be expected to result, in an SLC, we considered, as required by the Act, whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effects that may be expected to result from the SLC and, if so, what action should be taken.

70. In deciding on the appropriate remedy, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then

select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.

71. We identified two possible remedies to address the SLC in the market for the supply of representation for national advertising to independent radio stations: Full Divestiture, ie a structural remedy involving divestment of Bauer's 50% share in FRS along with the four Acquired Businesses (in order to provide sufficient scale of the customer base to ensure FRS's long-term viability); or a behavioural remedy requiring Bauer to provide representation services to independent radio stations on at least the same or better terms than customers currently have with FRS.

72. However, we recognised in relation to the assessment of remedies that there were a number of very unusual aspects in this case:

(a) the SLC arose from the combined effect of the four Acquisitions;

(b) these four Acquisitions represented a relatively disparate, non-contiguous set of radio assets that could not reasonably be said to represent a stand-alone business unit;

(c) at the heart of our concerns is the loss of FRS as an independent source of representation for independent commercial radio stations. The 50% shareholding in FRS acquired as part of these Acquisitions is only a small component of the value of the Acquisitions; and,

(d) the Acquisitions resulted in Bauer acquiring only 50% of FRS rather than the whole of that business.

73. We found that a Full Divestiture to a single purchaser could, at least in principle, remedy the SLC. We also found that it is likely that Bauer would be able to find a purchaser willing to purchase the Acquired Businesses. However, we found that the very unusual aspects in this case were highly relevant and raised risks materially higher than would normally be expected of full divestiture in a merger investigation.

74. A particular source of risk related to the inherent uncertainty regarding the incentives, likely appetite and strategic focus of any purchaser in relation to maintaining FRS as an active competitor to represent independent stations following any divestiture and the diverse set of radio stations which would make up the Full Divestiture package. As a consequence, we do not have the usual level of certainty that a structural remedy will necessarily be effective in

addressing at source the loss of rivalry resulting from the Acquisitions, [16] rather there is material uncertainty and abnormally high risks involved. While these risks could potentially be mitigated to some extent through our oversight of the divestiture process and our assessment of purchaser suitability, there remains a material and ultimately unmanageable residual risk that Full Divestment to a single purchaser would not be feasible to comprehensively remedy the SLC and the adverse effects.

75. Behavioural remedies are ongoing measures that are designed to regulate or constrain the behaviour of merger parties. However, unlike structural remedies, behavioural remedies do not normally address the source of an SLC directly, and additionally raise further risks, particularly if they are required for an extended period. In our Guidance,[17] we state that 'we will generally only use behavioural remedies as the primary source of remedial action in a Phase 2 merger investigation where:

(a) structural remedies are not feasible;

(b) the SLC is expected to have a short duration; or

(c) behavioural measures will preserve substantial Relevant Customer Benefits (RCBs) that would be largely removed by structural measures.'

76. Given our concerns that there is a material, and ultimately unmanageable residual risk that Full Divestment to a single purchaser would not be feasible to comprehensively remedy the SLC, we considered whether a behavioural remedy would be more effective at addressing the SLC or its adverse effects.

77. Bauer submitted a proposal with the following features:

(a) Provision of national advertising sales representation to all Third-Party Stations receiving national advertising sales representation from FRS as at the date of acceptance of undertakings.

(b) Representation on Third-Party Stations' existing terms as agreed with FRS and in effect as at 31 March 2019.[18] These terms may be amended or replaced at any time by mutual agreement with the Third-Party Stations.

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[16] Merger remedies guidance CMA87, paragraph 3.38.
[17] Merger remedies guidance CMA87, paragraphs 7.1 to 7.3.
[18] This is the date on which Bauer completed its acquisition of UKRD which included the 50% shareholding in FRS.

(c) A minimum revenue guarantee (MRG) guaranteeing Third-Party stations a minimum revenue from Bauer based on their existing FRS revenue. This would be subject to adjustments, which could increase or decrease the MRG, to take account of changes in the overall market for national advertising (Market Revenue multiplier[19]) and changes in the individual stations' listening hours (Listening Hours multiplier).[20]

(d) New stations would be represented on terms which were materially equivalent to the terms being offered by Bauer at that point in time to other stations.

(e) A dispute resolution process involving an independent Adjudicator.

(f) Compliance monitoring by a Monitoring Trustee.

(g) Bauer also committed:

(i) to provide a professional sales service and use all reasonable endeavours to promote an awareness of the Third-Party Stations to media buying agencies on the same basis in all material respects as for Bauer's own stations;

(ii) to negotiate and conclude sales contracts on behalf of the Third-Party Stations in good faith and acting in their commercial interests;

(iii) to use reasonable commercial endeavours to negotiate the best price for each sale of national advertising taking account of the marketplace and agreement between Bauer and the Third-Party Stations as to how the advertising is to be sold;

(iv) to promptly notify the Third-Party Stations of any material concerns that it may have regarding the identity of an advertiser or subject matter of a campaign on the same basis as for Bauer's own stations; and

(v) to act in good faith and in a timely fashion in relation to the performance of all of its obligations under the representation agreement and comply with all reasonable instructions and requests of the Third-Party Stations.

78. We identified a small number of outstanding details concerning Bauer's proposal, but these do not concern the core components of the remedy proposal and so we have been able to assess the likely effectiveness of its

[19] The Market Revenue multiplier adjusts the MRG for changes (both up or down) in UK annual national commercial radio revenue [✂].
[20] The Listening Hours multiplier adjusts the MRG for changes (both up or down) in a station's audience. [✂].

proposal, with a high degree of certainty. Subject to a number of further refinements to these proposals, we concluded that this behavioural remedy would be a more targeted and effective remedy than Full Divestiture.

79. There is substantial uncertainty that a Full Divestiture would be effective in addressing at source the loss of rivalry, in light of the highly unusual facts and particular circumstances of this case in which the SLC has arisen. In contrast, given the abnormally high risks associated with Full Divestiture in this case (which could be mitigated only to a limited extent), we concluded that a behavioural remedy including the aspects proposed by Bauer and also elements required by us, would be effective in mitigating the adverse effects of the SLC with a high degree of certainty.

80. Behavioural remedies may create market distortions (distortion risks) that reduce the effectiveness of the remedy and/or increase the effective costs over time. Our view is that, over time, the need for the remedy will reduce and there will be a point at which it is no longer necessary. We concluded that the remedy would become less effective over time and would need to be limited. We have concluded that a time-based sunset clause would be appropriate in this case, after which the remedy would no longer apply. This would also be consistent with our guidance on sunset clauses used in relation to reacquisition or in market investigations (see CMA 3 paragraphs 4.19-4.25). The remedy should therefore have a 10-year sunset clause.

81. Unusually, and on balance, we therefore concluded that a behavioural remedy would be the most appropriate remedy to the adverse effects of the SLC. We recognise that it only addresses the adverse effects of the SLC rather than the SLC itself and therefore does not restore the competitive structure of the market.

82. We also considered whether there are any RCBs that would arise as a result of the Acquisitions but be eliminated as a result of either remedy. Bauer stated that the following RCBs arose as a result of the Acquisitions which are relevant to the CMA's assessment of the SLC:

(a) lower prices for national advertisers;

(b) more efficient purchasing for national advertisers; and

(c) improvements in the quality of the content and distribution of the acquired stations benefitting listeners and advertisers.

83. We found that in each case the evidence provided by Bauer did not demonstrate that the claimed benefits accrued as a result of the creation of the relevant merger situation concerned, or may be expected to accrue within

a reasonable period as a result of the creation of that situation; nor that the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition. In any event, the behavioural remedy preserves the outcomes that Bauer has claimed as RCBs, and therefore do not need to be considered as a cost of the remedy.

84. We also addressed whether the remedy is disproportionate in relation to the SLC and its adverse effects. We concluded that a behavioural remedy is the least onerous effective remedy and is not disproportionate to the SLC or its adverse effects. It is therefore proportionate and effective at mitigating the adverse effects of the SLC.

85. We will seek to implement the behavioural remedy by obtaining Final Undertakings from Bauer. However, if agreement on Final Undertakings is not forthcoming on a timely basis, the CMA will impose a Final Order.

Final Report

1. The Reference

1.1 On 7 August 2019, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisitions by Heinrich Bauer Verlag KG (trading as Bauer Media Group (Bauer)) through subsidiaries, of:

(a) From Celador Entertainment Limited (Celador), 15 local radio stations and associated local FM radio licences (the Celador Acquisition);

(b) From Lincs FM Group Limited (Lincs), nine local radio stations and associated local FM radio licences, an interest in an additional local radio station and associated licences, and interests in the Lincolnshire and Suffolk digital multiplexes (the Lincs Acquisition);

(c) From The Wireless Group Limited (Wireless), 12 local radio stations and associated local FM radio licences, as well as digital multiplexes in Stoke, Swansea and Bradford (the Wireless Acquisition); and

(d) The entire issued share capital of UKRD Group Limited (UKRD) and all of UKRD's assets, namely ten local radio stations and the associated local FM radio licences, interests in local multiplexes, and UKRD's 50% interest in First Radio Sales Limited (FRS) (the UKRD Acquisition);

(together the Acquisitions) for further investigation and report by a group of CMA panel members (the Group).

1.2 The terms of reference are set out in Appendix A and the conduct of inquiry is set out in Appendix B.

1.3 In exercise of its duty under section 35(1) of the Act, the Group must decide:

(a) whether the Acquisitions each constitute a relevant merger situation; and

(b) if so, whether the Acquisitions, together or in isolation, have resulted, or may be expected to result, in an SLC within any market or markets in the United Kingdom for goods or services.

1.4 This document, together with its appendices and glossary, constitutes our final report. Further information, including a non-commercially sensitive version of the Parties' responses to the phase 1 decision and the issues statement, can be found our inquiry webpage.[21]

1.5 Throughout this document we refer to Bauer and the Acquired Businesses collectively as 'the Parties'.

2. Industry background

Introduction

2.1 This section addresses the background to radio broadcasting, concentrating on commercial radio. It sets out the technologies for analogue and digital broadcasting, and categorises the different types of broadcaster: commercial, the BBC, and community radio. It outlines trends in radio listening, including the distribution of listening to different broadcaster types and the growth in digital listening. It then describes the regulation and licensing regime, and looks at the structure of commercial broadcasting and consolidation in the industry. It then sets out how advertising on commercial radio occurs.

Broadcast technologies

2.2 Radio services are broadcast on two principal terrestrial platforms: analogue (AM/FM) and Digital Audio Broadcasting (DAB). Radio programming is also broadcast over the internet (IP or internet protocol, commonly known as 'online' listening) and via digital television distribution systems.

2.3 Analogue services are transmitted via a network of transmission sites across the UK with each station utilising a sub-set of this network. These

[21] Bauer Media Group merger inquiry webpage.

transmission sites are generally owned by a third party with whom the station must negotiate and pay for network access.

2.4 DAB is a digital transmission system whereby one or more analogue audio streams are converted to a digital format and then combined into a single digital stream. This process is called multiplexing. The multiplexed signal is then conveyed to the transmitter sites where it is converted into a digitally encoded frequency. This technology increases the number of stations potentially available to the listener and decreases the bandwidth resource requirement in any given area. A DAB radio is required to receive and decode the multiplexed signal and split out the individual stations. DAB+ is another version of DAB that can carry more stations using less capacity to achieve an equivalent technical quality. The number of radio channels that can be transmitted on a given multiplex depends in part on the type of channel and hence the capacity allocated to each channel transmitted (eg a music station typically requires greater capacity than a talk station).

2.5 Many services broadcast digitally whether on DAB or by internet (online- IP services) are a 'simulcast' of the analogue service, particularly local services. Online-only radio services are unregulated, but their listenership is currently limited, although the large radio groups have launched a number of IP-only stations. The number of digital-only radio stations in the UK is growing, particularly at a national level, as radio station operators look at new ways to reach audiences.[22]

2.6 The Government has stated that it is committed to a digital future for radio.[23] However, no radio station told us that it thought a switchover to a digital-only service is likely in the near future.

Types of provider

2.7 Radio services in the UK are provided by three distinct types of provider: the BBC, commercial radio providers and not for profit community radio operators. Services are provided on a national, regional or local basis by both the BBC and the commercial radio sector, but community radio only operates locally.

2.8 The means of funding and the regulatory framework differ across these three groups. Commercial radio's primary source of revenue is advertising, including sponsorship and promotions. The BBC's primary source of revenue

[22] Eg Bauer operates 14 digital-only stations on local or national DAB multiplexes, including Scala and Kisstory.
[23] The Government has recently initiated a joint review with the radio industry to explore whether the conditions are right for a switchover, or whether further progress needs to be made. Ofcom told us that any switchover will be a matter for Government.

is the licence fee, and community radio is funded mainly through a mixture of advertising revenue and grants.

2.9 Table 1 shows the number of analogue radio services as at March 2019.

Table 1: Analogue radio services March 2019

	AM	*FM*	*AM/FM total*
Local commercial	50	235	285
UK-wide commercial	2	1	3
BBC – UK wide	1	4	5
BBC local and Nations	26	46	46*
Community radio	11	270	281

Source: Ofcom, Media Nations UK 2019 Figure 4.13.
* BBC local and nations AM radio are also broadcast on FM

2.10 The BBC provides UK-wide, national and regional/local radio through a combination of AM and FM services. All of the BBC's national analogue services are simulcast on digital platforms, and the BBC also has six stations that are available on digital only.

2.11 As of March 2019, there were 285 local analogue commercial radio stations in the UK, of which 235 were broadcasting on FM and 50 on AM bands.[24] There were three UK-wide analogue stations (talkSPORT and Absolute Radio on AM, and Classic FM), which also broadcast on digital,[25] and 40 UK-wide commercial digital stations with 447 services broadcast on local DAB multiplexes,[26] many of which are a simulcast version of the analogue station.[27]

2.12 Not for profit community radio stations typically cover a small geographical area with a radius of up to five kilometres and generally on an analogue platform. There are 281 community radio stations on air.[28]

Radio listening and revenues

2.13 UK radio key listening metrics from Ofcom[29] are shown in Table 2.

[24] Ofcom, Media Nations UK 2019.
[25] These stations are also available in England, Scotland and Wales on either the Digital One multiplex or Sound One (national Multiplex).
[26] Ofcom Communication Markets Report 2019.
[27] In total there are 337 stations broadcasting on DAB. Of these, 31 are UK-wide commercial services and 11 are BBC UK-wide stations, source: Ofcom Digital Radio report 2017. Bauer told us some stations are broadcast across a number of local areas to create a quasi-national station.
[28] Ofcom, Media Nations UK 2019.
[29] Ofcom, Media Nations UK 2019.

Table 2: UK radio industry: key metrics

	Q1 2014	*Q1 2015*	*Q1 2016*	*Q1 2017*	*Q1 2018*	*Q1 2019*
Weekly reach of radio (% of population)	90.3%	89.3%	89.3%	89.3%	90.2%	89.4%
Average weekly hours per listener	21.5	21.3	21.0	21.2	20.8	20.9
BBC share of listening (%)	54.9%	54.4%	54.1%	52.8%	51.9%	51.4%
DAB digital radio take-up (adults) (%)	47.9%	49.0%	55.7%	57.9%	63.7%	66.5%
Digital radio listening share (%)	36.6%	39.6%	44.1%	47.2%	50.9%	56.0%

Source: Ofcom, Media Nations UK 2019 Figure 4.1 (based on RAJAR data)

2.14 The overall reach for radio has remained high, with nearly 90% of the population listening to radio each week,[30] and the time spent listening has declined only slightly since 2013. The average radio listener spent 20 hours 54 minutes listening to radio in an average week in Q1 2019.

2.15 Listening on digital equipment (eg DAB and via internet, for example to smart speakers and mobile devices) now accounts for a greater share of listening than analogue radios. In Q1 2019 this increased to 56%, from 51% a year previously (See Table 2). For the national commercial stations, 83% of all listening is through digital platforms. This is up from 62% in 2015, likely to be driven by increases in the number of national commercial stations available on digital. DAB is by far the main digital platform (40.4% share of all listening hours overall), but the largest growth is in listening online, which grew by 20% between Q4 2018 and Q1 2019.[31]

2.16 As shown in Table 2, while BBC radio accounts for the majority of radio listening (51.4%),[32] commercial radio's share and volume of listening are increasing. National commercial listening is growing while local commercial radio listening is in decline.[33]

2.17 Commercial radio revenues are shown in Table 3. Commercial radio revenues were £572 million in 2018, similar to the previous year and substantially up from the unusually low levels achieved in 2013. In 2018, an 11% decline in local advertising was offset by a 5% increase in national advertising, a 7% increase in sponsorship and 18% growth in other relevant turnover (such as revenue from on-air competitions). National advertising revenues (in real terms) increased from £294 million in 2017 to £301 million in 2018, whereas local radio advertising revenue had decreased from £143 million to £129 million.[34] This was despite growth in music streaming and increase in listening to podcasts especially among 15-24 age group. Since 2010, revenues in real

[30] 89.4%-Ofcom, Media Nations UK 2019.
[31] Ofcom, Media Nations UK 2019 page 83.
[32] As well as recorded commercial radio, a small share of listening is accounted for by 'other stations', including stations not measured on RAJAR such as international stations, community radio and commercial stations that do not subscribe to RAJAR.
[33] See Ofcom, Communications Market Report 2017 s3.1.1., Ofcom, Media Nations UK 2019.
[34] Ofcom, Communications Market Report 2019. Figures are adjusted for CPI at 2018 prices.

terms have increased by 7%, but local revenues have fallen by 20% while national revenues have increased by 21%.

Table 3: Commercial radio revenues

£m constant prices adjusted for CPI

Year	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*	*2018*
Commercial sponsorship	109.2	104.0	108.3	101.6	99.5	100.6	107.3	103.3	107.5
Local commercial	161.0	148.0	153.2	151.5	144.0	139.8	141.6	143.2	128.5
National commercial	249.5	249.0	244.3	222.9	276.4	282.8	289.1	294.2	301.4
Total commercial	535.2	517.9	523.7	495.6	542.2	549.0	565.1	570.6	571.7

Source: Ofcom, Communications Market Report – interactive data.

Regulation and licensing

2.18 Commercial analogue and DAB broadcasting services are regulated by Ofcom in accordance with conditions set out in a broadcasting licence.[35] A commercial radio licence allows a station to broadcast to a specific licensed area (the Measured Coverage Area (MCA)) in accordance with a specified format. In practice and for marketing purposes the area within which an adequately audible signal is heard, the Total Survey Area (TSA), will be larger.[36]

2.19 Licences are awarded for a set period of time. Local analogue radio licences are awarded for up to 12 years, after which they are re-advertised.[37] However, if an analogue station also broadcasts on DAB, the licence can be renewed automatically.[38] Local licences may also be renewed automatically for 12 years and then a further 7 years if they broadcast on a relevant local multiplex.[39] Ofcom told us that it does not plan at this time to advertise any new national or local analogue licences for commercial radio.[40]

2.20 The output of every commercial radio station is regulated by a one-page Format document, which is part of the licence. This encapsulates the overall ‘character of the service’ a station is obliged to deliver as a condition of its licence, and also sets out the station’s minimum hours of locally originated

[35] Issued by Ofcom under the Broadcasting Acts 1990 and 1996 and Communications Act 2003.
[36] The quality of analogue radio reception progressively degrades the further it is from the relevant transmitter as the signal strength decreases and it encounters interference from other radio signals.
[37] It is very rare for licences to be surrendered, and if a station is under financial pressure it is likely to be sold to a different owner. Bauer said it was aware of only a single case of a surrendered licence since 2010, and because since that time Ofcom has further simplified station Formats, this has further reduced the likelihood of a licence handback.
[38] Sections 104A and 104B, Broadcasting Act 1990.
[39] When licences that are not to be renewed automatically reach the end of their term, they are generally pre-advertised to assess likely demand. If the incumbent licensee is the only entity to declare an interest, then a ‘fast-track’ re-award process is implemented.
[40] See Summary of Hearing with Ofcom, 11 September 2019.

programming and its local news requirements. We were told that Format documents currently tend to be broadly written and are no longer as prescriptive as they once were.[41] Ofcom can consent to changes to the character of licensed services, but Ofcom must carry out a public consultation if it believes that the proposed change would 'substantially alter the [station's] character of service.'[42]

2.21 DAB broadcasting requires a Digital Sound Programme licence, although these do not have content requirements. Separate licences are also required to operate multiplex services. There are currently three national, six regional and 57 local multiplex licences. On average a DAB multiplex can have up to ten stations and a DAB+ multiplex can have up to 20 stations.[43] Multiplex licences are for an initial duration of 12 years, with a right to renew generally for a further 12 years. Ofcom told us that it intends to roll out small-scale local multiplexes (for small-scale DAB) once the necessary legislation has been approved.[44] Ofcom does not determine which stations should be carried on a multiplex; it is for the multiplex operator to contract with individual service providers.

2.22 Licensees are required to notify Ofcom of proposed changes of control relating to the licence. When control of an analogue radio licence changes Ofcom must carry out a review of the effects or likely effects of the change. Ofcom explained it has no power to block the change of ownership, but it can protect aspects of content currently broadcast, if it is not already specified in the Format document. However, Ofcom explained that in practice this measure is rarely used, in part this is because Formats are very broadly defined.[45]

2.23 Ofcom has a duty to secure that local commercial radio stations provide an appropriate level of programmes including local material and, where such programmes are included in the service, that a suitable proportion of them are locally made.[46] The extent of licence requirements in relation to locally made programmes depends on the licensed Format of the station. Local content can include local news, local information, comment, outside broadcasts, charity involvement, airplay for local musicians, local arts and culture and sports

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[41] See Summary of Hearing with Ofcom, 11 September 2019.
[42] Section 106ZA Broadcasting Act 1990.
[43] Potentially more depending on the programme services carried and the type of content they broadcast. Bauer told us that a single multiplex can carry both DAB and DAB+ services.
[44] See Summary of Hearing with Ofcom, 11 September 2019.
[45] See Summary of Hearing with Ofcom, 11 September 2019.
[46] Section 314, Communications Act 2003. Section 314 defines 'local material' as *material which is of particular interest to those living or working within (or within part of) the area or locality for which the service is provided or to particular communities living or working within that area or locality (or a part of it).*

coverage. Regulatory requirements in relation to localness were relaxed in 2010. Ofcom's localness guidelines were also changed to allow FM local stations to co-locate and request to share all of their programming within areas approved by Ofcom, effectively allowing them to come together to become larger, more viable stations. For example, Global's Heart-branded services are broadcast in 33 licensed areas. Existing regional analogue stations were allowed to share all of their programming (with all local programming requirements removed), in return for providing a version of their programmed service on a national DAB multiplex.[47] In late 2018 the amount of local programming required under a local licence was reduced again from 7 to 3 hours a day on weekdays with no requirement at weekends.[48] In addition, changes were made that enable more programming to be shared between stations and the consolidation of studios into fewer hubs.[49]

2.24 Bauer told us that Ofcom's deregulation of radio recognises the explicit challenges faced by local commercial radio stations, in particular the increased competition for listeners and advertisers and the shift in listening away from local to national radio services. It said that the deregulation is intended to assist in safeguarding their long-term viability, by allowing local stations to reduce the amount of local programming they air, broadening the definition of 'local', and allowing local stations to replace local programming with (higher quality) nationally networked programming.[50]

2.25 Bauer referred to an Ofcom consultation document from June 2018,[51] which states:

> It is now approaching a decade since Ofcom last carried out a review of its regulation of localness on radio. Since then, local analogue radio stations have faced increasing competition for both listeners and advertisers. This competition is coming from music streaming services such as Spotify and Apple Music, as well as from other radio services which are either not regulated (internet radio) or are regulated less than analogue services (DAB and other digital broadcast platforms).

[47] Ofcom considered that such a development could bring competition and choice in national services, a greater range and diversity of content for consumers, and the potential for new investment in programming. When carried on national DAB, these stations' local content would become less of a defining characteristic.
[48] This is the requirement for between the hours of 6am and 7pm if local news is provided at least hourly. If local news is not provided at least hourly there must be a minimum of 6 hours of locally-made programming. https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness.
[49] See https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/radio-broadcasters/localness.
[50] Bauer Response to issues statement paragraph 2.5.
[51] Ofcom Localness of commercial radio: Proposals to amend guidelines 21 June 2018 paragraphs 2.17-2.22 (edited).

> Data from the independent radio audience research organisation RAJAR shows that there has been a been a noticeable shift in listening patterns over the past decade away from local commercial radio stations to national commercial radio. … This is likely to reflect the fact that listeners now have a much greater choice of national radio stations available to them on the DAB platform. Over half of all radio listening is now to digital services (almost three-quarters of which is via DAB) … There is also currently a difference, particularly with regards to 'localness' requirements, between the considerably 'lighter touch' regulation of services broadcast on the DAB platform compared to the regulation of those which are broadcast on analogue (AM and FM) radio.
>
> In their responses to the Government's 2017 consultation on commercial radio deregulation … some of the larger radio station owners asked Government to create a more level playing field between analogue and digital services. Less prescriptive regulation in the analogue sector, they claimed, will enable them to be more flexible and compete more effectively against unregulated music streaming services and internet-only stations.

2.26 This Ofcom consultation document does not specifically refer to competition from non-radio advertising (other than streamed music services). It does indicate that the purpose of deregulation is to improve flexibility and to reduce costs. In its hearing, Ofcom told us that it had undertaken listener research to inform its decision to deregulate localness and found that some aspects of tight regulation of local content were no longer necessary as this was of lesser significance to listeners, and because of increasing competition within radio and from other formats. Ofcom acknowledged that bigger companies are likely to be better placed to take advantage of this through, for example, allowing national radio brands to be delivered locally.[52] Ofcom reported that following these changes the two main commercial radio groups, Global and Bauer, announced additional shared programming across their brands.[53]

2.27 We consider that a possible consequence of the deregulation of localness is that it may facilitate further consolidation of networks, to take advantage of opportunities to reduce costs and share programming (see paragraphs 2.28 to 2.31).

[52] See Summary of Hearing with Ofcom, 11 September 2019.
[53] Ofcom, Media Nations UK 2019, page 78.

Industry structure and consolidation

2.28 There has been consolidation in the local and regional commercial radio sector, with the largest groups being formed as the result of a series of mergers. The two main groups, who have led the consolidation, are Global and Bauer:

(a) Global Media & Entertainment Limited (Global): Global is a media company founded in 2007. In 2008 it acquired GCap Media PLC (itself a merger of Capital Radio and GWR Group in 2004). In 2012 it acquired GMG Radio which also resulted in the divestment of a number of stations to Communicorp (a new entrant from Ireland). It has made further small acquisitions in recent years.[54] It operates radio stations on AM/FM and digital in the UK under the brands Capital, Heart, Classic FM, Smooth, LBC, Radio X and Gold (not all stations are available on all platforms). In the year ended 31 March 2018 it recorded revenues of £388 million with an operating profit of £83 million.

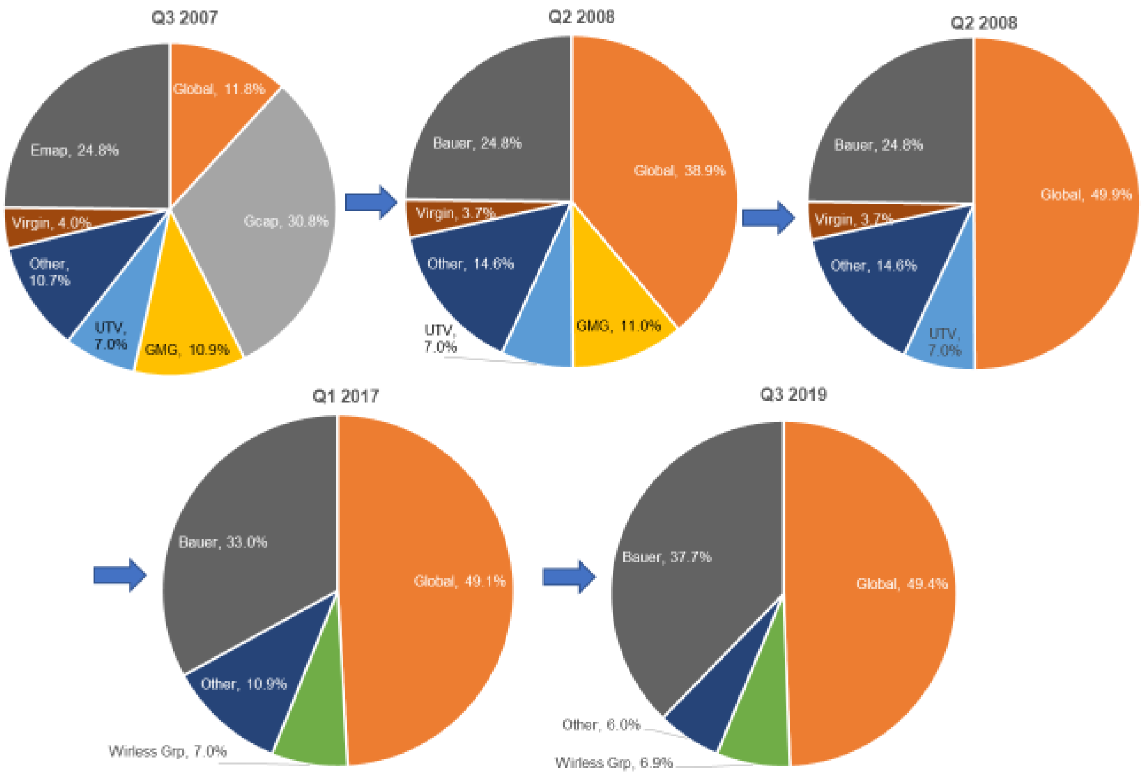
(b) Global also sells national advertising on behalf of Communicorp UK (Communicorp). Although independently owned, Communicorp operates seven regional stations as part of Global's Capital, Heart and Smooth networks under a brand and licensing arrangement. Communicorp also owns one local station, XS Manchester.

(c) Bauer is a multi-media company with interests in print, radio, television and digital operations. It is described in paragraphs 3.3 to 3.8. In the UK Bauer owns and operates a portfolio of commercial radio stations that broadcast locally and nationally under brands including Kiss, Absolute, Magic, Hits and Greatest Hits, and includes Jazz FM and Scala Radio. Bauer purchased Planet Rock in February 2013, this was followed by Absolute Radio at the start of 2014, Orion Media in May 2016 and Jazz FM in August 2018. In the year ended 31 December 2018 Bauer had total revenue of approximately £[✂] in the UK. Its UK commercial radio operation generated revenue of approximately £[✂].

2.29 These acquisitions have led to a consolidation of commercial radio hours into fewer and fewer radio services providers. This is illustrated in Figure 1 based on share of listening hours.

[54] eg The Bay, Lakeland Radio, 2BR and Juice 107.2.

Figure 1: Evolution of UK Commercial Radio Market Shares by Media Owner (2007-2019, based on RAJAR data for listening hours)



Source: CMA from Bauer data

2.30 The final pie-chart in Figure 1 is based on the post-Acquisitions position: it reflects Bauer's acquisitions of Jazz FM and the Acquired Businesses,[55] and recent acquisitions by Global (eg, The Bay, Lakeland Radio, 2BR and Juice 107.2). Bauer explained that it has included within 'Other' smaller operators such as Nation Broadcasting Group, Tindle CI Broadcasting, JACKfm, Quidem, IOW Radio, More Radio, Dee Radio Group and KM Group. The data also includes Communicorp's business within Global's total despite its separate ownership, because it broadcasts under Global's branding (see paragraph 2.28(b)).

2.31 Overall, the industry is now heavily concentrated with Global accounting for 49.4% of commercial radio listening, and Bauer (post-Acquisitions) 37.7%. Bauer also submitted that Global (with Communicorp) wins a disproportionate share of national advertising revenue. It told us that [✂].

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[55] Although during the period of the CMA's inquiry the Acquired Businesses are held and operated separately from Bauer in accordance with the CMA's initial enforcement orders of 1 March 2019 and 12 March 2019.

Advertising on commercial radio

2.32 Advertisers may reach radio audiences in two main ways: by purchasing airtime in commercial breaks or through sales promotion and sponsorship.

Airtime purchasing

2.33 Radio airtime may be bought on a national, regional or local basis. Major advertisers whose requirements include the ability to reach consumers across a wide geographic area are typically represented by a media buying agency. The main media buying groups negotiate terms, usually annually, with the large radio stations' sales houses. We refer to this as 'contracted advertising'.

2.34 The four main media buying groups are Group M, Omnicom, Dentsu Aegis and Publicis, each of which has several media buying agencies. Although they typically negotiate terms with media owners on behalf of all the agencies in the group, in order to leverage their combined buying power, they plan and book campaigns for clients on an individual agency basis according to that client's requirements. As well as these large buying groups, there are many medium and small agencies, some regional and some specialising in particular areas.

2.35 The large media buying groups often enter into share deals with large radio sales houses (ie Global and Bauer). [✂]. Bauer also said that there are volume deals [✂].

2.36 Airtime may be bought on a regional or local basis on behalf of clients who only require coverage in particular regions or who wish to 'upweight' their coverage in particular areas of the country. In the case of major national advertisers, purchasing/booking is through one of the media buying agencies under the terms of a contract. Regional and, more commonly, local advertising campaigns are more likely to be booked directly by an advertiser. Bookings by agencies or clients who have no contract with the radio station are 'non-contracted' sales.

Airtime sales

2.37 Radio airtime may be sold on a local, regional and national basis. Typically, for networks of local stations, local, low-value advertisers are dealt with by the station's local sales staff, whereas higher-value and in particular national advertisers are handled by the station's (or a third-party) sales house.

2.38 The three main commercial sales houses are operated by Global, Bauer and FRS.[56]

(a) Global, in addition to selling national advertising for its in-house stations, sells national advertising on behalf of radio stations that have a brand and content licence agreement with it eg Communicorp (Quidem has also recently agreed such an arrangement).[57] Global also sells national airtime around news bulletins under the Independent Radio News (IRN)/Newslink arrangements on behalf of all UK radio stations subscribed to IRN. The IRN/Newslink sales are attributed proportionately to the radio operators that contribute airtime to IRN.[58]

(b) Bauer sells national advertising for its in-house stations. It currently does not sell national advertising on behalf of other stations, although it has done so in the past (for Orion from 2014 to 2016).

(c) FRS is a sales house that sells national advertising, sponsorship and promotion and digital campaigns on behalf of independent local radio stations. FRS represents 118 local radio stations across the UK.[59] FRS is jointly owned by Bauer (following its acquisition of UKRD) and Wireless. FRS is described in more detail in paragraphs 3.18 to 3.28.

2.39 In all cases the sales house is able to sell all or part of the geographical footprint of the radio stations that it represents. In the case of a sales house representing several local radio stations, it may combine their footprints to offer regional or national coverage.

Sponsorship and promotion

2.40 Sponsorship involves an advertiser associating its brand with a particular feature of the radio station's programming that has some relevance to it. For example, the station's weather forecasts might be sponsored by a holiday company or its traffic news by a motor dealership. Sales promotions may take many forms and, again, are usually related to the product or service being promoted and integrated with the station's programming rather than being

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[56] In addition, Wireless and GTN sell advertising on a national basis. GTN sells radio stations' airtime in exchange for providing traffic, travel and entertainment bulletins to those stations. In practice, the airtime that is sold is adjacent to the bulletins which GTN provides.
[57] Under brand and content licence agreements, independent stations (such as Communicorp's stations) adopt the group's branding (eg broadcasting under Global's Heart or Capital brands), and carry its content, other than as required under localness obligations. The independent station receives national sales representation, but remains responsible for securing its own local advertising.
[58] Under the IRN/Newslink arrangements, stations contribute airtime around news slots which are sold by Global under an airtime agency agreement. That revenue is used to fund the provision of the IRN news service to all local radio stations. Some stations will receive a rebate of airtime revenue.
[59] FRS website, about us, as at 26 November 2019.

inserted in commercial breaks. Typically, sales promotions attempt to involve the listener and encourage participation in, for example, a competition. Terms, including prices, for sponsorship and sales promotions are negotiated individually, on a case by case basis, rather than 'contracted.'

3. The Parties and FRS

3.1 This section sets out some background on the Parties, ie Bauer and the Acquired Businesses.

3.2 The UKRD Acquisition included Bauer purchasing UKRD's 50% interest in FRS. This section also sets out details of FRS and its activities, as background to our assessment of the competitive effects of the Acquisitions.

Bauer

3.3 Heinrich Bauer Verlag KG, trading as Bauer Media Group (Bauer), is a Germany-headquartered media company primarily active in Europe, but also in Russia, the United States and Australasia. It is a privately-owned company employing approximately 12,000 staff.

3.4 In the year ended 31 December 2018, it generated €[✄] in revenue primarily from publishing (mainly from consumer magazines) and audio (mainly from selling inventory on a large portfolio of radio stations it owns and operates), but also from online comparison platforms, television and digital services for SMEs.

3.5 The same year, the UK accounted for approximately [✄]% (£[✄]) of Bauer's global revenue. Bauer is the second largest radio operator and largest consumer magazine publisher, by revenue, in the UK. These two businesses together account for the vast majority of its UK revenue, with Bauer's UK commercial radio operations alone generating revenue of approximately £[✄] in the year ended 31 December 2018.

3.6 Bauer entered the UK commercial radio market in 2008 by acquiring EMAP plc. It has since grown by launching new DAB stations, and also through a series of acquisitions. Notable examples of these include Absolute Radio (2014) and Orion Media (2016). The former increased Bauer's commercial share of listening from 26.2% to 31.1%, while Orion Media added a further 1.9% to Bauer's pre-Acquisitions share of [✄][60] is the second largest in the UK, see Table 5.

[60] [✄].

3.7 Bauer’s UK radio operations, both DAB and analogue, are primarily conducted through Bauer Radio Limited (Bauer Radio), a wholly owned-subsidiary which owns and operates a portfolio of commercial radio stations that broadcast locally and nationally. Bauer Radio operates several networks of radio stations, the largest of which are Kiss, Magic, Absolute Radio and Hits Radio. Kiss, Magic and Absolute Radio are all listener- and trade-facing brands. Hits Radio is a trade-facing brand, with a number of the radio stations that form part of it retaining distinct listener-facing identities. On 30 January 2019, Bauer incorporated Scala Radio LP (renamed Bauer Media Audio LP (Bauer Media Audio) on 11 March 2019), another wholly-owned subsidiary of Bauer which operates Scala Radio, a national DAB radio station.

3.8 Bauer also owns a 30% stake in Sound Digital Limited, one of the two national commercial radio multiplexes licenced by Ofcom, as well as several local commercial radio multiplexes. Bauer additionally owns a 22.3% stake in Independent Radio News (IRN), a news service provider to commercial radio operators.

Celador

3.9 Celador is a UK-headquartered media company with interests in film and television production, TV format licensing, and radio ownership and operation. Prior to the Celador Acquisition, through Celador Radio Broadcasting Limited (Celador Radio), Celador owned 25 local FM radio licences, mainly in the South and East of England as well as a DAB-only station in Ipswich. Some of these licences were amalgamated so as to create 15 local radio stations. The Celador Acquisition was immediately followed by a divestment of four licences (comprising two radio stations) to Nation Broadcasting Limited (Nation), a media company which owns and operates radio stations in the UK (see paragraph 4.6). Celador Radio, and therefore Bauer, consequently retains 21 local FM licences plus the DAB-only licence, comprising 14 local radio stations.

3.10 The UK revenue of Celador's radio station businesses, in the financial year ended 30 September 2018, was approximately £[✄]. Of this total revenue, £[✄] was attributable to the Celador radio stations that have been acquired and retained by Bauer (ie excluding the radio stations Bauer divested to Nation).

Lincs

3.11 Lincs is a UK-headquartered regional media company with interests in radio broadcasting in the Lincolnshire / South Yorkshire area. Lincs does not own or operate a non-radio business. Prior to the Lincs Acquisition, Lincs owned nine local FM radio licences (comprising eight local radio stations) and a DAB-only station in Suffolk, as well as a 40% interest in Ipswich 102 FM. Lincs also owned interests in the Lincolnshire (51%) and Suffolk (33.3%) digital multiplexes. The Lincs Acquisition was immediately followed by a divestment of one FM licence (comprising one station) to Nation (see paragraph 4.2). Lincs, and therefore Bauer, consequently retains eight local FM radio licences plus the DAB-only licence (comprising eight local radio stations), the 40% interest in Ipswich 102 FM, and all of Lincs' multiplex interests.

3.12 The UK revenue of Lincs, in the financial year ended 30 September 2018, was approximately £[✂], of which £[✂] related to the Lincs stations that have been acquired and retained by Bauer (ie excluding the radio station Bauer divested to Nation).

Wireless

3.13 Wireless is a UK media company which is wholly-owned by News Corp UK and Ireland Limited (News UK), itself a subsidiary of the US-headquartered News Corporation. It is primarily active in the UK and Ireland. In addition to commercial radio, Wireless owns and operates a digital services division incorporating Zesty and Tibus. These entities provide a range of services, including cloud hosting and streaming solutions, as well as digital strategy and transformation.

3.14 Prior to the Wireless Acquisition, Wireless' radio business comprised: (i) 32 national and local radio stations across the UK and Ireland (of which Bauer bought 12 local FM licences plus six DAB-only spin-off stations), (ii) local digital multiplexes across the UK (some of which Bauer has bought), (iii) national advertising sales houses in the UK and Ireland (Wireless Sales and Urban Media), (iv) 50% of FRS, and (v) a 3.4% interest in IRN.

3.15 Wireless sold to Bauer 12 local radio stations plus the six DAB-only spin-off stations, as well as digital multiplexes in Stoke, Swansea and Bradford (Wireless Acquired Business). Wireless has retained the following as part of its UK radio business: (i) national stations (Talk Sport 1, Talk Sport 2, Virgin Radio and TalkRadio), (ii) two DAB+ national stations (Virgin Chilled and Virgin Anthems), (iii) one local radio station in Northern Ireland and three in Scotland, and (iv) two local digital multiplex operators (Central Scotland and Aberdeen) and its shareholding in a third local digital multiplex operator (London II).

3.16 The UK revenue of the 12 acquired stations, in the financial year ended 30 June 2018, was approximately £[✂].

UKRD

3.17 UKRD is a commercial radio broadcaster operating solely in the UK. It owns and operates 11 FM radio licences (comprising ten local radio stations) together with two DAB-only spin-off stations. In addition, UKRD operates an internet-only radio service, Encore Radio, featuring songs and news relating to musicals. UKRD has additional interests in three local multiplexes which cover the areas: North Yorkshire; Surrey and North Sussex; and Plymouth and Cornwall. The UK revenue of UKRD in the financial year ended September 2018 was approximately £17.26 million. On a continuing operations basis (ie after disposals unrelated to the Acquisitions) revenue in this period amounted to approximately £[✄].

FRS

3.18 FRS, which is 50% owned by Wireless and 50% owned by UKRD, is a national sales house selling, for a commission, national radio advertising airtime to media buying agencies[61] on behalf of the local radio stations it represents.

3.19 Media buying agencies represent companies seeking to run advertising campaigns, usually on a national or regional basis, using radio, and which are likely to utilise networks of local radio stations. Media buying agencies do not normally negotiate directly with local stations due in part to the complexity this would involve. Sales houses offer a network of radio stations to these agencies.

3.20 FRS currently sells national radio advertising on behalf of 118 local radio stations,[62] including the radio stations forming part of the Acquired Businesses, in exchange for a commission. FRS' retained commission in 2018 was £[✄] and its total revenue was £[✄]. FRS employs 21 people, based in London and Manchester.

3.21 The stations currently represented by FRS are shown in the maps in Figure 2 and Figure 3, with the key to the maps in Figure 4. There is partial geographic coverage of the UK and it does not include all the major conurbations.

3.22 FRS holds an important position within the overall market structure of the commercial radio sector in the UK, as itis the principal supplier of

[61] All of FRS' customers are media buying agencies.
[62] This includes stations owned by two media owners, Quidem and Connect FM, who have since confirmed they have entered into national sales representation agreements with Global. [✄].

representation for national advertising to independent local radio stations.[63] It allows these stations to access national advertising customers, whether as part of a national or regional bundle, or individually.

3.23 Media buying agencies may look to advertise on just one local radio station or several local radio stations at any one time (eg for a store opening), for multiple simultaneous local campaigns, or for regional and national campaigns where the use of local radio is intended to build scale in terms of the audience reached. Of FRS' retained commission in 2018:

(a) [✂]% were 'national' bookings, that is, bookings on all FRS stations.[64]

(b) [✂]% were 'regional' bookings, that is, bookings on one or more of FRS' regional groupings of radio stations, but fewer than all stations.

(c) [✂]% were 'single station' bookings, that is bookings for individual or groups of stations, which are not in either category above.

3.24 FRS enters into rolling [✂] contracts with radio stations to sell airtime and S&P slots on their behalf to media buying agencies. Commission rates paid by the stations represented by FRS [✂].

3.25 On the other side of its market, FRS typically enters into negotiations with media buying agencies every [✂]. These negotiations determine the trading rate (ie how much media buying agencies pay per minute of airtime). [✂].

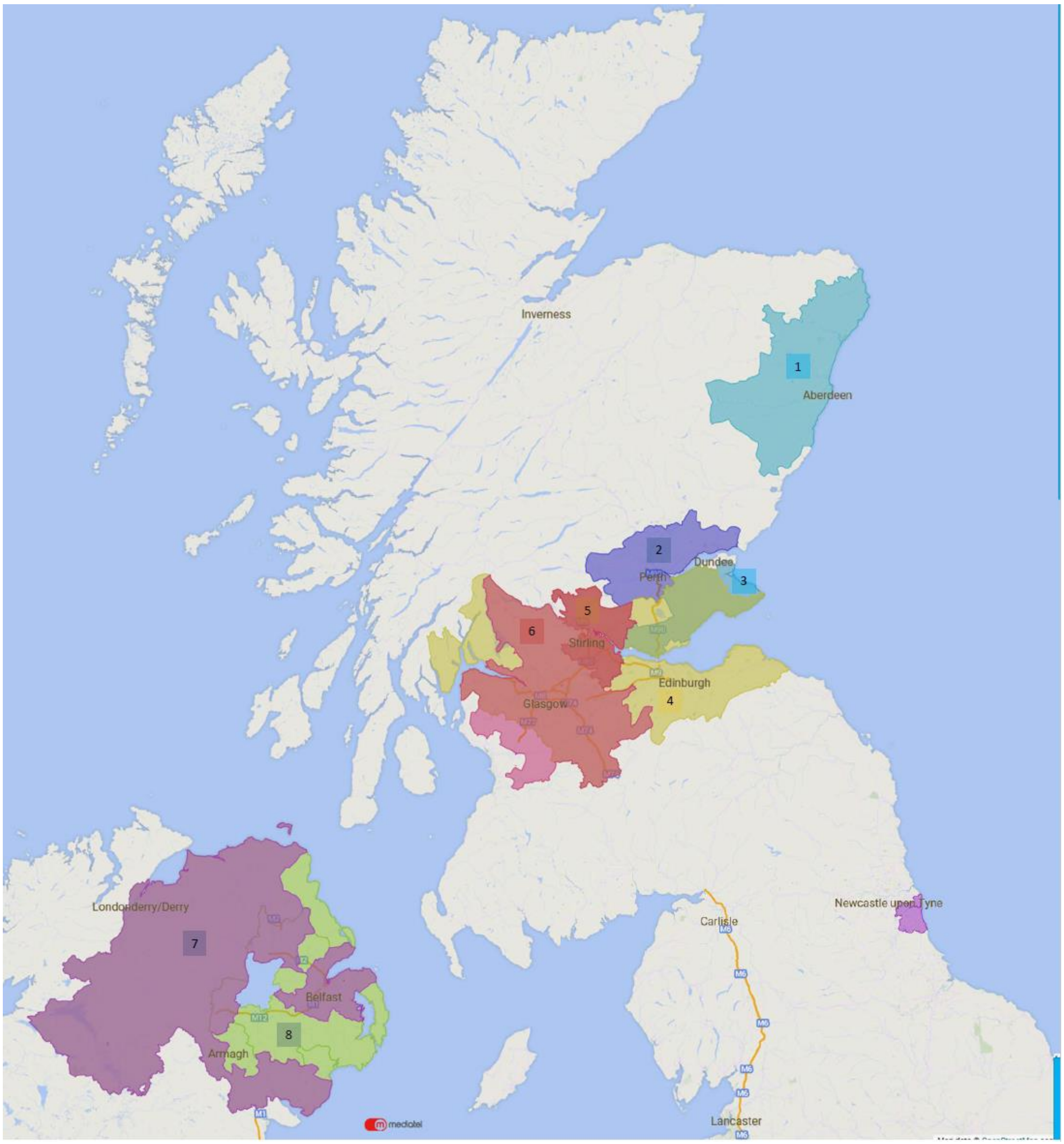
3.26 FRS trades with a large number of media buying agencies. Between 1 April 2018 and 1 April 2019, [✂].

3.27 Bauer told the CMA that its intention was to represent the Acquired Businesses and, to the extent that they want to be represented by Bauer, any other third party station currently represented by FRS. [✂]. Any station represented by Bauer would no longer be represented by FRS

3.28 FRS' geographic coverage, if the Acquired Businesses [✂] are excluded, is shown in Figures 5 and 6 with the key in Figure 7.

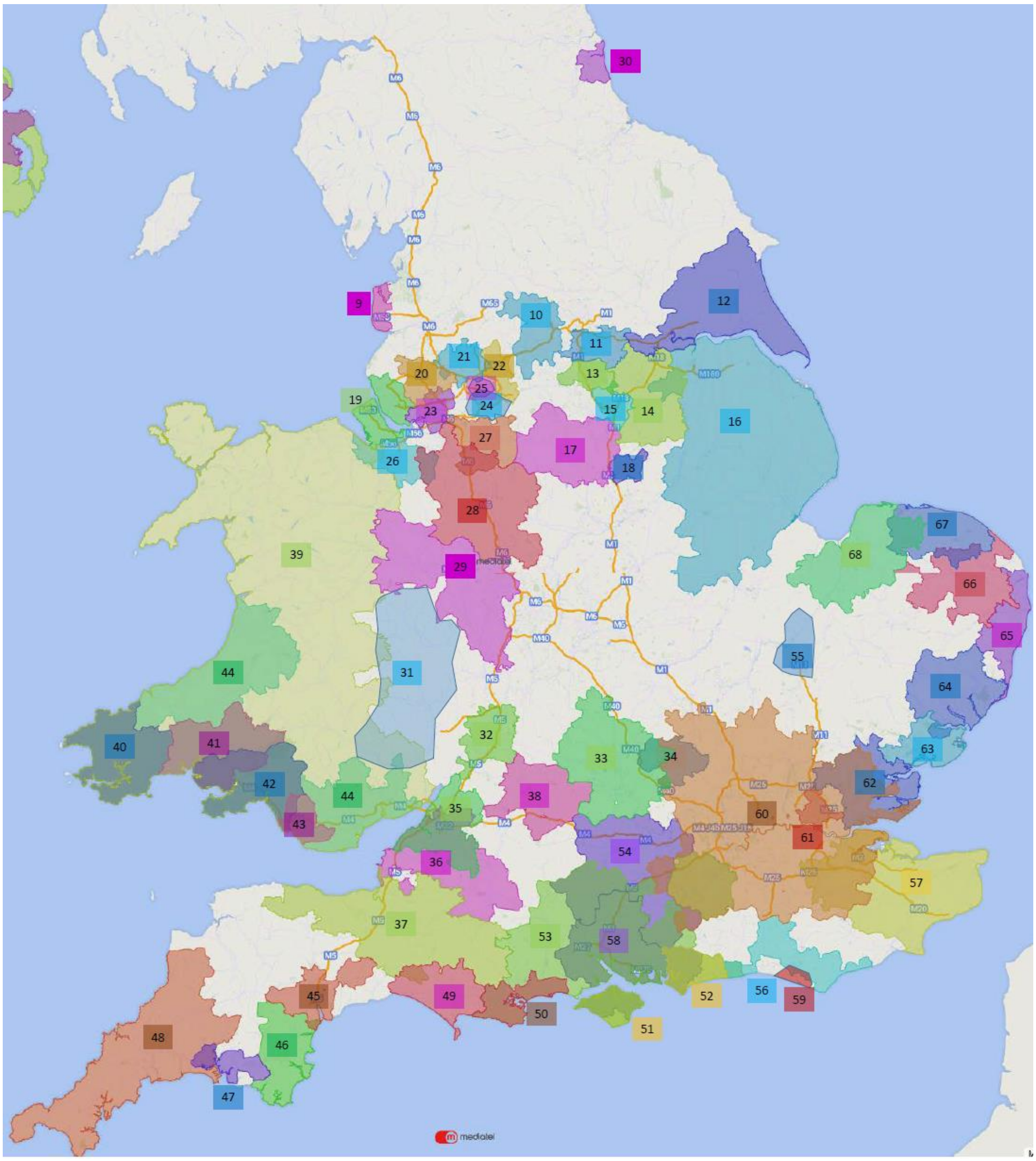
[63] Prior to the Acquisitions, FRS' joint owners, UKRD and Wireless, do operate radio stations. Global and Bauer have also provided or currently provide representation for local radio stations. However, both also operate their own local radio businesses.
[64] We note that this is not comprehensive national coverage.

Figure 2: Map of FRS' current coverage – Scotland, Northern Ireland and North East England



Source: Bauer

Figure 3: Map of FRS' current coverage – England and Wales



Source: Bauer

Figure 4: Key for Figure 2 and Figure 3

1 Original 106 (Aberdeen)
2 Wave (Dundee & Perth)
3 Kingdom (Fife)
4 Scottish Sun Hits, 80s and Greatest Hits (Central Scotland)
5 Central FM (Stirling)
6 Nation Radio Scotland (Glasgow)
7 Q Radio (Northern Ireland)
8 U105 (whole of Northern Ireland)
9 Radio Wave (Blackpool) - Wireless
10 Pulse 1, Pulse 2, Pulse 80s, Pulse Total Access (Bradford) - Wireless
11 Ridings FM (Wakefield) – Lincs FM
12 KCFM (Hull) - Nation
13 Dearne FM (Barnsley) – Lincs FM
14 Trax FM (Doncaster & Bassetlaw) – Lincs FM
15 Rother FM (Rotherham) – Lincs FM
16 Lincs FM (Lincolnshire) inc Compass (Grimsby) & Rutland – Lincs FM
17 Peak 107 (Chesterfield) - Wireless
18 Radio Mansfield (Mansfield - Independent
19 Love 80s (Liverpool) – Dee Radio Group
20 Wish FM (Wigan) - Wireless
21 Tower FM (Bolton) - Wireless
22 Revolution (Oldham) - Independent
23 Wire FM (Warrington) - Wireless
24 Imagine FM (Stockport) – Helius Media
25 Gaydio (Manchester) - Independent
26 Dee 106.3 (Chester) – Dee Radio Group
27 Silk 106.9 (Macclesfield) – Dee Radio Group
28 Signal 1, Signal 2, Signal 80s, Signal Total Access (Stoke) - Wireless
29 Signal 107 (Wolverhampton, Shropshire) - Wireless
30 Sun FM (Sunderland) - Nation
31 Sunshine Radio (Hereford, Monmouth & S Shrops) – Murfin
32 The Breeze (Cheltenham) - Celador
33 Jack, Jack 2, Jack 3 (Oxford) – Oxis Media
34 Mix 96 (Aylesbury) - UKRD
35 Sam FM (Bristol) - Celador
36 The Breeze SW (Bristol, Weston, Bath, Warminster) - Celador
37 The Breeze (Yeovil, Shaftesbury, Bridgwater) - Celador
38 Sam FM (Swindon) - Celador
39 Dragon FM (Wales) - Nation
40 Radio Pembrokeshire - Nation
41 Radio Carmarthenshire - Nation
42 Swansea Bay (Swansea) – Nation
Swansea Sound, Wave, Wave 80s,
Wave Tot Acc (Swansea) - Wireless
43 Bridge FM (Bridgend) - Nation
44 Nation Radio (South Wales) - Nation
45 Radio Exe (Exeter) - Independent
46 The Breeze S Devon (Torbay) - Celador
47 Radio Plymouth (Plymouth) - Independent
48 Pirate FM (Cornwall) - UKRD
49 Wessex FM (Weymouth) - UKRD
50 Fire Radio (Bournemouth) - Celador
51 IOW Radio (Isle of Wight) – Media Sound Holdings
52 Spirit FM (Chichester) – UKRD
53 Sam FM (Solent) – Nation
54 The Breeze (Thames Valley) - Celador
55 Star Radio (Cambridge & Ely) - Independent
56 More Radio (Sussex) – Media Sound Holdings
57 KMFM (Kent) – Iliffe Media
58 The Breeze (Solent) – Nation
59 Gaydio (Brighton) – Independent
60 Chris Country (London) – Independent
Mi-Soul (London) – Independent
Nation Radio (London) – Nation
Gaydio (London) – Independent
Spectrum (London) - Spectrum
61 Time 107.5 (Romford) – Lyca Media
62 Radio Essex (Essex) – Adventure Radio
63 Dream 100 (Tendring) - Celador
64 Town 102 (Ipswich) – Celador
Ipswich 102 (Ipswich) – Lincs/Nation/Folder
65 The Beach (Gt Yarmouth) - Celador
66 Radio Norwich (Norwich) - Celador
67 N Norfolk Radio (N Norfolk) - Celador
68 KLFM (Kings Lynn) - Celador

Not shown:
Island FM (Jersey) – Tindle Radio
Channel 103 (Guernsey) – Tindle Radio
3FM (Isle of Man) - Independent

Source: Bauer

Figure 5: Map of FRS’ coverage following the removal of the stations of the Acquired Businesses [✂] – Scotland, Northern Ireland and North East England

[✂]

Source: Bauer

Figure 6: Map of FRS’ coverage following the removal of the stations of the Acquired Businesses [✂] – England and Wales

[✂]

Source: Bauer

Figure 7: Key for Figure 5 and Figure 6

[✂]

Source: Bauer

4. The Acquisitions

4.1 On 31 January 2019, Bauer bought the entire share capital of Celador Radio for £[✂]. Following completion Bauer immediately divested The Breeze (Winchester, Portsmouth and Southampton), along with Sam FM (South Coast), to Nation. Bauer and Nation had agreed for this divestment to be automatically activated upon completion of the Celador Acquisition.

4.2 On 28 February 2019, Bauer acquired the entire share capital of Lincs for £[✂]. Following completion Bauer immediately divested KCFM to Nation. Bauer and Nation had agreed for this divestment to be automatically activated upon completion of the Lincs Acquisition.

4.3 On 28 February 2019, Bauer bought from Wireless 12 local FM radio stations and associated licences, as well as digital multiplexes in Stoke, Swansea and Bradford, for £[✂]. This comprised most of Wireless’s local radio and local multiplex business interests.

4.4 On 31 March 2019, Bauer bought the entire issued share capital of UKRD for £[✂].

4.5 Table 4 lists the radio stations purchased and retained by Bauer (ie excluding the stations sold to Nation, see paragraph 4.6).

Table 4: Radio stations purchased and retained by Bauer through the Acquisitions

UKRD	*Celador*	*Lincs*	*Wireless*
Wessex FM	The Breeze (Solent)	Lincs FM	The Wave (Swansea)
Eagle Radio	Fire Radio	Compass FM	Swansea Sound
KL.FM 96.7	The Breeze (Somerset)	Rutland Radio	Peak FM
Mix 96	The Breeze (Cheltenham)	Trax FM	Wave FM
Minster FM	Sam FM (Swindon)	Dearne FM	Wish FM
Pirate FM	Sam FM (Bristol)	Ridings FM	Wire FM
Yorkshire Coast Radio	The Breeze (Basingstoke & North Hampshire)	Rother FM	Tower FM
Spire FM	The Breeze (South West)		Pulse 1 (Bradford)
Spirit FM	The Breeze (South Devon)		Pulse 2 (Bradford)
Stray FM	The Beach		Signal 107
	North Norfolk Radio		Signal One (Stoke)
	Dream 100		Signal Two (Stoke)
	Radio Norwich		

Source: Bauer.
Note: This table excludes digital-only stations – Bauer acquired an additional ten DAB-only stations and one IP-only station.

4.6 Bauer submitted that it agreed to sell KCFM to Nation in order to eliminate an overlap in the Hull area. Similarly, it sold Sam FM (South Coast) and The Breeze (Winchester, Portsmouth and Southampton) to Nation to eliminate an overlap in the south coast of England. Bauer explained that it wanted to avoid any competition concerns being raised by the CMA because of these overlaps, and considered that Nation, as an experienced operator of local radio stations, would be a credible and effective local competitor in respect of any stations that it acquired.

Agreements with [✂]

4.7 [✂].

4.8 [✂].

Rationale for the acquisitions

4.9 Bauer submitted that it had been considering the Acquisitions in the radio sector [✂].

4.10 This strategy is reflected in Bauer's submitted rationale and investment case for the Acquisitions where it stated that:

(a) [✂].

(b) The Acquisitions enable Bauer to compete more effectively with Global. [✂].

(c) [✂].

4.11 Bauer told us that its core rationale is to integrate the stations forming part of the Acquired Businesses into the Bauer station network, while also enhancing their appeal to listeners and therefore to advertising customers. This would in turn enable Bauer to compete more effectively with Global. Bauer expects the four Acquisitions collectively to immediately increase Bauer's national share of commercial listening by [✂]%. Bauer's share of listening [✂] would then stand at [✂]% (see Table 5).

4.12 [✂]. Bauer considers this necessary to increase its share of national radio advertising revenue [✂].[65] [✂]. In addition, through the Celador Acquisition in particular, Bauer will significantly increase its reach in areas, like the south of England, where its reach had been considerably lower than Global's.

4.13 Bauer told us by completing the four Acquisitions in very close succession, [✂].

4.14 Bauer told us that following the Acquisitions, it plans to increase the audience of the stations forming part of the Acquired Businesses (both in terms of an absolute increase and in terms of reaching new demographics) by leveraging Bauer's digital skills to build digital/IP listening, [✂]. Bauer expects that this would further increase Bauer's national share of commercial listening which it expects would [✂].

4.15 [✂]. Bauer submitted that Global (with Communicorp) wins a disproportionate share of national advertising revenue. [✂].

4.16 [✂].

4.17 Bauer told us it expects to increase the collective EBITDA of the Acquired Businesses [✂]. Bauer submitted that this increase in EBITDA would result from [✂].

4.18 Bauer submitted that it aims to sell inventory on radio stations currently represented by FRS (and not bought by Bauer) through agreements similar to [✂]. Bauer submitted that this would [✂] increasing Bauer's national share of commercial listening by an additional 2.7%.

4.19 Bauer submitted that, through the mechanisms outlined above, it would be better able to [✂].

[65] Bauer also said that its strategy included launches of new stations (such as Country Hits and Scala) and [✂].

5. Relevant merger situation

5.1 Under section 35 of the Act and pursuant to our terms of reference,[66] we are required to investigate and report on two statutory questions, the first being whether a separate relevant merger situation has been created as a result of each of the Acquisitions and the second, if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.

5.2 We address the first statutory question in this section.

Enterprises ceasing to be distinct[67]

5.3 The Act provides that a RMS will be created if, as a result of the merger, two or more enterprises cease to be distinct within the statutory period for reference[68] and either the turnover test or the share of supply test is satisfied.[69]

5.4 We found that each of (i) Bauer (via Bauer Radio and Bauer Media Audio) (ii) Celador, (iii) Lincs, (iv) UKRD and (v) the Wireless Acquired Business own and operate commercial radio services in the UK for gain or reward and we have found are 'enterprises' for the purposes of the Act.[70]

5.5 The Act provides that two enterprises cease to be distinct enterprises if they are brought under common ownership or common control.[71]

5.6 We found that as a result of each of the Acquisitions, Celador, Lincs, UKRD and the Wireless Acquired Business and Bauer and its indirect subsidiaries, Bauer Radio in respect of the Celador, Lincs and UKRD Acquisitions and Bauer Media Audio in respect of the Wireless Acquisition have ceased to be distinct for the purposes of the Act.

5.7 The Celador Acquisition completed on 31 January 2019 and the CMA was first informed about completion on 15 February 2019. Following extensions[72]

[66] Terms of reference.
[67] Section 23 of the Act.
[68] Section 23 and section 24 of the Act.
[69] Section 23 of the Act.
[70] Section 129 of the Act.
[71] Section 26(1) of the Act.
[72] For failure to answer in good time two notices issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act.

the four-month deadline for a decision under section 24 of the Act was 14 August 2019.

5.8 The Lincs Acquisition completed on 28 February 2019.[73] Following extensions[74] the four-month deadline for a decision under section 24 of the Act was 27 August 2019.

5.9 The Wireless Acquisition completed on 28 February 2019[75]. Following extensions[76] the four-month deadline for a decision under section 24 of the Act was 27 August 2019.

5.10 The UKRD Acquisition completed on 31 March 2019 and the CMA was informed about completion on 1 April 2019. Following extensions[77] the four-month deadline for a decision under section 24 of the Act was 22 August 2019.

5.11 The reference decision for all four Acquisitions was issued on 7 August 2019. Therefore, in the case of each Acquisition, the relevant enterprises ceased to be distinct at a time or in circumstances falling within section 24.

5.12 We found that the turnover test[78] was not met in relation to any of the Acquisitions because the turnover in the UK of each Acquisition did not exceed £70 million.

5.13 We therefore applied the share of supply test. The share of supply test is met if a merger creates or enhances a share of supply of goods or services of any description in the UK of at least 25%.[79]

5.14 We found Bauer on the one hand and each of Celador, Lincs, UKRD and the Wireless Acquired Business on the other overlap in the supply of commercial radio services in the UK.

5.15 We found that the share of supply test in section 23 of the Act was satisfied for each Acquisition by reference to the relevant parties' combined share of

[73] The CMA was first informed on 15 February 2019 that completion would take place on 28 February 2019.
[74] For failure to answer in good time two notices issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act.
[75] The CMA was first informed on 15 February 2019 that completion would take place on 28 February 2019.
[76] For failure to answer in good time two notices issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act.
[77] For failure to answer in good time a notice issued under section 109 of the Act and, in accordance with section 25(4) of the Act, while the CMA was considering undertakings under section 73 of the Act accordance with section 25(4) of the Act.
[78] Set out in section 23(1) of the Act.
[79] Section 23 of the Act

total: (i) national commercial radio revenues; and (ii) national commercial radio listening:

(a) Bauer's [✂] [30-40]% share of commercial radio revenues at the national level is increased by:[80]

(i) [✂] [0-5]% from the Celador Acquisition;

(ii) [✂] [0-5]% from the Lincs Acquisition;

(iii) [✂] [0-5]% from the Wireless Acquisition; and

(iv) [✂] [0-5]% from the UKRD Acquisition.

(b) Bauer's [✂] [30-40]% share of commercial radio listening at the national level is increased by:[81]

(i) 1.1% from the Celador Acquisition;

(ii) 1.1% from the Lincs Acquisition;

(iii) 1.7% from the Wireless Acquisition; and

(iv) 1.3% from the UKRD Acquisition.

5.16 In light of the above assessment, we concluded that each of the Acquisitions has resulted in the creation of a separate relevant merger situation for the purpose of section 35(1) of the Act.

6. The counterfactual

6.1 The assessment of the effects of a merger and application of the SLC test involves a comparison of the prospects for competition with the merger against the counterfactual, which is the competitive situation which would have applied absent the merger.[82]

6.2 The counterfactual is an analytical tool which serves as a benchmark against which the expected effects of a merger can be assessed against the most likely future competitive situation absent the merger. The CMA's approach to the counterfactual is set out in the Merger Assessment Guidelines.[83]

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[80] RAJAR (Q4 2018), Radiocentre and Bauer estimates. UKRD Final Merger Notice, Table 1.
[81] Commercial listening data is from RAJAR (Q2 2019).
[82] *CC2 Revised*, paragraph 4.3.1.
[83] *CC2 Revised*, paragraph 4.3.

6.3 In order to determine the counterfactual, we have considered, based on the evidence, what would have been the most likely scenario had Bauer not made the Acquisitions.

6.4 We took account of:

(a) the extent to which the Acquisitions were linked by a common commercial strategy pursued by Bauer to bring about a [✄], such that it would be artificial and inappropriate to consider each of the Acquisitions separately and involve unsubstantiated speculation and spurious accuracy to try to identify which, if any, combination of the Acquisitions would proceed absent any other;

(b) whether, as part of any such common commercial strategy, Bauer was likely to have proceeded with any other acquisition;

(c) the applicable counterfactual for each of the Acquisitions absent a sale to Bauer (including the subsequent sale of three acquired stations by Bauer to Nation);

(d) the extent to which [✄] were likely to have proceeded absent the Acquisitions; and

(e) the applicable counterfactual for FRS absent the Acquisitions, taking into account the cumulative effect of certain of the above agreements and transactions on FRS.

Common commercial strategy

6.5 Before turning to each of the specific agreements and transactions referred to above, we set out Bauer's submissions, and our conclusions, on the appropriate counterfactual to be used as a benchmark in our assessment of the effects on competition of the four Acquisitions.

6.6 Bauer submitted that:

(a) the Acquisitions are not commercially interdependent or contractually inter-conditional and were entered into with different counterparties at different points in time;

(b) the Acquisitions were part of a number of options Bauer was considering ([✄]) and Bauer would have pursued each individual Acquisition in light of the contribution that Acquisition made to Bauer's overall strategic aim of '[✄]', irrespective of whether any of the other Acquisitions went ahead;

(c) our theory of harm relied on the combined effect of the Acquisitions on FRS and we should provide analysis of whether any individual Acquisition (or any combination short of all four) would produce the same effect on FRS because if an Acquisition did not individually give rise to the FRS related theories of harm, then there is no SLC in respect of that Acquisition; and,

(d) as a result, the CMA is required to:

(i) assess separately whether each Acquisition gives rise to an SLC; and

(ii) determine the counterfactual for each Acquisition independently.

6.7 At the Main Party Hearing, Bauer explained its strategy relating to the Acquisitions was 'to land the Acquisitions as sequentially' as it could, because if it had staggered the Acquisitions and started on one, [✂]. Bauer told us that [✂]. Bauer said if [✂] this could mean [✂] which does not sit with its strategy [✂].

6.8 In response to our provisional findings, Bauer submitted we had 'committed an error of law in not considering the Acquisitions separately' when we had found each Acquisition gave rise to a Relevant Merger Situation.[84]

Our assessment

6.9 It is well established by case law that the CMA is required to consider whether it has sufficient basis in light of the totality of the evidence available for making the assessment that it did; there must be evidence of some probative value on which the CMA could rationally reach its conclusions.[85]

6.10 This requirement applies to the CMA's conclusion on the counterfactual as much as its conclusion on the SLC question.

6.11 When considering the counterfactual, we took account of:

(a) Bauer's evidence on the rationale for the Acquisitions (see paragraphs 4.9 to 4.19) which indicated that the series of separate Acquisitions between 31 January 2019 and 31 March 2019 were [✂];

(b) Bauer's submissions on the counterfactual working paper; and,

[84] Bauer Response to provisional findings paragraphs 3.2 to 3.15.
[85] Intercontinental Exchange, Inc. v Competition and Markets Authority and NASDAQ Stockholm AB [2017] CAT 6 at 124 also citing BAA Ltd v Competition Commission [2012] CAT 3 at 20(4) and most recently Tobii AB (publ) v Competition and Markets Authority [2020] CAT 1 at 53

(c) Bauer's submissions on our provisional findings on the counterfactual.

6.12 We do not accept the proposition put forward by Bauer that as a matter of law the CMA is required to determine the counterfactual for each Acquisition independently. In our view adopting such an approach would ignore the cumulative effect on competition of a series of separate transactions that were [✂] (see paragraphs 4.9 to 4.19).

6.13 We assessed the counterfactual position for the Acquisitions on the basis of the evidence before us bearing in mind that the counterfactual is an analytical tool intended to assist us in assessing the effects on competition resulting from mergers. Assessing the Acquisitions together against a counterfactual of none of the Acquisitions having gone ahead achieves that aim. An artificial and speculative assessment of the Acquisitions individually or sequentially in our view does not.

6.14 We concluded that – given this overarching strategy and Bauer's ultimate aim, bringing about [✂] – would only have been achieved by Bauer where it succeeded in executing this approach of multiple, closely timed transactions, ie Bauer had a universal approach to its acquisition strategy, designed to achieve a [✂].

6.15 In light of this, we concluded that it is appropriate to consider the competitive effects of the Acquisitions together against a counterfactual of none of the Acquisitions having gone ahead. This approach avoids an artificial and speculative exercise of considering the Acquisitions individually or sequentially, which would result in the cumulative effect of the Acquisitions on the relevant markets not being adequately assessed.

6.16 This approach in our view enables us to consider the impact of the Acquisitions on competition without importing into our assessment any spurious claims to accurate prediction or foresight[86] which attempting to individually and sequentially assess the competitive impacts of every potential hypothetical permutation of the four Acquisitions would have resulted in.

[86] *CC2 Revised*, paragraph 4.3.6: … 'the [CMA] will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary for the [CMA] to make finely balanced judgements about what is and what is not the counterfactual.'

The position of Bauer in the counterfactual

6.17 Whilst we note that Bauer had been considering a variety of acquisition options, we saw no evidence, sufficient for the purpose of the counterfactual assessment, that Bauer was in a position to execute alternative purchases at the time of the Acquisitions. Bauer [✂].[87] Given [✂] scale, such a transaction on its own would not have achieved the [✂]. Bauer told us its strategy has been to focus on acquisitions and absent the Transactions it would have pursued other acquisitions.[88] However, there were no other active discussions regarding acquisitions with third parties at the time of the Acquisitions, such that we can form an expectation of other acquisitions going ahead.

6.18 Bauer also had the option of negotiating with third parties for them to carry its brands through a BCL or for it to represent them for national advertising through a national sales agreement (NSA). Whilst we note that following the Acquisitions Bauer agreed a [✂] (see paragraphs 6.49 to 6.57) this by itself would not achieve the [✂] that Bauer wished to achieve. It may have approached Celador, Lincs, Wireless and UKRD absent the Acquisitions to negotiate BCLs and/or NSAs as an alternative way to achieve [✂]. However, we have no evidence that this was considered an option at the time by Bauer. Further, to the extent that there is any evidence of any of the Acquired Businesses having considered this, it was not their preferred option.[89] Therefore, we find that there is insufficient evidence to allow us to form an expectation on whether BCLs or NSAs would have been negotiated with the Acquired Businesses absent the Acquisitions.

6.19 We conclude therefore that absent the Acquisitions, Bauer would have continued to operate and compete as it had done prior to the Acquisitions. It would have been likely to seek opportunities to launch new radio stations, improve technologies and reach for its radio distribution (eg through IP), as well as looking at opportunities for further station acquisitions.[90] We do not believe that these measures are likely to create a substantial change in radio markets in the foreseeable future. For reasons explained in paragraphs 8.19 to 8.31, we also conclude that absent the Acquisitions, Bauer would be likely to seek opportunities to represent independent radio stations for national advertising, and so would have been a credible and growing competitor to FRS. The competitive effects of this in respect of the market for

[87] Bauer [✂].
[88] Bauer Response to provisional findings paragraph 1.23.
[89] Celador submitted that it may have looked at a licence agreement but that this was not its preferred option.
[90] Bauer Response to provisional findings paragraph 3.6.4-3.6.6.

representation of national advertising to independent radio stations is addressed in section 8.

Counterfactual in relation to each of the Acquisitions and the subsequent station sales to Nation

6.20 In this section we first set out Bauer's overall submission on the counterfactual concerning each individual Acquisition before looking in more detail at the appropriate counterfactual for each of the Acquired Businesses, taking into account each of the businesses' own specific circumstances. In particular, we consider whether they would have continued as independent radio groups absent the Acquisitions, or whether it would have been likely that they would have been sold, which could have increased market concentration and might mean that they be likely to leave FRS for the representation of national advertising.

Bauer's overall counterfactual submission

6.21 Bauer submitted that it was not appropriate to assume that the pre-transaction conditions of competition would have continued absent the Acquisitions under the counterfactual.[91] Bauer believed that it was likely that all Acquired Businesses would have been sold under the counterfactual for various reasons and that Global and/or Communicorp would have been the most likely purchasers.[92] Bauer considered that the sale of some of the acquired stations to Nation would also have occurred.

6.22 [✂]. It viewed FRS as already in a strategically challenged position with the stations it represented lacking geographic coverage, audience share and the reach of either Bauer or Global. As such it was and would have become increasingly a materially reduced business in terms of scale and that this could have led to an accelerated decline or even failure. Furthermore, given Bauer's view of the counterfactual position of the Acquired Businesses, Bauer considered it likely that these businesses would have withdrawn from FRS and thus made FRS economically unviable under the counterfactual.[93]

[91] Bauer response to Issues Statement, paragraph 3.2.
[92] Bauer response to Issues Statement, paragraph 3.30.4. Bauer's opinion on the most likely purchaser is based on Global and Communicorp being the other main players in the market, their financial resources and history of having acquired businesses in the past.
[93] Bauer response to Issues Statement, paragraphs 3.5 and 3.6.

Celador

6.23 Bauer's view was that given its financial position and the age of its owner, Celador would have been sold to another radio operator, most likely in its opinion Global and/or Communicorp. Bauer considered it unlikely that UKRD or Wireless would have acquired Celador given their respective strategies. An alternative and less likely strategy in Bauer's view is that Celador would have entered into BCL/NSA representation arrangements with Global. It submitted that in either scenario Celador would have ceased its arrangements with FRS.[94]

6.24 [✄].

6.25 [✄]. Global told us that [✄]. [✄].[95]

6.26 [✄].[96] [✄].[97]

6.27 [✄].

6.28 We noted that Celador's preferred option was [✄]. However, there is insufficient evidence that there was a willing purchaser who was in sufficiently advanced discussions with the owner that a sale was foreseeable in the near future. [✄]. There is no evidence to show that the owner was looking to sell at any valuation or that Celador was a failing business. [✄].

6.29 As Celador submitted, absent such a sale it could have continued to operate [✄]. Therefore, we concluded that the appropriate counterfactual absent the Celador Acquisition is the pre-merger conditions.

Lincs

6.30 Bauer submitted that Lincs may have continued as an independent radio operator. However, Bauer was of the strong view that Lincs was entertaining other offers for its business. It told us that it understood from Lincs that [✄]. Bauer believed that it was likely, in the counterfactual, that Lincs would have considered a sale in the event that other operators were sold and left FRS. Bauer considered that Global and/or Communicorp would have been the likely purchaser in these circumstances.[98]

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[94] Bauer response to Issues Statement, paragraph 3.3.1.
[95] [✄].
[96] [✄].
[97] The chairman's statement was in response to [✄]
[98] Bauer response to Issues Statement, paragraph 3.3.2.

6.31 Lincs is profitable. The 30 September 2018 statutory accounts show the group had increased turnover in 2018 to £6 million producing an operating profit of £513,541. This compared with £5.7 million turnover in 2017 producing an operating profit of £150,581.

6.32 [✂]. Further it stated that [✂].

6.33 Lincs had approaches in 2017 [✂] and [✂]. However, Lincs' position was that if it were to sell it was only looking to sell the entire business and not individual licences/stations.

6.34 Bauer approached Lincs in 2018 with an offer for the group which led to the Lincs Acquisition on 28 February 2019. Global [✂] on the understanding that Lincs was open to offers. [✂]. Global [✂]. [✂].

6.35 The financial evidence shows that Lincs is a profitable business. Whilst it stated that it would consider any realistic offer for the business it was not actively looking for a sale. We also note that Global was only really interested in one licence held by Lincs and not the whole group. It is not foreseeable therefore that in the absence of the Bauer offer that the whole of Lincs would have been sold to Global. In fact, Lincs [✂].

6.36 We therefore concluded that the appropriate counterfactual absent the Lincs Acquisition is the pre-merger conditions.

Wireless

6.37 Bauer believed News UK's long-term strategy was to exit local radio. As such, it believed under the counterfactual Wireless would likely have sold some or all of its existing stations to either Global and/or Communicorp. Bauer submitted that these stations would therefore have stopped using FRS.[99]

6.38 [✂].

6.39 [✂].

6.40 We therefore concluded that, absent the Wireless Acquisition, the Wireless assets sold to Bauer would have been retained in the wider Wireless radio business and operated under pre-merger conditions.

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[99] Bauer response to Issues Statement, paragraph 3.3.3.

UKRD

6.41 Bauer submitted that UKRD had decided to exit radio and therefore in the counterfactual would have sold its stations to one or more purchasers. This aligns with UKRD's exit planning detailed below. According to Bauer, the most likely purchasers would been Global and/or Communicorp and potentially Bauer (if the stations were split up).

6.42 UKRD is loss making. However, it had reduced its losses in the last financial year to 30 September 2018[100] and had seen [✂].[101] [✂].

6.43 [✂].[102] [✂].

6.44 [✂].

6.45 Global told us that [✂].

6.46 Our view was that that whilst UKRD was [✂]. Whilst UKRD was loss making, it had a plan in place (which was perceived to be working) to develop the business in such a way that it would achieve [✂]. It told Global that it was not for sale in February 2019, although we note this could have been because of its discussions with Bauer. However, Global [✂] and would have represented it only under a brand license agreement. This option would not have provided the exit UKRD's shareholders were seeking. A BCL with [✂] following an acquisition [✂] of UKRD is highly speculative given that [✂].

6.47 Further, there is nothing in the board documents or finances that suggest that UKRD was in such a perilous situation that it would need to be sold at any price. It was also not in a sale process with any other potential purchaser except Bauer.

6.48 In light of the above, we concluded that the most likely counterfactual is the pre-merger conditions ie UKRD was looking to sell but for the foreseeable future would have continued to operate in the market as it did pre-merger albeit that it may have considered withdrawing further stations from FRS.

Bauer/Nation transaction

6.49 On 28 February 2019, Bauer sold The Breeze (Winchester, Portsmouth and Southampton), Sam FM South Coast and KCFM to Nation Radio. These radio

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[100] The UKRD group accounts for the year ended 30 September 2018 showed that revenue from continuing operations fell marginally from £15.9 million to £15.6 million with operating loss reducing from £524,000 to £251,000.
[101] [✂].
[102] [✂].

stations were part of the Celador and Lincs Acquisitions. Bauer explained that it sold these stations immediately in order to eliminate potential competition issues, based on their local geographic overlaps with Bauer stations.

6.50 Bauer believed that if the transactions with Celador and Lincs had not happened then the sale of The Breeze (Winchester, Portsmouth and Southampton), Sam FM South Coast and KCFM to Nation Radio would still have happened. This was based on Bauer's view that absent Bauer acquiring Celador and Lincs these businesses would still have been sold in the short term.

6.51 However, because we consider that in the counterfactual none of the Acquisitions would have occurred, it follows that neither the subsequent sale of these stations to Nation by Bauer nor to Nation by any other party would have happened. Accordingly, we concluded that the station sales to Nation do not form part of the counterfactual.

[✂]

6.52 [✂].

6.53 [✂].

6.54 [✂].

6.55 In response to our Provisional Findings, Bauer submitted that [✂].[103]

6.56 [✂].

6.57 [✂].

6.58 Bauer further submitted that it had been approached by [✂] looking for it to provide national representation following its entry into an NSA with Orion.[104] It said it had also been approached by four other third parties since 2016 looking for representation.[105] None of these discussions resulted in an NSA [✂].

6.59 [✂]. We concluded that in the counterfactual none of those Acquisitions would have occurred and those businesses would have remained independent and likely with FRS for the foreseeable future. [✂].

[103] Bauer Response to Provisional Findings paragraphs 3.18-3.20.
[104] Third parties that approached Bauer for national sales representation followings its agreement with Orion were [✂].
[105] The third parties were [✂].

6.60 [✂].

6.61 [✂].

6.62 [✂], in our view the pre-merger conditions are the appropriate counterfactual [✂].[106]

FRS

6.63 Bauer submitted that the Acquired Businesses would still have been likely to be sold relatively quickly in the absence of the Acquisitions, and that likely purchasers, [✂], would have then taken representation away from FRS.

6.64 Bauer also submitted that even if this had not happened FRS would have ceased to be profitable in the short to medium term and would have exited the market.

6.65 Bauer told us that FRS had lost stations including five ex-FRS stations acquired by Global/Communicorp between 2016 and 2019, and five stations which UKRD, one of the two shareholders of FRS, had removed from FRS representation in 2017. Bauer also said that UKRD could have looked to move more stations out of FRS, which could affect the confidence that other stations would have in FRS, given that UKRD is a shareholder in FRS. Other stations were actively considering their options prior to the Acquisitions and [✂].[107] Therefore, it was not reasonable to assume that other stations would not continue to leave FRS in the counterfactual.

6.66 Bauer further submitted that FRS listener reach had fallen [✂]% between 2015 and 2018 whilst overall commercial listening hours were growing. Its revenue had fallen by [✂]% between 2016 and 2018 and its EBITDA in that period by [✂]%. Bauer considered that it was therefore reasonable to assume that revenue and EBITDA would continue to fall. Bauer submitted that if revenue declined at the same rate as FRS' last financial year ([✂]%), with no loss of stations, FRS would not be a viable business after [✂]. Bauer considered this was highly conservative and unlikely given the rate of station loss in the past and the current financial situation of a number of radio stations that it believed would lead them to look elsewhere for national representation. Further details of Bauer's calculations are included in Appendix C.

6.67 Bauer argued that FRS was not in a position to arrest this decline as:

[106] [✂].
[107] Bauer submitted that [✂]. Quidem had also entered into a national representation agreement with Global.

(a) It lacked the ability to compete effectively for national advertising, with it being unable to offer agencies the scale, coverage and efficiency they obtain from Bauer and Global;

(b) It was unable to respond to changing listener habits and in particular to fully monetise IP listening;

(c) Local radio listening is falling, and stations are financially challenged and not able to take full advantage of Ofcom's deregulation; and

(d) There is increased competition from non-radio media.

6.68 Bauer also told us that, speaking hypothetically, if it had been actively competing to represent independent radio stations in the counterfactual situation, it is likely that it would have won further customers from FRS, accelerating FRS' revenue decline.

6.69 Bauer submitted that there was concrete evidence that two clients, [✄], would have left FRS in the counterfactual.[108] It said that these groups accounted for a substantial proportion of FRS' revenues (approximately [✄]% of FRS' total commission revenues in the year to March 2019 which equates to [✄]% of its pre-tax profit in FY19 and the commission revenue of each is likely to exceed FRS' budgeted pre-tax profit for FY20), [✄].[109]

6.70 It told us that [✄].

6.71 Some significant radio stations we contacted expected that FRS would struggle to retain its portfolio of client stations, and that some of FRS' client stations may seek representation from Bauer and Global. Quidem has an agreed NSA deal with Global and will leave FRS. We were told that FRS stations achieve a far lower share of national advertising revenues than their share of radio listening.[110] We were told that FRS is disadvantaged because of its relatively small size and because its stations are of disparate identity and limited geographic coverage, meaning it is comparatively less attractive to national advertisers than Bauer and Global.

6.72 We have found that most of FRS' costs are fixed and so any substantial decline in turnover would mean it would likely rapidly become loss-making (see Appendix C). However, we note that FRS is currently profitable and its pricing is stable. Most of FRS' client stations, apart from the Acquired

108 Bauer Response to Provisional Findings paragraph 3.27.
109 Bauer Response to Provisional Findings paragraph 3.28.
110 FRS pre-acquisition ([✄]): share of commercial listening [✄]%; estimated share of national airtime revenue [✄]% [0-5], see Table 5.

Businesses are small, so we consider there would be no substantial impact on FRS' profitability in the foreseeable future if a number of individual stations chose to leave. However, while it is possible that these FRS customers may choose to leave FRS, we have no basis to conclude with sufficient certainty that within the counterfactual situation any of these stations would leave FRS. In our view, there would likely be competition between FRS, Bauer and Global for representation of these stations, but we cannot predict or form expectations on the outcome of this competition.

6.73 We agree that the sizes of the Acquired Businesses are significant relative to FRS. However, as set out in paragraphs (6.26, 6.33, 6.37 and 6.45) our view is that these businesses would not have been sold immediately and in such a close time in the counterfactual. Accordingly, it is reasonable for us to assume they, and [✂] would have continued to use FRS as their national advertising representative at least in the foreseeable future.

6.74 Further, even if a potential alternative purchaser or purchasers had existed for any of the Acquired Businesses, there is no evidence that such a purchaser or purchasers would necessarily have ceased representation arrangements with FRS and thereby adversely impacted FRS' viability in the foreseeable future. Whilst Bauer claims that it is likely that they would have been acquired by Global or Communicorp (and hence they would have left FRS to be represented by Global), there is insufficient evidence to enable us to form an expectation sufficient to support a counterfactual that this would have happened.

6.75 We did not consider that FRS is a failing firm.[111] We concluded that in the foreseeable future, FRS in the counterfactual would have remained active providing national advertising sales representation to radio stations.

6.76 We therefore concluded that absent the Acquisitions, the appropriate counterfactual is that FRS would have continued as an independent business owned by UKRD and Wireless, operating on the same basis as was the case pre-merger.

Prospects for FRS in the longer term

6.77 In our provisional findings, we provisionally concluded that absent the Acquisitions, the appropriate counterfactual was that FRS would have continued as an independent business owned by UKRD and Wireless, operating on the same basis as pre-Acquisitions. However, we took the view

[111] See *CC2 Revised*, paragraphs 4.3.8-4.3.18.

that FRS' position was potentially vulnerable in the longer term, although we were unable to forecast FRS' financial prospects with confidence, as these prospects would be strongly influenced by whether, and when, any major clients were lost. We said at paragraph 6.73: [of the Provisional Findings]

> While the speed and extent to which this might happen is unpredictable, in light of the factors noted in paragraph 6.70 [of the Provisional Findings], it seems likely that one or more of the Acquired Businesses would have been sold and removed from FRS representation within a number of years beyond the time period relevant to the counterfactual. A loss of significant scale is likely to make FRS less attractive to advertisers and so increase the likelihood of further stations choosing to leave. Because FRS' profitability is dependent on maintaining a scale of turnover (as potential for cost-savings in proportion to scale appear limited) it is likely that it would no longer be economically viable to continue in such circumstances. While the timing of closure is uncertain, we provisionally conclude that the most likely longer-term position for FRS is that it would have exited the market at some point, after the foreseeable counterfactual period but within, at most, ten years.

6.78 Bauer, in its response to our provisional findings, submitted that the evidence (together with further evidence it provided) indicated that FRS would have failed in a much shorter period, in particular pointing to evidence it said showed that station groups would likely leave FRS, for example: on stations seeking alternative representation[112] (see paragraph 6.72); that third party radio stations 'expected FRS to struggle to retain clients'[113] (see paragraph 6.71); that the appropriate counterfactual for each of the Acquired Businesses is that they would have instead have been acquired by an alternative group[114] (see paragraphs 6.82 to 6.84), and that 'deregulation creates an environment supporting greater consolidation and/or representation by national station groups'.[115] It also submitted that IP listening was growing, and at present there is only one supplier of services to target advertising to listeners over IP, Global. Bauer said alternatives were being developed,[116] but it stated that it was not possible that FRS could launch a rival platform to move outside traditional radio advertising and compete with large operators like Google and Facebook in the growing digital advertising segment.

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[112] Bauer Response to provisional findings paragraph 3.30.1.
[113] Bauer Response to provisional findings paragraph 3.30.2.
[114] Bauer Response to provisional findings paragraph 3.30.4.
[115] Bauer Response to provisional findings paragraph 3.30.3.
[116] Such as Bauer's joint venture with Wireless Group, Octave Audio.

6.79 In contrast, Global told us that 'the exit of FRS in the next 10 years is highly speculative, nor is it the 'most likely' longer term outcome'.[117]

6.80 Following the receipt of responses to the provisional findings document, we reconsidered this aspect of the provisional findings on the counterfactual and the prospects for FRS in the long run in light of these submissions and evidence.

6.81 We received no new evidence to change our view on whether any of FRS' large customers would have likely left FRS in the foreseeable future absent the Acquisitions.

6.82 We accept though that FRS' financial position is at risk if it loses a significant portion of its customer base. Therefore, we gave further consideration to our assessment of the likelihood of one or more of the Acquired Businesses withdrawing its business from FRS in the long run, once under new ownership. We accept that some of the four Acquired Businesses, in the counterfactual, would have been likely to look for sales opportunities in the medium or longer term.[118] Based on the recent history of acquisitions, the ability to realise synergies, and the size and financing available to acquire the larger independent radio groups, in our view the most likely prospective acquirers would normally be expected to be Bauer or Global. Bauer have told us that in the counterfactual it would still be looking to acquire stations (see paragraph 6.17).

6.83 However, given the existing size and market share of Bauer and Global, any significant acquisition of radio stations in the UK would be likely to qualify as a relevant merger situation (within the meaning of the Act) and could give rise to the likelihood of an SLC arising from the same representation theory of harm we have found arises from the Acquisitions, or other potential theories of harm. Accordingly, whilst we cannot anticipate the outcome of any future investigation, it is not possible for us to form an expectation that such an acquisition would be cleared such that it would be sufficiently certain to be able to be considered as the relevant counterfactual.[119]

6.84 Apart from Bauer or Global, Bauer suggested (see paragraph 6.21) alternative radio groups who may be interested in acquisitions could include Communicorp or Nation.[120] Communicorp has told us that it might be

[117] Bauer Response to provisional findings paragraph 3.4.
[118] See Provisional findings paragraphs 6.24, 6.32, 6.36, and 6.41
[119] We acknowledge that there are smaller radio stations and groups of stations currently with FRS that may not raise the same level of concerns if acquired by Bauer or Global. However, such stations would not represent a significant proportion of FRS' revenues and so are unlikely to affect its ability to continue to operate in the longer term.
[120] Bauer response to Issues Statement, paragraph 3.30.3.

interested in certain acquisitions depending on fit and brand strategy. However, this was in the context of discussing a divestment remedy. We note that Communicorp has not taken on purchases of the scale of the Acquired Businesses in recent years. Also, given its BCL with Global, it would need to take account of whether or not these stations fitted with gaps in Global's coverage. Accordingly, there is insufficient certainty that Communicorp would be an acquirer of any of the Acquired Businesses in their totality.

6.85 Our view is that in the counterfactual [✂]. Therefore, we cannot form an expectation that [✂] stations would have been likely to leave FRS [✂].

6.86 In addition, we have received no evidence that there would be likely potential entrants to local radio who would be purchasers of the Acquired Businesses and who would be likely to choose to leave FRS.

6.87 Therefore, while it is quite possible that FRS' customers might be put up for sale, it is not possible for us to determine which, if any, radio station groups would be sold and when and if so, to whom; whether there would be a merger investigation which might prohibit or place conditions and controls on the acquisitions; and whether any acquired radio stations would be likely to leave FRS.

6.88 It is also possible that FRS' existing customers could seek representation by Bauer or Global. Indeed, our expectation is that Bauer would be seeking to secure opportunities for representation.[121] While Bauer has said that it expects to offer a better service to independent radio stations, we are not in a position where we can anticipate Bauer's offer (or FRS' response). Nor do we know how Global will choose to respond. It [✂], that there are very few independent stations which broadcast to areas not already served by Global's brands, [✂]. Bauer may or may not be successful in attracting stations away from FRS, and similarly Global may attract stations, but we have no plausible evidential basis to form an expectation of the extent to which this would occur.[122] We have seen no evidence indicating that any of the Acquired Businesses were contemplating entering into an NSA. It is possible, in the absence of a sale, that this option might have been considered, but there is no evidence that there was any factor which would have changed their evaluation of this option relative to the pre-Acquisition situation. Therefore,

[121] See paragraph 8.59 of provisional findings
[122] In response to Provisional Findings, Global argued that there was no basis to form an expectation FRS' customers would be likely to seek alternative representation, as Bauer had not concluded national sales representation agreements with independent stations in the last five years, Global had only done so (absent acquisitions) with Quidem, that Global [✂], and because many of FRS' customer stations do not wish to enter into a brand licensing agreement . See Global: response to provisional findings paragraphs 5.1-5.3.

there is no basis to form an expectation that these businesses would have entered into an NSA and left FRS.

6.89 While it is possible that FRS would lose a significant level of customers due to acquisitions and representation deals among its customers, threatening its viability, we cannot predict the outcome of this competitive process with a sufficient level of certainty.

6.90 We also considered Bauer's further submissions on FRS' financial prospects and whether we could conclude in the longer term that FRS could be expected to become loss making within a few years, even without the loss of significant radio group clients.

6.91 Because of the substantial levels of uncertainty around several different future developments that Bauer's analysis (see paragraph 6.66) assumes, we do not place significant weight on this evidence. We are uncertain whether FRS' advertising revenues will continue to decline in line with recent trends (Bauer has projected continuing declines of revenues of [✂]% a year based on just one year from FY17 to FY18).[123] But we cannot predict whether this will continue, or might, for example, respond to changes in the economic climate where uncertainty may have disrupted the demand for advertising in the last couple of years.

6.92 Bauer has also assumed that the only cost savings FRS would make would be that direct costs would decline in proportion to revenue and 25% of staff costs would be reduced in line with revenue decline. We cannot predict to what extent FRS has an ability to restructure and reduce costs going forward.

6.93 The same concerns apply to the further analysis Bauer submitted after provisional findings, which assumes a higher rate of continuing revenue decline (see Appendix C paragraphs 15-16 and Table 7).[124]

6.94 However, we consider that the budget set out in Table 2 of Appendix C of the provisional findings carries greater evidential weight, because it was prepared by FRS itself with knowledge of FRS' financials, performance and potential. In that exercise, a budget was prepared [✂]. Despite the predicted [✂], and as a result FRS would be a viable, although a weakened business. This indicates

[123] Global told us that using he change in FRS revenue between FY17 and FY18 as the long run trend was not justified. It presented evidence which it said showed that the stations currently represented by FRS show a long-term trend of growth in both reach and listening hours, while FRS has recently attracted a number of new digital stations. Global: response to provisional findings paragraph 8.2. However, in response Bauer told us that these calculations were flawed, in particular that stations which were represented by FRS between 2009 and 2019 but which had changed name in the meantime had not been correctly matched and so were excluded from earlier periods, thus understating the earlier figures for reach and listening and thereby the decline in these figures over the period.

[124] Bauer Response to provisional findings Annex A.

that in contrast to Bauer's submissions, FRS could survive a loss of some substantial clients (long-term revenue trends were not addressed in this exercise). FRS [✄].

6.95 We also note that the radio sector itself is likely to continue to evolve as a result of changes in listening habits, technology, the options available for consuming audio output, the advertising market and regulation. It is not feasible to account for how these and related factors might affect the prospect for radio advertising revenues (and FRS specifically) in the context of a merger inquiry. We note Bauer's arguments that FRS would not be able to develop a targeted IP product. However, no radio stations told us this was a major factor at present in their choice of representation, and we cannot rule out that FRS or third parties could develop such a service.

6.96 Given these significant uncertainties, we do not consider that there is sufficient evidence to conclude that FRS could be expected to lose customers such that it would become unprofitable and close within a period of ten years. Such a situation could occur, but to form such an expectation would involve speculation unsupported by clear evidence. Bauer submitted that the CMA did not need to satisfy itself that any particular station or station group would, on the balance of probabilities, have left FRS in the counterfactual. It only needs to satisfy itself that it is the case, on the balance of probabilities, that FRS would have lost sufficient clients so as to become unviable in the short to medium term.[125] However, we have not received evidence sufficient to allow us to form individual expectations and assess these together collectively, therefore any view would be mere speculation.

6.97 We therefore consider that the possibility is not sufficiently plausible based on the evidence we have and the uncertainties associated with FRS' future financial position.

6.98 Having re-considered our assessment in light of the submissions and new evidence we have received, we therefore consider we do not have evidence with sufficient probative value to conclude that, absent the merger, FRS would have exited the market 'after the counterfactual period but within, at most, ten years'. It is possible that this might happen, but a conclusion to this effect would be based on undue speculation given the context and market uncertainties discussed above. In such circumstances, we therefore expect that in the absence of the Acquisitions, FRS would continue in the market.

[125] Bauer Response to provisional findings paragraph 3.32.

Conclusion on the counterfactual

6.99 For the reasons set out above, we concluded that the Acquisitions would not have occurred, and the appropriate counterfactual against which to assess the competitive effects of the Acquisitions is the pre-Acquisitions situation.

7. Market definition

Introduction

7.1 The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of a merger. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.[126] Market definition in a merger inquiry identifies the set of alternative products (and areas) that exercise a significant competitive constraint on the merging parties. This is typically based on considering how customers would respond to an increase in the price of the merging parties' offerings. The closest alternatives, those that would prevent a monopoly supplier of those alternatives from raising prices, form the relevant market.[127]

7.2 The boundaries of the market do not determine the outcome of our analysis of the competitive effects of a merger in a mechanistic way. In assessing whether a merger may give rise to an SLC, we may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[128]

7.3 There are normally two dimensions to the definition of the relevant market: a product dimension and a geographic dimension. The relevant product market is a set of products that customers consider to be close substitutes ie in terms of utility, brand or quality. The relevant geographic market may be local, regional, national or wider.[129]

7.4 This section looks at:

(a) The supply of radio advertising.

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[126] *CC2 Revised*, paragraphs 5.2.1 and 5.2.2.
[127] Formally this is the narrowest candidate group of products or areas (a 'candidate market') that satisfies the hypothetical monopolist test. This test is satisfied if a hypothetical firm that was the only present and future seller of the products in the candidate market would find it profitable to raise prices. Source: *CC2 Revised*, paragraph 5.2.10.
[128] *CC2 Revised*, paragraph 5.2.2.
[129] *CC2 Revised*, paragraph 5.2.5.

(i) Product scope.

(ii) Geographic scope.

(b) The supply of representation for national advertising to independent radio stations.

The supply of radio advertising

Product scope

7.5 Bauer and the Acquisitions[130] overlap in the supply of commercial radio services in the UK.

7.6 Commercial radio is a two-sided market. Suppliers compete to serve both advertisers (who pay to advertise) and listeners (who generally do not pay). The size of each group of customers affects the profitability of the radio station, because the value that advertisers realise from using the radio station depends on the size of its listenership.

7.7 We have focussed our assessment on the effect of the Acquisitions on the advertisers' side of the market, and not on radio listeners. This is because, while the Acquisitions could impact on local radio listeners' range of choice, radio listeners can turn to national commercial stations, and also BBC national and local radio stations which do not carry advertising but account for around 51% of radio listening in the UK.[131] Also, Ofcom's licensing requirements include a requirement to protect the interests of listeners.[132] Further, insofar as the Acquisitions may reduce competition and choice in regard to local radio stations, the analysis of competition for local advertising can act as a proxy for assessing this effect. Therefore, we have not considered or defined the market for listeners.[133]

7.8 In terms of product scope, we considered the following:

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[130] With the exception of FRS.
[131] Media nations: UK 2019, Ofcom, Figure 4.8.
[132] Ofcom's statutory duties include ensuring that: a wide range of high-quality radio programmes are provided, appealing to a range of tastes and interests; and television and radio services are provided by a range of different organisations. Source: Ofcom website.
[133] As a result of the Acquisitions, Bauer has acquired interests in eight local multiplexes. It already holds interests in some 15 local multiplexes. The Acquired Multiplexes do not overlap with the local multiplexes Bauer already owns. For reasons set out in the reference decision (CMA, Decisions to refer, 30 August 2019), the CMA concluded at phase 1 that the Acquisitions were not likely to give rise to an SLC in relation to either horizontal or vertical theories of harm. Therefore, we have not investigated this possibility and have not defined a market for multiplexes.

(a) Types of radio advertising

(b) Non-radio constraints

Types of radio advertising

7.9 The two main revenue streams for commercial radio providers are the sale of airtime advertising (broadcast in programmed commercial breaks) and sponsorship and promotion.[134]

7.10 As discussed in paragraphs 2.33 to 2.39, advertisers seeking airtime typically either purchase this from media buying agencies or directly from the radio station/group, and airtime is accordingly sold on a contracted or non-contracted basis.

7.11 We were persuaded that, absent exceptional circumstances, the conditions of competition for airtime advertising and sponsorship and promotion advertising are similar, as advertisers have access to the same sets of stations supplying advertising.

7.12 We did not receive evidence supporting a departure from the approach taken in previous radio mergers. Consistent with that approach, we therefore did not consider contracted, non-contracted, and sponsorship and promotion advertising as separate markets. However, we have taken into account the existing alignments between contracted and non-contracted advertising and the particular levels of geographic radio advertising competition described in the competitive assessments in sections 8 to 11.

Non-radio constraints

7.13 On the advertiser side of commercial radio there are two main types of customers: national advertisers, who wish to reach regions across the UK, and local advertisers, who wish to target smaller and more specific regions with their advertising. We consider the product scope separately for each of these groups of customers, as it is possible these customers face different alternatives to radio advertising.

7.14 When considering non-radio constraints, we are conscious that local and national advertisers can use a variety of different means to advertise and promote their products and services. However, the relevant question is whether non-radio advertising alternatives form a sufficient competitive

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[134] CMA Case, *Global Radio / Juice,* 5 October 2015, paragraphs 20-27 (providers may have ancillary revenues, such as some digital revenues); Competition Commission case, *Global Radio / GMG*, 21 May 2013, paragraphs 5.17-5.20; OFT Case, *Bauer Radio Ltd / TIML Golden Square Ltd*, 20 December 2013, paragraphs 10 and 11.

constraint on radio advertising, such that they would on their own constrain radio stations.

National non-radio constraints

7.15 This section assesses whether the market for radio advertising should be wider than radio and include, for example non-radio advertising such as other audio advertising platforms and/or digital advertising platforms.

7.16 In previous radio mergers, the CMA excluded non-radio advertising from its market definition.[135] This is because there are certain features of radio as an advertising medium which mean it is well positioned to meet the needs of certain advertisers, for example it is difficult for listeners to avoid adverts when listening to commercial radio and people often listen to the radio whilst doing other tasks which may be relevant to some products being advertised.

7.17 Bauer submitted that radio advertising is part of a wider audio advertising market. In addition, Bauer said that radio is competing heavily for advertising spend with digital platforms, such as Facebook and Google. Although it also submitted that national radio revenues and prices have remained resilient to the threat from digital advertising, and that up until 2019 commercial radio has had five years of record revenues. Bauer further submitted that the growth of digital media as an alternative to radio has largely taken effect on radio at the local level.

7.18 Bauer submitted that media buying agencies can credibly threaten to move at least some of their radio budget to other forms of media such as online, though it noted that in some cases clients explicitly request radio advertising.

7.19 Bauer has previously submitted to the CMA that radio advertising has some unique qualities[136] not precisely replicable by other forms of media advertising.[137,138]

7.20 All national radio companies questioned[139] said that they face competition from multiple forms of non-radio advertising. They also all emphasised the

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[135] CMA Case, *Global Radio / Juice,* 5 October 2015, paragraph 32; Competition Commission case, *Global Radio / GMG*, 21 May 2013, paragraph 5.44; OFT Case, *Bauer Radio Ltd / TIML Golden Square Ltd*, 20 December 2013, paragraph 38.
[136] Global/GMG, paragraph 5.29.
[137] Though Bauer more recently noted that this does not mean that they are not substitutable.
[138] Although not submitted directly, a Bauer internal document that analyses why customers use radio states that radio is a 'last minute' medium because an ad can be created and booked within days, it is efficient at targeting (time/place/profile) and is a trusted medium. We infer that these qualities relate to Bauer's assessment of radio as a unique advertising medium.
[139] Global, Wireless and GTN.

growth of digital players, such as Google and Facebook, and said they internally monitor these.

7.21 We asked media buying agencies and national advertisers which non-radio forms of advertising they considered when buying their (or their clients') national radio advertising.[140] Of the 35 customers that responded, only six either did not consider purchasing any alternatives to radio advertising or did not consider any of the alternatives as suitable. The remaining 29 customers listed other types of advertising as alternatives to national radio advertising, but only two of these rated any other form of advertising as a very close alternative.[141] Overall, television and digital advertising were the forms of advertising that were rated as closest alternatives to radio advertising, but even these were only considered by around half of the 35 customers that responded and were rated closer to the middle of our scale of closeness than the top (the top being very close alternatives). Given these responses, we concluded that whilst customers believe there are alternatives to radio advertising, they are not close alternatives.[142]

7.22 This is consistent with Bauer's internal documents, which generally monitor other radio competitors much more closely than other audio, press or digital advertising competitors. However, Bauer submitted that there is little data publicly available on digital advertising and the paucity of such data necessarily is reflected in the content of Bauer's internal documents.

- *Our views on national non-radio constraints*

7.23 We found that, given the third-party evidence, non-radio alternatives act as a constraint for national radio advertising to some extent. This is particularly true of digital advertising and television. However, also as a result of the third-party evidence, we found that customers do not see other forms of advertising as close alternatives. This is also consistent with Bauer's submission that national radio advertising has remained resilient against the growth of digital advertising and Bauer's lack of internal monitoring of non-radio alternatives. For these reasons, we concluded that non-radio alternatives are not such that they would on their own sufficiently constrain radio stations.

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[140] We asked these customers what, if any, other forms of advertising they considered when purchasing radio advertising. We further asked them to rate how close these other forms of advertising were to radio. We used a five-point scale where the bottom was not at all and the top were very close alternatives.
[141] Television in both instances.
[142] We asked this question in the context of our assessment of the effect of the loss of FRS, but consider that it is relevant to market definition.

Local non-radio constraints

7.24 In relation to local advertising, Bauer submitted that the alternatives to advertising on local radio (particularly for the acquired stations which operate in very small geographic areas) will be local newspapers, out-of-home advertising and online services (such as directories, social media etc).

7.25 Bauer also submitted that digital competition is a growing threat to local radio stations as it enables advertisers to precisely target certain audiences. Bauer said that a growing proportion of total advertising spend, including that which would have otherwise gone to radio, is being allocated to online advertising, and that this trend is likely to continue. However, Bauer also submitted that while local press revenue is falling as a result of the rise of digital advertising, radio has so far maintained its level of revenue.

7.26 Operators of local radio stations particularly highlighted digital advertising and local press advertising as exerting a competitive constraint on local radio advertising.[143]

7.27 Local advertisers gave mixed responses on whether they considered non-radio advertising to be a close alternative to radio advertising. Fourteen of 24 local advertisers considered non-radio advertising to be a close alternative to radio advertising, however the others emphasised that they consider radio advertising to have unique features, for example listeners are unable to fast forward the advertising and advertisers can create jingles that are frequently repeated, meaning their products become memorable.[144]

7.28 We also asked local advertisers which non-radio forms of advertising they considered when buying their local radio advertising.[145] Of the 17 local advertisers who answered this question, only three either did not consider purchasing any alternatives to radio advertising or did not consider any of the alternatives to be suitable. Of the other 14 who did consider alternatives to radio, none considered any alternative to be a very close alternative, 12 considered print and around half considered digital and out-of-home advertising. However, on average, these advertisers rated each of these forms of advertising around the middle of a scale between being a very close alternative and not at all an alternative.

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[143] Global, Wireless and 18 FRS radio station groups.
[144] Evidence gathered as part of the Phase 1 investigation
[145] This was as part of our Phase 2 investigation and was just asked to local advertisers in the three areas considered in section 11. We asked these customers what, if any, other forms of advertising they considered when purchasing radio advertising. We further asked them to rate how close these other forms of advertising were to radio on a five-point scale where the bottom was ‘not at all’ and the top was ‘very close alternatives’.

- *Our views on local non-radio constraints*

7.29 The third-party evidence shows that local advertisers have alternatives to local radio advertising. We found that local radio advertising is constrained to some extent by non-radio advertising. However, local advertisers do not appear to consider forms of non-radio advertising to be very close alternatives to radio and consider it to have some unique features. we therefore concluded that non-radio alternatives would not be sufficient on their own to constrain local radio stations.

Community radio

7.30 Community radio stations are not for profit and typically cover a small geographic area (see paragraph 2.12). Community radio is funded mainly through a mixture of advertising revenue and grants. No third parties told us that community radio was a significant competitor for advertising. As such, we have not sought to include competition for advertising from community radio in our competitive assessment.

Conclusion on product market definition

7.31 We considered a variety of evidence from Bauer, including their internal monitoring, evidence from other radio groups and from local and national advertisers. We found there is widespread use of alternatives to radio advertising, and advertisers moving spending to other forms of media, particularly digital, but we have not received evidence that this is in response to pricing changes which would indicate that they are in the same market. There was little direct evidence of a competitive constraint, sufficient to mean that non-radio advertising should be included in the same market whether nationally or locally (ie that we should assess the impact of the Acquisitions across a more widely defined advertising market).

7.32 Therefore, we concluded that the product market is radio advertising.

7.33 Nonetheless we recognise that non-radio advertising is likely to form an out-of-market constraint, given that it is a readily available and widely used alternative to radio advertising. We have therefore taken account of this within our competitive assessments and given it appropriate weight where relevant. In particular, we have taken account of the views of relevant customers and considered evidence specific to particular local areas in our assessments at the local level (see paragraphs 11.55 to 11.58, 11.70 to 11.71, 11.91 to 11.93 and 11.114 to 11.116).

Geographic scope

7.34 A radio station broadcasts nationally, regionally or locally over an area specified by its licence (see paragraph 2.18). Some stations broadcast on multiple transmitters and can split their transmission, broadcasting different programming through each transmitter. This allows advertisers to purchase advertising across only part of the station's TSA.

7.35 In previous radio mergers, the CMA found that national, regional and local stations can compete with each other, as there is no direct relationship between the scope of licence held and the scope of advertising campaigns offered.[146] Some national stations sell regional advertising, where they are able to split their transmission, and in some circumstances, regional stations can reduce their rates to attract local advertisers within a region. Bauer splits its stations' advertising between different local transmitters in several of its TSAs to attract local advertisers. Local stations frequently carry national advertising as part of a broader network. The distinctions between local, regional and national stations are therefore not necessarily reflected in clear-cut distinctions in competitive dynamics. However, the importance of a station's geographic reach may vary depending on the type of campaign being advertised. For example, a local business may place more importance on broadcast location and advertisers looking for a targeted campaign will take into account the risk of avoidable wastage (from paying for advertising reaching an audience outside of the intended area).[147]

7.36 In the context of the present case, we considered local markets based on local radio stations' TSAs[148] and a UK-wide advertising market. We assessed the Acquisitions' impact on contracted airtime advertising and national sponsorship and promotion at the national level (national radio advertising), and assessed the Acquisitions' impact on non-contracted airtime advertising and local sponsorship and promotion at the local level (local radio advertising).

Conclusion on geographic market definition

7.37 Radio groups and independent sales houses can offer networks of stations, and stations may also be able to split their transmission to provide different tailored content through different transmitters, allowing targeted local advertising to be offered. We therefore defined both local and national

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[146] CMA Case, *Global Radio / Juice,* 5 October 2015, paragraph 33; Competition Commission case, *Global Radio / GMG*, 21 May 2013, paragraphs 5.47-5.50.
[147] CMA Case, *Global Radio / Juice,* 5 October 2015, paragraphs 45-48.
[148] We considered the ability of stations to broadcast on multiple transmitters and split transmissions as appropriate.

advertising markets with reference to the possible permutations of station coverage at local (station and transmitter and combinations of these) and national level.

The supply of representation for national advertising to independent radio stations

Product scope

7.38 The evidence we have received shows that national advertisers and large media buying agencies generally do not negotiate directly with radio stations. It would be more costly and inefficient for these customers to negotiate advertising directly with individual stations. Instead, they deal with the in-house sales functions of radio groups (eg Global and Bauer), or with FRS, a sales house which collectively represents independent radio stations which do not have in-house sales functions. These sales houses also allow customers to access a large number of local and regional stations and are likely to have a better understanding of customers' requirements and usual ways of working.

7.39 For radio stations, as well as making their offering more accessible, a sales house can function as a sales team dealing with potentially over 100 media buying agencies. This will cost less than a radio station employing its own representatives.

7.40 Therefore, to access national advertisers or large media buying agencies, radio stations use representation services to sell national and contracted advertising. Bauer and Global have in-house representation services, but independent radio stations need to contract with a sales house to book national advertising in exchange for a commission. FRS provides representation services to many independent radio stations; it sells advertising on individual stations, groups of stations or all of its member stations, and receives a commission from the advertising revenue. Communicorp has an agreement with Global (and Quidem has also agreed to do so), and [✂] Bauer. The potential options for representation, including FRS, Bauer and Global, are assessed further in section 8.

7.41 We asked radio groups that purchased representation services from FRS what options they would consider instead. Eight of 17 radio groups told us that they would consider self-supply, with the other nine not giving this as an option. However, all saw this as being problematic for reasons including the additional cost and the size of their audiences being too small to attract interest from national advertisers. We found this evidence was consistent with that from a few large media buying agencies which suggested that they would negotiate with or purchase advertising from individual independent operators if FRS was unavailable.

7.42 We asked the 17 radio groups what options they would consider should FRS no longer be available, and the only further option was to use 'Digital Audio Exchanges'.[149] This option was raised by one radio group who said that this would be online only and only cover part of its need for representation.[150]

Conclusion on product market definition

7.43 Based on the evidence we have received, we found that there is a market for representation services, ie representing independent radio stations to national advertisers and large media buying agencies. Based on the evidence we received from independent radio stations, we found that neither self-supply or other options, such as digital exchanges, were part of this market.

Geographic scope

7.44 Advertising customers that deal with sales houses, rather than directly with radio stations, tend to be interested in advertising across multiple parts of the UK. This means that they wish to engage with providers of radio advertising that can offer a wide geographic coverage. As such, FRS and the in-house sales functions of Bauer and Global centrally sell advertising on local radio stations across the UK.

7.45 We found no evidence of their being variations in the supply of representation services in different parts of the UK.

Conclusion on geographic market definition

7.46 Therefore, we concluded that the geographic market for representation services is national.

Conclusion on market definition

7.47 We assessed the effects of the Acquisitions in the following relevant markets:

(a) The supply of radio advertising in:

[149] These are platforms, such as Global's DAX, that connect advertisers with publishers of online audio content.
[150] Helius Media.

(i) Local markets (corresponding to the transmission areas of analogue radio stations by individual transmitters or combinations of transmitters and also combinations of co-owned stations); and

(ii) The national market; and

(b) The supply of representation for national advertising to independent radio stations in the UK.

8. The supply of representation for national advertising to independent radio stations

Introduction

8.1 We considered whether the effect of the Acquisitions would be to result in a substantial lessening of competition (SLC) in the market for representation of national advertising to independent radio stations.

8.2 The SLC could occur as a result of each of:

(a) Bauer acquiring material influence through the acquisition of 50% of the shares in FRS as a result of the UKRD Acquisition, and the ability to alter the corporate strategic direction of FRS and eliminating it as an independent competitor in representation services for independent radio stations;

(b) Bauer having the ability and incentive to withdraw the Acquired Businesses which represent a large proportion of FRS' customers from FRS thereby challenging its economic viability.

8.3 We considered whether the Acquisitions resulted in a loss of current and/or future competition that may have occurred absent the Acquisitions. Prior to the Acquisitions, FRS and Global both supplied representation services to independent radio stations; Bauer has also done so in the past, [✄], and may have been perceived as a potential competitor in the supply of representation services to independent radio stations.[151] As set out in paragraphs 8.19 to 8.40, absent the Acquisitions Bauer would be expected to have supplied representation services to independent radio stations.

8.4 Therefore, this theory of harm is that the Acquisitions, by leading to the loss of FRS as an independent competitor, could result in a substantial lessening of

[151] See paragraph 2.38.

competition in the supply of representation services to independent radio stations:

- *(a)* due to the loss of the current constraint imposed by Bauer as a potential competitor, and/or
- *(b)* due to the loss of the increased constraint that Bauer would have exerted on FRS absent the acquisitions.

In either case, this would result in a reduction in the number of competitors offering representation services from three absent the Acquisitions (FRS, Bauer and Global) to two following the Acquisitions (Bauer and Global).

Competitive assessment

Bauer's evidence

8.5 Bauer submitted that that the Acquisitions did not give rise to an SLC in this market for the following reasons:

- *(a)* FRS would have failed in the short to medium term absent the Acquisitions and would not therefore have continued as an effective participant in providing national advertising sales representation. Bauer told us that in this counterfactual position, it would have sought to represent as many FRS stations as possible, which would put further pressure on FRS and hasten its exit.
- *(b)* Bauer is not an actual or potential competitor in such a market:
- *(c)* As a result of the Acquisitions, that the number of options for representation for the FRS stations thus changes from two pre-Acquisitions (FRS and Global) to two post-Acquisitions (Bauer and Global).
- *(d)* Its interest in representing the independent FRS stations arises as a result of the Acquisitions, because they add to the share of listening acquired through the Acquisitions [✂].
- *(e)* Global was and remains a constraint in the supply of national advertising representation. The independent radio stations represented by FRS were already leaving FRS for Global, whether as a result of acquisition or representation. This would have continued in the counterfactual. The threat of the non-acquired FRS stations switching to Global would incentivise Bauer both to represent those stations and to offer competitive terms in order to do so.

(f) It said that even if the above points are rejected there is no SLC as the elimination of FRS cannot be expected to have an adverse effect on customers (which in this case it considered to be advertisers or listeners rather than radio stations). It claimed that an adverse effect on individual stations represented by FRS, or removal of their 'preferred option' does not constitute an SLC.

Third Party evidence

8.6 Independent radio stations highlighted that representation services are important for them: 12 out of 17 radio groups using FRS for representation services that responded to our questionnaire[152] said that the revenue from FRS accounts for over 10% of their revenue and a majority said it was important for their viability.

8.7 FRS stations raised a further concern that as Bauer would potentially be competing with FRS stations for local and national advertising revenue, it could be incentivised, on a selective basis in areas where its local stations overlap with independent radio stations that it represents, to further worsen terms to those independent stations or treat its own stations preferentially in the allocation of advertising.[153]

Alternatives for representation

8.8 We assessed whether Bauer would have competed to offer representation absent the Acquisitions, how FRS is affected by the Acquisitions and the other potential alternatives for local stations for representation to national advertisers.

8.9 As well as Bauer and FRS, we identified the following potential alternatives:

(a) Global;

(b) Wireless;

(c) A replacement of FRS;

(d) Self-representation; and

(e) Other options

[152] This is out of a total of around 20 radio station groups using FRS.
[153] This potential further harm appears more likely to arise as a result of the possible foreclosure of FRS (due to Bauer's acquisition of a large proportion of FRS' customers) and less likely to occur purely as a result of Bauer's acquisition of 50% of FRS, ie as a result of the UKRD Acquisition alone.

Bauer

Bauer's position prior to the Acquisitions

8.10 We assessed whether Bauer has been an actual or potential competitor in the market for representation services prior to the Acquisitions.

8.11 Bauer submitted that prior to the Acquisitions:

(a) it was not a competitor with FRS in the supply of representation for national advertising;[154]

(b) it had not been active in providing representation services since its acquisition of Orion;

(c) it [✂];

(d) it [✂];

(e) its strategy, as evidenced by its behaviour over the past decade, has been to acquire stations rather than represent them as acquisition brings both increased revenue (ie 100% of all advertising sales compared to just sales commission on national advertising sales, which are a small proportion of total advertising sales, around 15%) and also certainty that Bauer can increase audience share;[155]

(f) its focus on acquisitions (including the Acquisitions) was consistent with its overall strategy of [✂];[156] and,

(g) there was no evidence that Bauer constrained the terms offered by FRS prior to the Acquisitions.[157]

8.12 We found that Bauer does not currently represent any third-party stations [✂], but it has previously done so, representing Orion between 2014 and 2016.[158]

8.13 We also found evidence that Bauer has previously appeared reluctant to represent independent radio stations. Two FRS stations told the CMA that they had discussed the possibility of national radio advertising representation

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[154] Bauer Response to Provisional Findings paragraph 1.16.
[155] Bauer Response to Provisional Findings paragraph 1.16.
[156] Bauer Response to Provisional Findings paragraph 1.16.
[157] Bauer Response to Provisional Findings paragraph 4.4.1 (B).
[158] Bauer ultimately acquired Orion in 2016, and it told us it had won the opportunity to represent Orion from Global.

from Bauer in the last five years.[159] However, both discussions were limited and neither agreed representation. One of the stations was told by Bauer that 'third party representation was not something it would consider'.[160] Another station said 'Bauer has told [it] in the past that [it] did not want to sell national airtime/sponsorship and promotions for smaller brands because it would be too much work for not enough return'.[161] Further in the past, another station had 'informal talks with little or no interest from the larger operators'.[162]

8.14 Bauer said it had also been approached by four other third parties since 2016 looking for representation.[163] None of these discussions resulted in an NSA, [✂] the IEO imposed by the CMA following the UKRD Acquisition.

8.15 Despite this, Bauer appears to have been considered a potential option by both independent radio stations, a number of which approached Bauer (as set out above), and FRS. FRS told us that it considered Bauer as one of the most likely alternative options (along with Global and selling to agencies directly) for its independent radio station customers. FRS told us that in the recent past [✂] served FRS with notice to leave as it was looking at other options. FRS told us it presumed these alternatives were Bauer and/or Global. While [✂] remained an FRS customer and this renegotiation did not lead to a reduction of the headline commission rates it paid, [✂] did achieve other improvements in its terms.

8.16 Bauer stated that it was unclear to it whether the other options considered by [✂] were related to representation, a potential sale or an alternative strategy such as focussing solely on local advertising.[164] Bauer also gave reasons why it was not a potential competitor in this case.[165] However, regardless of the other options actually considered by [✂] or Bauer's actual position, FRS perceived Bauer as a potential alternative for [✂].

8.17 In our view this evidence shows Bauer was, at the very least, perceived by FRS as a competitor and that Bauer's presence as a possible supplier of representation services has constrained the terms offered by FRS in the recent past.

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159 [✂].
160 [✂].
161 [✂].
162 [✂].
163 The third parties were [✂].
164 We note that [✂] stated in an email to FRS that it was 'shortly meeting with alternative national sales organisations'.
165 Bauer Response to Provisional Findings paragraph 4.15.

- *Assessment of Bauer's position prior to the Acquisitions*

8.18 Bauer has provided representation in the past, but last did so in 2016 and appears to have declined other opportunities to do so. There is also some evidence that prior to the Acquisitions, Bauer was perceived as a competitor by FRS. On the basis of this evidence we found that prior to the Acquisitions, Bauer was at least perceived as a potential competitor to FRS; although the constraint it exercised was limited because of its past preference to acquire stations (see paragraph 8.11(e)) rather than represent them.

Bauer's position absent the Acquisitions

8.19 While Bauer's previous activity in the supply of representation services is relatively limited, this appears to be the result of Bauer's strategy to acquire stations rather than represent them. In contrast, absent the Acquisitions, it would have had less ability to pursue this preferred strategy. While it may have been able to acquire some other local stations, these would likely have been far smaller than the Acquisitions. This means that Bauer's position prior to the Acquisitions is not representative of what it would have been absent the Acquisitions. In order to assess whether Bauer would have competed to provide representation absent the Acquisitions, we looked at:

(a) Direct evidence of Bauer's future position;

(b) Bauer's ability to compete to provide representation; and

(c) Bauer's incentive to compete to provide representation.

- *Bauer's future position*

8.20 Bauer submitted that there was substantial evidence from its internal documents that it has been focused on an acquisition strategy and has refused to take on national sales representation while it was focused on making acquisitions.[166] However, this relates to its strategy prior to and related to the Acquisitions, not its future intentions in the absence of the Acquisitions. We found no internal documents setting out Bauer's future intentions in the absence of the Acquisitions.

8.21 Bauer has [✄], while reaching such an agreement was possible, in our view the pre-merger conditions are the appropriate counterfactual [✄]. Therefore, we concluded that [✄] is not direct evidence of Bauer's future position,

[166] Bauer Response to Provisional Findings paragraph 4.22.

although it is informative with regard to Bauer's ability and incentive to provide representation.

8.22 We found no evidence from Bauer's actions and planning (eg from internal papers) directly evidencing its likely position absent the Acquisitions. We therefore explored Bauer's ability and incentive to provide representation.

- *Bauer's ability to compete to provide representation*

8.23 Bauer submitted that Representation '[✂].' However, Bauer also submitted that:

(a) It has in the past successfully represented the Orion stations,[167] which [✂].

(b) The changes Bauer would have to make to start representing independent radio stations would be minimal and low cost. Bauer, for example, stated that:

(i) 'There are very few incremental costs associated with representing additional stations.'

(ii) 'Integrating the FRS stations into our existing systems and processes would be quick and simple'

(c) There are reasons to believe Bauer would be better at representation than FRS.[168]

8.24 We also note that Bauer has not highlighted any significant barriers to it being able to offer representation. In our view, Bauer's representation of Orion from 2014-2016 demonstrates that Bauer has the ability to offer representation.

8.25 [✂] Bauer believes it has the ability to quickly offer representation. [✂] Bauer was confident in its ability to offer representation is still relevant evidence.

8.26 Bauer's ability to compete also depends on independent radio stations being open to being represented by Bauer. We asked independent radio stations whether they were open to representation from Bauer. Overall, 14 of 17 radio groups that use FRS that responded to our questionnaire said that they may consider representation from Global, Bauer or another national radio station operator in the future. However, these responses were often linked to FRS being unavailable or caveated, for example nine out of 17 expressed

[167] Bauer response to phase 1 decision, 27 August 2019, paragraph 8.11.
[168] Bauer response to phase 1 decision, 27 August 2019, paragraph 8.4.

concerns that Bauer (and Global) would prioritise their own brands. Despite some radio groups' reservations, we found it likely that a sufficient number of independent radio groups would be open to being represented by Bauer to enable it to be able to compete.

8.27 Based on the evidence set out above, we found that Bauer does not appear to face any significant barriers to offering representation to independent radio stations and could in our view quickly and at little cost compete to provide representation. Further, we found that potential customers would be sufficiently open to Bauer as a supplier for it to be able to compete. We therefore concluded that Bauer would have the ability to compete to provide representation.

- *Bauer's incentive to compete to provide representation*

8.28 Bauer submitted that:

(a) 'absent the [Acquisitions] the decision whether to offer representation would depend on the extent to which the representation advanced Bauer's overall strategy.'

(b) Bauer's 'strategy is to [✂].

(c) The Acquisitions formed part of this overarching commercial strategy aimed at [✂].[169]

(d) Representing the Third Party Stations in addition to and following the Acquisitions helps deliver this [✂].

8.29 Bauer submitted that it now has strong incentives to represent independent radio stations following the Acquisitions, but that this is a result of the Acquisitions.[170] Bauer submitted that the incentives arose for the following reasons:

(a) The Acquisitions represent 'an opportunity to represent independent radio stations as a group, as this constitutes a critical mass which [✂] in a way that piecemeal representation of individual stations would not.'[171]

(b) Independent radio stations as a group were not sufficient, by themselves, to enable Bauer to [✂] prior to the Acquisitions. However, they would

[169] Bauer Response to Provisional Findings paragraph 3.4.
[170] Bauer Response to Provisional Findings paragraphs 1.23 and 4.19-4.22.
[171] Bauer Response to Provisional Findings paragraph 4.19.

make a material contribution to further [✂] between Bauer [✂] after it has already been [✂] by the Acquisitions.[172]

(c) Following the Acquisitions, the contribution that each incremental increase in share of listening makes towards [✂], and thereby increasing the likelihood of Bauer [✂], has a greater significance given the [✂] Bauer has already achieved.[173]

8.30 We agree that representation of independent radio stations would contribute to Bauer's overall strategy [✂]. Further, as set out in paragraphs 10.21 to 10.89, we found that the benefits to Bauer of representing independent radio stations were greater than the costs. However, we disagreed with Bauer that their incentive to represent independent radio stations was a result of the Acquisitions for the following reasons.

8.31 First, absent the Acquisitions Bauer would still be aiming to grow its scale. Indeed, Bauer submitted that absent the Acquisitions it would have considered and identified alternative means of delivering the [✂] required, such as other acquisitions or launches.[174]

8.32 Second, to achieve this Bauer would look for alternatives to the Acquisitions that could contribute to the overall goal. This is consistent with Bauer's explanation of how it approached the Acquisitions. Bauer said in response to our provisional findings, that it 'considered a range of strategic options which would contribute to this overall goal and executed all of those that it was able to execute in view of their contribution to this overall aim.'[175] In our view, representation would be a strategic option that could contribute to Bauer's goal.

8.33 Third, of Bauer's strategic options representation would likely offer Bauer the greatest ability to grow its scale to a significant degree and quickly. The potential for alternative acquisitions is limited absent the Acquisitions. Launches also appear limited and take time to gain listeners. While some launches are successful, eg in March 2019 Bauer launched Scala as its fourth main national service and by Q4 2019 it had gained 0.35% of commercial listening,[176] the number of such opportunities is limited, there is a risk competitors will respond by launching similar stations, and they can only be launched digitally reducing their potential number of listeners. In contrast, stations represented by FRS make up 7.9% of commercial listening and could

[172] Bauer Response to Provisional Findings paragraph 4.19.
[173] Bauer Response to Provisional Findings paragraph 4.21.
[174] Bauer Response to Provisional Findings paragraph 3.6.5.
[175] Bauer Response to Provisional Findings paragraph 3.6.4.
[176] https://www.rajar.co.uk/content.php?page=listen_market_trends

be signed relatively quickly. Further, these options are not necessarily mutually exclusive; Bauer could still pursue new launches alongside representation as it has done while pursuing acquisitions; and Bauer could pursue representation where acquisition was not an option, [✂].

8.34 Fourth, as submitted by Bauer, ‘there is still a risk …[✂]. However, this threat only serves to increase Bauer’s incentive to represent the independent radio stations [✂].’[177] Although we put limited weight on this factor because, as set out in [✂], we found that there are not many independent radio stations for whom [✂] would be a viable option.

8.35 Finally, we thought that Bauer’s [✂] indicates that it has the incentive to represent independent radio stations absent the Acquisitions. Bauer told us that [✂], it would have been in Bauer’s commercial interests to provide national sales representation [✂].’

8.36 Although this evidence strongly indicates that absent the Acquisitions Bauer would have the incentive to compete to represent, Bauer submitted [✂]:

(a) [✂].[178]

(b) [✂].

(c) Bauer’s concerns about the transitory nature of representation (relative to acquisition) are mitigated – provided Bauer does a good job of representation [✂].[179]

8.37 However, in our view, these features do not appear to be unique [✂] that Bauer would not be able to acquire. Similarly, Bauer’s logic that, if it does a good job of representation, its concerns about the transitory nature of representation (relative to acquisition) would be mitigated, would equally apply to other relevant situations.

8.38 Our finding that [✂] is evidence of Bauer’s incentives absent the Acquisitions is not inconsistent with our conclusion that [✂] to be part of the counterfactual. This is because the exclusion [✂] from our counterfactual was not a result of concerns over Bauer’s incentive [✂] or to provide representation more generally. Rather the uncertainty was whether absent the Acquisitions [✂].

[177] Bauer Response to Provisional Findings paragraph 1.20.
[178] Bauer Response to Provisional Findings paragraph 1.18.
[179] Bauer Response to Provisional Findings paragraph 4.13.

8.39 We have found that Bauer would have an incentive to represent independent radio stations absent the Acquisitions. Absent the Acquisitions Bauer would still have the incentive to increase its commercial share of listening and representation would contribute to this goal. We found that [✄] was strong evidence that Bauer would have the incentive to compete to supply representation absent the Acquisitions. This is because [✄] being in its commercial interests absent the Acquisitions also apply to other independent radio stations. Based on the reasons above, we concluded that Bauer would have the incentive to represent independent radio stations absent the Acquisitions.

- *Assessment of Bauer's position absent the Acquisitions*

8.40 As set out above, while Bauer does not currently represent independent stations, we found that absent the Acquisitions it would have the ability and incentive to do so. Accordingly, we find that absent the Acquisitions Bauer would have been a credible and growing competitor to FRS.

FRS

FRS' position absent the Acquisitions

8.41 FRS is a national sales house which sells national radio advertising to media buying agencies[180] on behalf of 107 local radio stations,[181] including the Acquired Businesses, in exchange for a commission. The stations FRS represents have a total of just over 7% of UK commercial radio listener hours and around [✄]% of national airtime revenue.[182] This makes FRS the largest current supplier of representation services to independent radio stations both by number of stations represented and by listening hours.

8.42 As discussed in paragraphs 6.88 to 6.89, while FRS' existing customers could seek representation by Bauer or Global, there is some evidence that FRS would remain its customers preferred option. FRS' customer stations gave a number of reasons why they considered representation by FRS to be preferable to other options for representation services. In particular, they highlighted its relative independence because it is not part of a larger radio group and that it does not require brand or content licensing deals.

[180] All of FRS' customers are media buying agencies.
[181] Excluding Quidem and Connect stations which are now being represented by Global; and JACKfm which is a national station.
[182] See Table 5.

8.43 As set out in paragraphs 6.63 to 6.98, we concluded that absent the Acquisitions, FRS would have remained active providing national advertising sales representation to radio stations.

How FRS will be affected by the Acquisitions

8.44 The Acquisitions have two distinct potential impacts on FRS: first, through Bauer's acquisition of 50% of FRS and second, through Bauer's acquisition of a large proportion of FRS' customers (measured by share of business). These two potential impacts are considered in this section.

- *Impact of Bauer's acquisition of 50% of FRS*

8.45 Bauer's acquisition of UKRD's 50% shareholding of FRS, gives Bauer the ability to influence FRS' corporate and strategic decision-making, which might ultimately weaken FRS. It might do this through seeking the decline or closure of FRS or otherwise reducing its attractiveness to independent radio stations or advertisers by, for example, preventing FRS from making investments or take other action necessary to compete effectively. Using this influence, Bauer may be able to facilitate its intention to represent independent radio stations currently represented by FRS. This would make FRS less able to compete and allow Bauer to represent these stations on worse terms than it would have to offer if FRS were freely competing for these customers.

- *Impact of Bauer's acquisition of a large proportion of FRS' customers*

8.46 The Acquisitions enable Bauer to acquire a large proportion of FRS' customers (by share of business) which has the potential to affect the financial viability of FRS. If FRS is not viable, it will no longer be an option for local radio stations as a route to sell to national advertisers.

8.47 As a result of the Acquisitions and Bauer withdrawing the stations from FRS's representation, FRS would lose a substantial part of its business including [✂]% its revenue and [✂]% of its retained commission.[183] FRS' offer to national advertisers would also be much reduced, losing nearly [✂] listeners, reducing its reach by [✂]%, and much of its geographic coverage.[184]

8.48 Bauer has stated that 'it would not be efficient to continue to operate FRS as a separate sales house in its current form. Bauer intends to directly represent those independent stations currently represented by FRS and has every

[183] Based on FRS 2018 data, excluding stations now owned by Bauer or Global.
[184] [✂].

incentive to do so'.[185] Bauer's internal documents indicate that FRS would not be economically viable following the Acquisitions.[186] Overall, Bauer does not dispute that 'the Transactions will lead to the failure of FRS'.[187]

8.49 The available evidence, including our analysis of FRS' financial data (see Appendix C), shows that, without the revenue stream from the Acquired Businesses, FRS would cease to be profitable. We have found that most of FRS' costs are fixed and so any substantial decline in turnover would mean it would likely rapidly become loss-making. While there may be potential for cost savings (see paragraphs 6.92 to 6.94), in our view any such savings would not be on a scale which could address the loss of revenue from the Acquisitions.

8.50 FRS' offer to national advertisers would be much worsened as a result of representing fewer stations, listeners and geographic areas. In our view, FRS' greatly reduced reach and coverage would make it more difficult for FRS to attract media buying agencies as customers and would reduce its negotiating power. Accordingly, we do not consider that it would be possible for FRS to raise its prices to media buying agencies to offset such a substantial loss of revenue.[188]

8.51 As a result of these factors, we concluded that the removal of the stations forming part of the Acquired Businesses from FRS would cause FRS to cease to be financially viable.

- *Our assessment of the impact of the Acquisitions on FRS*

8.52 Based on the evidence and reasons set out above, we concluded that each of the two impacts described above would result in FRS being likely to cease to act as a competitor independent from Bauer. In addition, the option of using FRS, which is currently the independent stations' preferred option and is likely to remain an option for the foreseeable future, is likely to be removed or significantly worsened as a result of the Acquisitions.

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[185] Bauer response to phase 1 decision, 27 August 2019, paragraph 8.7.
[186] We found that Bauer expected that the cumulative effect of Acquisitions, would make FRS 'uneconomic'. It also said that 'even if we don't buy FRS, the acquisitions will make it very difficult for it to continue as a viable model', and that the residual FRS stations 'would be a complex group to provide sales representation for'.
[187] Bauer Response to Provisional Findings paragraph 4.2.
[188] It may be able to increase commission rates to independent radio stations, but this would depend on competition for those customers reducing, which is what we are considering in this section.

Global

8.53 Bauer submitted that independent radio stations could obtain alternative representation from Global.

8.54 Global currently represents stations operated by Communicorp, which accounts for around 5% of total UK commercial radio listening hours. Global has recently entered into a brand licensing and national representation arrangement with Quidem, which is currently represented by FRS. Global has also previously represented Orion, although this is over five years ago.

Requirement for brand and licensing agreements

8.55 Global's current representations include brand and licensing agreements, such that the represented stations carry Global's programming (excepting local programming obligations) and they are branded with one of Global's brands (eg Capital or Heart).

8.56 Global submitted that it would not be 'commercially viable' to represent the FRS stations, outside of its Heart, Capital and Smooth brands. Global told us that its entire national sales operation is structured around selling national brands. It said that marketing individual stations does not fit into this structure and where Global has in the past sought to market individual stations which do not form part of a larger branded network (such as Global's now defunct digital-only stations the Arrow and Chill), [✂].Global also told us that 'adding independents to its propositions [✂].'

8.57 Global has said that since 2016, it has also discussed national sales representation [✂]. As set out below, [✂]:

(a) [✂].

(b) [✂].

(c) [✂].

8.58 We note that Ofcom's regulatory changes in 2018 mean that content licensing is now more appealing, as the changes reduced requirements for local content. BCLs may be particularly attractive where there is no direct competition between brand owner and licensee for listeners. However, we note that some residual FRS stations expressed reluctance to enter into brand and content licence agreements.[189]

Global's willingness to represent additional independent radio stations

8.59 In terms of representing additional independent radio stations, Global also told us that:

(a) [✂].

(b) [✂].

(c) [✂].

(d) [✂].

Conclusion on Global as an option

8.60 Based on the evidence set out above, we find that there are limited circumstances where Global would be willing to represent any more independent radio stations and where they would, this would require a BCL. Given that [✂], we consider that this issue could occur again in the future. Furthermore, even if willing to accept a BCL, there are not many independent radio stations for whom Global would be a viable option, because of the independent stations' limited scale and their potential overlap with Global's brands.

8.61 We therefore concluded that Global is an alternative to FRS, albeit a limited one. However, it will likely only be a suitable option for those independent radio stations willing to make a brand licensing agreement and who are in areas where Global's own brands are not already present.

Wireless

8.62 Wireless represents its own national stations, eg talkSPORT and Virgin Radio, but used FRS to represent its local stations, including those it has sold to Bauer and its retained stations.

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[189] For example:

- Dee Radio Group said 'Given the brands of Bauer and Global operate in our markets it would be very important that we weren't tied to licence agreements.'
- Mid Anglia Media (Star Radio Cambridge) said it would not wish to be forced into taking an existing national Global or Bauer brand.
- [✂] said that a brand licensing arrangement would not work for it at all. [✂].
- JACKfm said under no circumstances could it accept a brand and content licensing agreement.

8.63 Bauer submitted that Wireless' retained local station U105 may be able to obtain representation by Wireless' existing sales house.[190]

8.64 [✂].[191]

8.65 Taking account of the evidence above, and that [✂], we concluded that Wireless is unlikely to supply representation services to independent radio stations.

A replacement of FRS

8.66 One alternative option for independent radio stations to obtain (or threaten to obtain) representation services may be to create or sponsor entry for a new entity to offer representation services.

8.67 Bauer submitted that this option was not credible and that it carried considerable execution risk, partially because it would require a critical mass of stations, which presents a significant practical coordination problem.

8.68 There is no evidence that this option was considered (or threatened) prior to the Acquisitions. Some independent radio stations referred to creating a replacement for FRS if it were no longer available, but all considered that there would be problems with this approach.

8.69 Quidem told us that, following the Acquisitions, it met with JACKfm, [✂] and KM Group. They discussed the options available should FRS fold, one of which was to take some FRS staff and create an independent substitute for FRS. Such ideas were not progressed. Quidem considered that Bauer's Acquisitions would take the available portfolio to below the critical threshold required to have an offering which could be sold to national media buying agencies. Quidem has since opted to enter into a representation agreement (including a BCL) with Global.

8.70 Based on this evidence we concluded that it is unlikely that an FRS-type replacement would have been established to replace FRS in the counterfactual (and would be even more unlikely following the Acquisitions).

Self-representation

8.71 Eight of the 17 radio station groups that told us what options they would consider should FRS no longer be available said that they would consider

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[190] Bauer response to phase 1 decision, 27 August 2019, paragraph 8.13.
[191] [✂].

representing themselves. However, they all saw this as being problematic.[192] Typical responses included:

(a) The amount of national revenue would not justify employing a dedicated national sales representative.[193]

(b) [The radio group] ‘has neither the audience scale nor could it sustain the cost of setting up the sales team that would be required to operate on this market effectively against the sales teams of national radio operators.’[194]

8.72 This is consistent with what FRS and media buying agencies told us. FRS said that media buying agencies do not normally negotiate directly with local stations due in part to the complexity this would involve. Also few large media buying agencies suggested that they would negotiate with or purchase advertising from individual independent operators if FRS was unavailable.

8.73 Based on the evidence from residual FRS customers, we concluded that self-representation is likely to be too costly an option to be a close alternative to representation by FRS, Bauer or Global.

Other options

8.74 Of the 17 radio groups that told us what options they would consider should FRS no longer be available, the only further option raised was to use ‘Digital Audio Exchanges’.[195] This was raised by one customer who said that this option would be online only and only cover part of its need for representation.[196]

8.75 Bauer submitted that there were also routes to market such as the Radio Trading Desk and national advertising sold via GTN and IRN/Newslink. However, as noted in the previous paragraph these were not raised as options by any independent radio stations.

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[192] Star Radio Cambridge response.
[✂].
[✂].
Lyca Media (Time 107.5) response.
Dee Radio Group response.
Media Sound Holdings response.
Tindle CI Broadcasting response.
KM Group response.
[193] Star Radio Cambridge response.
[194] [✂].
[195] These are platforms, such as Global’s DAX, that connect advertisers with publishers of online audio content.
[196] Helius Media.

Finding on competition in the supply of representation services

8.76 Bauer submitted that assuming the Acquisitions resulted in a loss of competition then the loss of competition is not substantial, is very short lived and is offset by pro-competitive efficiencies and RCBs in terms of better representation of independent stations through a wider range of advertisers and increased volume of sales and increased competition between Bauer and Global to represent stations.[197]

8.77 However, we concluded that in the foreseeable future, FRS in the counterfactual[198] would have remained active providing representation to radio stations. Further, as set out in paragraph 8.42, there are reasons why independent radio stations prefer FRS and we cannot predict the outcome of competition with sufficient level of certainty.

8.78 We found that following the Acquisitions the independent stations' existing preferred option of representation will be removed; the number of possible suppliers falls from three to two and that all the residual-FRS independent stations across the UK could be adversely affected. Further, independent radio stations have told us that revenues from national advertising are very important to their financial health.

8.79 Bauer further submitted that any lessening of competition could not be substantial because it would not affect listeners or advertisers. While we agree that the loss of competition in this market would not directly affect listeners or advertisers, it would affect the customers in this markets, ie independent radio stations.[199]

8.80 Bauer also submitted that the Acquisitions produce substantial benefits in the sector as a whole and these would dwarf any effect of a lessening of competition. We address this further as relevant customer benefits in the remedies section (see paragraphs 14.23 to 14.29).

8.81 We have found two likely outcomes as a consequence of the Acquisitions:

(a) Bauer gains the ability to exercise material influence over FRS altering its corporate and strategic decision-making which would make FRS less able to compete to supply representation services.

[197] Bauer Response to Provisional Findings paragraph 1.27.
[198] See paragraph 6.76
[199] We reject Bauer's argument presented at paragraph 8.5(f). The statutory test for an SLC is whether it arises in any market in the UK, not that it necessarily directly impacts on final customers.

(b) Bauer acquired a large proportion of FRS' customers (by share of business) and has the ability and incentive to withdraw these customers from FRS and FRS is likely to cease to exist due to the loss of these customers.

8.82 In our view, each of these outcomes mean that FRS is likely to cease to be an independent competitor in the supply of representation services. We also found that absent the Acquisitions it is likely that Bauer would have been a credible and growing competitor to FRS for the supply of representation services. As a result, absent the Acquisitions competition to represent independent radio stations would be between FRS, Bauer and Global. We found that as a result of the Acquisitions this would reduce to competition between only Bauer and Global post-Acquisitions. By eliminating the principal route of choice for independent radio stations to sell advertising slots to purchasers of airtime for national advertising, the Acquisitions reduce the number of separate options for independent stations from three to two.

8.83 We also found that the impact is substantial for the following reasons: the independent radio stations told us that revenues from national advertising are very important to their financial health; the existing preferred option of radio stations is removed; the number of possible suppliers falls from three to two; and all the residual-FRS independent stations across the UK could be affected; and because this will apply to stations across the UK.

8.84 Subject to any countervailing factors, we therefore concluded that the Acquisitions, as a result of each of: (1) Bauer's acquisition of the ability to exercise material influence over FRS; and (2) its acquisition of a large proportion of FRS' customers (by share of business), have resulted, or may be expected to result, in an SLC in the market for the supply of representation for national advertising to independent radio stations in the UK.

9. Horizontal unilateral effects in the supply of national advertising

Introduction

9.1 This section addresses the theory of harm that the Acquisitions would lessen competition in the market for the provision of national advertising because (as explained in paragraph 8.2):

(a) due to the UKRD Acquisition, Bauer would acquire a 50% shareholding of FRS; and *(b)* the Acquisitions would, by removing a significant part of FRS' customer base, make FRS economically unviable as an independent competitor.

We therefore found that following the Acquisitions, FRS would cease to compete independently of Bauer.

9.2 Consequently, we would expect FRS to be eliminated as a competitor in the provision of advertising to national advertisers. As two competitors in the supply of national advertising, Bauer and FRS are likely to impose some form of competitive constraint on each other.

9.3 We would normally expect firms that offer lower prices and/or better quality products/services than their competitors to impose a competitive constraint, putting pressure on competitors to position their offering to prevent customers switching to such rival firms. When previously competing firms merge, the constraint one competitor imposes on another is removed. The merged firm may be able to reduce the quality of the products or services it provides or increase prices because the merged firm faces fewer competitors to which customers could switch should it worsen its offer.[200]

9.4 This effect is more likely to have a negative impact on customers when the products/services offered by firms compete closely with each other. This is because it is likely that each firm imposes a substantial constraint on the other and when this is removed post-merger, the negative effect on prices and or quality will be more significant.

9.5 If FRS currently imposes a competitive constraint on Bauer by offering a potential alternative option for Bauer customers in the supply of national advertising, post-Acquisitions, as FRS ceases to be an independent competitor and the number of suppliers of national advertising fall, this constraint will be lifted. This has the potential to result in Bauer increasing prices or decreasing the quality of the services offered to its customers. Similarly, Bauer may also currently be constraining FRS as it potentially offers an alternative to FRS customers in the supply of national advertising. Post-Acquisitions, as FRS ceases to be an independent competitor and the number of suppliers of national advertising fall, this constraint will be lifted. This may result in the stations forming part of the Acquired Businesses, which were previously part of FRS and so constrained in the same way as FRS, offering services at increased prices or reduced quality. Hence, the Acquisitions have

[200] In our Merger Assessment Guidelines this is referred to as horizontal unilateral effects (*CC2 Revised*, section 5.4).

the potential to worsen the offers facing current customers of both FRS and Bauer.

9.6 This section considers how close Bauer and FRS are as competitors in the supply of national advertising in order to assess whether, and to what extent, FRS poses a competitive constraint on Bauer and vice versa. We then assess the effects of these potential constraints being removed as a result of the Acquisitions.

Competitive assessment

9.7 We considered competition in the market for national advertising and the closeness of competition between Bauer and FRS.

9.8 Global, Bauer and FRS supply national advertising. The shares of supply set out in Table 5 show that Global and Bauer are by far the largest suppliers of commercial radio by listening hours and revenue with a combined share of around 90% for both listening hours and revenue. FRS is a much smaller supplier, by share of commercial listening and particularly by share of national revenue.

Table 5: National shares of supply Q2 2019

	Share of commercial listening (UK) (%)	*Estimated share of national airtime revenue (%)*
Bauer [✂]	[✂] [30–40]	[✂] [30–40]
FRS pre-Acquisition [✂]	[✂] [5-10]	[✂] [0–5]
Celador	1.1	[✂] [0–5]
Lincs	1.1	[✂] [0–5]
Wireless (local stations acquired by Bauer)	1.7	[✂] [0–5]
*UKRD**	1.3	[✂] [0–5]
Increment [✂]	[✂] *[0–10]*	[✂] *[0–5]*
Merged entity [✂]	[✂] *[30–40]*	[✂] *[30–40]*
Other FRS stations	[✂] [0-5]	[✂] [0–5]
Global & Communicorp†	50.4	[✂] [50–60]
Wireless (National stations only)	5.1	[✂] [0–5]
Others	2.2	[✂] [0–5]

Source: Bauer.
* [✂].
† Global sells contracted advertising on behalf of Communicorp.

9.9 We noted in paragraphs 6.69 to 6.73, that the competitive constraint imposed by FRS is declining. This is borne out by FRS' and UKRD's internal documents. Bauer submitted that FRS would likely have continued to decline (and ultimately left the market) absent the Acquisitions.[201] We concluded in

[201] Bauer response to issues statement, paragraph 4.4.

the counterfactual (see paragraph 6.63 to 6.98) that FRS would have continued to operate in the market (for the foreseeable future).

9.10 In addition, we recognised that non-radio advertising may also be relevant as an out of market constraint (see paragraph 7.23).

Constraint from FRS on Bauer

Bauer's submissions on closeness of competition

9.11 Bauer submitted it competes most strongly with Global in the provision of national advertising and that this competition will be unaffected by the Acquisitions.[202] Bauer also submitted that the Acquisitions have the potential to enhance competition between Bauer and Global. We consider this further in paragraphs 12.31 to 12.40.

9.12 Bauer submitted that FRS is at best a fringe player in the provision of national advertising. Bauer submitted that due to FRS' limited audience share, reach and geographic coverage it is not a material competitive constraint on Bauer (or Global) for the sale of national airtime[203] and FRS is competitively irrelevant when Bauer negotiates deals with media buying agencies.

9.13 Bauer also submitted that FRS is unable to compete for share deals.[204]

9.14 Bauer submitted that local stations represented by FRS were largely complementary to Bauer's, and as a result the stations represented by FRS were used primarily as complements rather than as substitutes to Bauer's stations – either geographically (for example, in the South East where Bauer is not represented pre-Acquisitions) or to add unique reach from stations that generally target smaller local areas or have fewer listeners (ie reach listeners that cannot easily be reached through Bauer or Global).

9.15 Figures 8 and 9 show Bauer's and FRS' pricing, measured by net national airtime CPTs[205] for 2007 to 2018, and their volume of impacts[206] over the same period. The relationship between FRS and Bauer's CPTs and volumes demonstrated by Figures 8 and 9 is consistent with Bauer's submission that FRS is neither a substitute for or competitor to Bauer.

[202] UKRD Final Merger Notice, paragraphs 2.10 and 2.11.
[203] UKRD Final Merger Notice, paragraph 2.10.2.
[204] Share deals account for the bulk of national airtime spending.
[205] Cost per thousand impacts (ie when an advertisement is listened to 1,000 times), a commonly used measure in relation to radio advertising.
[206] An impact is where one listener hears an advertisement once.

9.16 Figure 8 shows that despite [✂].

Figure 8: Bauer submission on comparison of Bauer and FRS net national airtime CPTs, 2007-2018

[✂]

Source: Bauer and FRS

9.17 Figure 9 shows that, [✂], whilst [✂].

Figure 9: Bauer submission on comparison of Bauer and FRS net national airtime impacts, 2007-2018

[✂]

Source: Bauer and FRS

9.18 Bauer submitted that if FRS were a substitute for, and competitor to, Bauer, then [✂], media buying agencies would have switched volumes (measured by impacts) away from Bauer and towards FRS.

9.19 Bauer submitted that the removal of FRS would not result in price increases to advertisers. Instead it was more likely that advertisers would experience pricing efficiencies as a result of combining complementary offerings under one sales house. It submitted that customer concerns over prices were unfounded. It cited the following reasons:

(i) [✂] ([✂] for Bauer and [✂] for FRS).

(ii) Post-Acquisitions, Bauer [✂].

(iii) Bauer [✂].

(iv) Global is the main constraint on Bauer's pricing today and this will continue post-Acquisitions.

Evidence on closeness of competition from internal documents

9.20 We also looked at evidence of Bauer's consideration of competition in its internal documents. We found that Bauer focused most of its internal analysis on its position in relation to Global. We also found that FRS was infrequently featured within Bauer's internal documents and that there was a lack of any monitoring of FRS activity. This supported Bauer's submissions that it did not see FRS as an important competitor.

Evidence on closeness of competition from third parties

Customers

9.21 The majority of customers[207] we asked about the Acquisitions said they had no concerns. This was largely attributed to FRS having a smaller presence in the market relative to Bauer and Global and hence only making up a small proportion of customers' radio spend. A small number of customers were concerned about the potential impacts on prices for national advertising.

9.22 We asked customers to list the top five radio companies from whom they purchased national radio advertising in 2018. FRS was consistently ranked in 4th or 5th position, if mentioned at all which indicated to us that customers generally believed FRS to be a weak competitor in the supply of national advertising . Most customers explained this was because Bauer and Global sufficiently cover their clients' desired geography and demography in most cases, hence FRS would not be considered as an alternative. Further, some third parties suggested that FRS is a good option to achieve incremental reach on a campaign that is mostly on Bauer's and Global's stations because it provides access to some geographical regions not covered by Bauer and Global.

9.23 We asked customers how close an alternative they considered FRS to be to Bauer.[208] The low average rating showed that FRS was not generally seen as a close alternative to Bauer. Customers typically attributed this to the difference in audience demographics of the stations represented by Bauer and FRS.

9.24 We asked customers if their current advertising expenditure with Bauer could be replaced by spending with FRS. Customer responses were that a vast majority of customers' advertising expenditure with Bauer could not be replaced with FRS spending indicating that FRS is not a close competitor or a substitute for Bauer.

9.25 We asked media buying agencies whether FRS may have had an impact on negotiations even in situations where FRS was not used often. The responses indicated that for most media buying agencies, the option of using FRS did not assist their negotiations with other radio station operators.

[207] Media buying agencies and advertisers.
[208] On a scale of 1-5, 1=not at all, 5=very close alternatives.

Competitors

9.26 We asked competitors about the role of FRS in competition in the market for national advertising.

9.27 Global told us that it did not view FRS as a [✄] and [✄] that FRS exiting the market would [✄]. Wireless told us it considered itself and FRS to be relatively small players in the overall radio advertising market when compared to Bauer and Global. Global Traffic Network (GTN) submitted that FRS was a weak and potentially weakening option.

Assessment of the constraint on Bauer from FRS

9.28 We found that, based on Bauer's submissions and internal documents, Bauer did not view FRS as a constraint on its national advertising business. This was consistent with evidence from third parties that FRS did not impose a material constraint on Bauer. Whilst Figure 8 and Figure 9 showed that [✄] was not a result of substitution from FRS as could be seen [✄] in Figure 9. Similarly, Figure 8 shows that [✄]. These points were consistent with Bauer not being a strong constraint on FRS and vice versa.[209] We concluded that Bauer's largest competitor was Global, and this would not be materially affected by the Acquisitions.

Constraint from Bauer on FRS

9.29 We considered the possible constraint that Bauer might impose on FRS as a potential alternative option that FRS customers could use in the supply of national radio advertising. The consequence of the Acquisitions would then be that current customers of FRS could be impacted by a loss of competition should FRS cease to operate independently.

Submissions on closeness of competition

9.30 Bauer submitted that it could only be a close competitor with FRS if their underlying stations were substitutable but as there was no geographic overlap between these stations, FRS and Bauer were complements not substitutes. Bauer also submitted that if it were exerting a material constraint on FRS, then as Bauer [✄], however Figure 8 showed this has not occurred. It gave the example that, between 2012 and 2017 [✄] whilst [✄], which implied a

[209] However, we consider that it is possible that FRS and Bauer could be substitutes for some customers given there are several geographical overlaps in their coverage prior to the Acquisitions (although we accept these overlaps are not extensive).

lack of competitive constraint imposed on FRS from Bauer. However, we found that between 2016 and 2018 as [✂] which implied that Bauer could have begun to constrain FRS.

9.31 FRS submitted that its main competitors were Bauer and Global. [✂].[210]

9.32 FRS' internal documents showed extensive internal analysis of FRS' position behind Bauer and Global in the supply of national radio advertising which indicated to us that FRS considered Bauer and Global to be its largest competitors.

9.33 FRS submitted that it saw itself as third in line to Bauer and Global when selling national airtime slots to media buying agencies, but that FRS offered geographic coverage that Bauer did not have and so some customers would use both to reach a wider audience. FRS viewed Bauer as a key competitor despite the fact that some of the listeners of FRS' stations were not accessible to national advertisers through Bauer stations.

9.34 We asked media buying agencies and advertisers how they thought spending with FRS would be reallocated if FRS was unavailable. Responses were mixed, making it difficult to draw conclusions about the implications of the constraint on FRS from Bauer. However, the responses indicated that many customers would divert at least some of their spending with FRS to Bauer should FRS become unavailable. This implied to us that Bauer was likely to be a current constraint on FRS to some extent.

Assessment of the constraint on FRS from Bauer

9.35 We first considered whether Bauer was a general constraint on FRS offering an alternative option in the supply of national radio advertising to FRS customers, and then whether there were FRS customer segments who might be disadvantaged by the loss of competition should Bauer represent the stations forming part of the Acquired Businesses.

9.36 While FRS considered Bauer to be one of its strongest competitors, which implied that Bauer constrained FRS to some extent, we found that third-party evidence did not tend to support this. Media buying agencies and advertisers did not tend to see FRS as a direct alternative to Bauer, and many emphasised that they used FRS and Bauer to achieve different objectives (eg to cover different geographic areas). We found there was a general lack of concern shown by national advertisers and media buying agencies about the Acquisitions. The evidence in the round indicated that Bauer was a limited

[210] [✂].

source of competitive constraint on FRS. We therefore concluded that Bauer did not materially constrain FRS and that they were not close competitors in the supply of national radio advertising.

9.37 We considered whether there are any customers who, rather than using FRS and Bauer as complements to achieve broad geographic coverage, instead viewed them as alternatives and who would substitute between them, at least at the margin, to achieve greater impacts in response to relative differences in pricing and reach. We found no evidence of this substitution happening in practice. Furthermore, no significant concerns were expressed by media buying agencies or advertisers.

9.38 We therefore found that Bauer did not pose a material competitive constraint on FRS.

Conclusion on horizontal unilateral effects in the supply of national advertising

9.39 We found that neither Bauer nor FRS imposed close competitive constraints on each other in the supply of national advertising which indicated that the Acquisitions were unlikely to substantially lessen competition. We also found that Bauer's largest competitor was Global and this would not be materially affected by the Acquisitions.

9.40 We therefore concluded that the Acquisitions would not and would not be expected to create an SLC in the provision of national advertising.

10. Vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house

Introduction

10.1 We considered the possible impact on local radio advertising markets as a consequence of Bauer representing the stations forming part of the Acquired Businesses.[211] We thought this theory of harm might manifest in the following ways:

[211] In addition, Bauer's acquisition of the ability to exercise material influence over FRS meant FRS was no longer an independent sales house. This might also have provided a mechanism by which Bauer could foreclose the residual FRS stations. However, we did not pursue this as we thought the removal of the stations forming part of

(a) Removing the acquired ([✂][212]) stations would substantially degrade FRS' offering and may make FRS unviable.

(b) The residual FRS stations would lose FRS as a source of national advertising revenues if FRS closed.

(c) Alternative sources of national advertising revenues may be limited to potentially just representation by Bauer or Global who may offer representation under terms which were not as attractive for the residual FRS stations.

(d) Despite potential benefits from representing stations, such as commission for representation and increased ability to renegotiate national contracts with media buying agencies, Bauer might not have the incentive to represent the residual FRS stations because of the potential for those stations' national and local advertising revenues to divert to Bauer.

(e) As a result of the Acquisitions, the merged entity may have the ability and incentive to withhold access for the residual FRS stations to its own sales house – we refer to this as total foreclosure.[213]

(f) The loss of access to national advertising revenues via FRS may cause a significant loss of revenue to the residual FRS stations. This loss of revenue could significantly weaken the residual FRS stations' ability to compete for local advertising, thereby lessening competition in the local areas where they compete. The reduced access to national advertising customers via FRS could also reduce the revenue of new entrants or expanded radio stations and thus reduce competition dynamically.

Assessment framework

10.2 We assessed this theory of harm using the CMA's ability, incentive and effect framework.[214,215] This framework applied regardless of the intent of Bauer in choosing to represent the stations it acquired.

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the Acquired Businesses was the more likely mechanism by which Bauer could foreclose the residual FRS stations.

[212] [✂], we considered this theory of harm in terms of the impact of the Acquisitions.

[213] We considered the potential for a worsening of the terms in the supply of representation in Section 8 where we found an SLC as a result of the horizontal unilateral effects and as such did not consider it necessary to further assess partial foreclosure.

[214] *CC2 Revised*, paragraph 5.6.6.

[215] We are not implying that the Acquisitions were motivated by an intention to foreclose the residual FRS stations, but we are considering whether the consequence was that Bauer's incentives to subsequently represent them are influenced.

10.3 We assessed the following under each part of the framework:

(a) Ability refers to whether Bauer, as a consequence of the Acquisitions can foreclose the residual FRS stations, ie whether it can significantly impact their viability or competitiveness:

(i) The impact of the Acquisitions on the viability of FRS and its ability to act as a source of national advertising revenue for the residual FRS stations.

(ii) What, if any, replacements were available for FRS revenues for the residual FRS stations.

(b) Incentive of Bauer to foreclose the residual FRS stations, in particular, the financial impact through revenues from representation, compared with diversion of national and local advertising revenues to Bauer stations.

(c) Effect of foreclosing local radio stations on competition for local advertisers.

Ability of Bauer to foreclose residual FRS stations

10.4 We assessed whether the merged entity would have the ability to harm the residual FRS stations, through denying them access to national advertising revenues.

10.5 This section assesses:

(a) The impact of the Acquisitions on the viability of FRS and its ability to act as a source of national advertising revenue for the residual FRS stations.

(b) What, if any, replacements were available for FRS revenues for the residual FRS stations.

Impact of the Acquisitions on the viability of FRS

10.6 As discussed in paragraphs 8.46 to 8.52, the removal of the acquired ([✂]) stations from FRS would make FRS unviable. The Acquisitions and [✂] meant that FRS was losing [✂]% of its revenue and [✂]% of its retained commission. We found that it would not be possible for FRS to reduce its costs and/or raise its prices sufficiently to compensate for the removal of these stations. Even if FRS were to be able to did this, its reduced reach and coverage would make it more difficult to attract media buying agencies as customers. Therefore, it would likely cease to represent local radio stations for national advertising and cease to provide national advertisers access to local radio stations.

Replacements for FRS revenues

10.7 We assessed the ability of the residual FRS stations to seek alternative revenue sources following the loss of FRS because if residual the FRS stations had other revenue sources, then Bauer would be unlikely to be able to foreclose them.

Alternative sources of national revenues

10.8 We considered the alternatives for representation in paragraphs 8.21 to 8.56. We found that following the Acquisitions, Bauer and Global would be the only options for the residual FRS stations, with Global unlikely to want to serve some stations and other stations unlikely to want to accept its branding and content conditions.

Additional local advertising

10.9 Although Bauer and Global may have the ability to restrict or worsen access to national customers, we thought that the residual FRS stations may be able to compensate for lost revenue by seeking additional local customers/revenue.

10.10 We found that, for the vast majority of residual FRS radio stations, local advertising CPT rates were higher than those for national advertising received via FRS. This indicated that FRS stations were already maximising their local sales as they would get higher rates than selling the same inventory through FRS.

10.11 Responses from the residual FRS stations indicated that they would be unable to compensate for lost revenue by securing additional local advertising, though we noted that the sales team requirements meant it was more expensive to acquire local advertising than advertising via FRS. For example:

(a) Dee Radio Group said it did not sell out of inventory so it could carry lower yield national advertising and it provided the turnover to take Dee Radio Group to profit.

(b) Adventure Radio (Radio Essex) said there was not enough demand to fill a local only or national only revenue source. It had a significant amount of

unsold inventory and with a high cost of operation this meant Adventure Radio (Radio Essex) currently made a loss.

(c) [✄] said both revenue streams were vital, whilst national advertisers were generating a much lower yield, the cost of sales to [✄] was equally much lower. Local advertising generated a higher yield but required a team of people to facilitate the booking from sales exec, creative and sponsorship and promotion managers. Both markets were vital to a station's survival.

10.12 Five out of 16 residual FRS station groups that responded to our questionnaire[216] said that, if FRS no longer existed, they would consider increasing local advertising revenues. However, the responses from these station groups suggest that this would be a very difficult strategy and was unlikely to be profitable without cutting costs in the business and/or raising local prices. For example:

(a) Radio Plymouth said that it would compensate little for the loss of revenue from FRS. 'We drive hard for local revenue already against three main competitors in our TSA who have very low costs compared to ours. The High Street was also contracting making the task even more difficult.'

(b) [✄] said that 'putting up the price on our local advertising may also be a possibility, but to replicate the loss of income, it'd have to be around 20-30% and that would also assume that we didn't lose any existing business.'

(c) Lyca Media (Time 107.5) said that it 'could pull out of RAJAR and only sell locally. This would impact profits by about 60% but we could also reduce some programming, [✄].'

10.13 Twelve out of 16 residual FRS station groups that responded to our questionnaire told us that they would not be able to increase local revenues to compensate for the loss of FRS revenue, including some that said they would consider this option. One of the remaining station groups said that it would be able to replace revenue if it left FRS.

10.14 UKRD removed five out of its ten stations from FRS, despite owning a 50% share of FRS. An internal document shows that [✄]. Bauer submitted that UKRD's strategy to focus on local advertising suggested it was plausible that the residual FRS stations could do the same.

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[216] This was out of a total of around 20 radio station groups using FRS.

10.15 [✂].

10.16 [✂].[217]

10.17 We considered the revenues for the stations UKRD had removed from FRS. Bauer submitted that [✂].

Our assessment

10.18 We found that following the Acquisitions there would be two options for the residual FRS stations for representation services: Global and Bauer. We also found that for a few or some local radio stations Global would not be a viable option (see paragraphs 8.34 to 8.42). We therefore found that the residual FRS stations would have very limited alternative sources of national revenues.

10.19 In our view the residual FRS stations would be unlikely to be able to gain additional local advertising to compensate for the loss of national advertising revenues (see paragraphs 10.9 to 10.17). The evidence from the FRS stations and differential between local and national advertising prices indicated that the residual FRS stations were already maximising their local sales.

10.20 We found that, following the Acquisitions, Bauer was likely to have the potential to foreclose competitors by refusing to supply representation for national advertising. Therefore, we concluded that, following the Acquisitions, Bauer was likely to have the ability to foreclose the residual FRS stations.

Incentive of Bauer to foreclose the residual FRS stations

10.21 We assessed whether Bauer would find it profitable to foreclose the residual FRS stations by denying them access to national advertising revenues.

10.22 Bauer told us that it did not have an incentive to foreclose the residual FRS stations but had an incentive to represent them on similar terms to FRS. The main reasons it gave for this were:

[217] [✂]:
(a) [✂].
(b) [✂].
(c) [✂].

(a) Representing the residual FRS stations would increase Bauer's share of radio listening and geographic coverage and enable it to renegotiate its contracts with media buying agencies.

(b) Attempting foreclosure risked benefitting Global, if Global represented the stations instead.

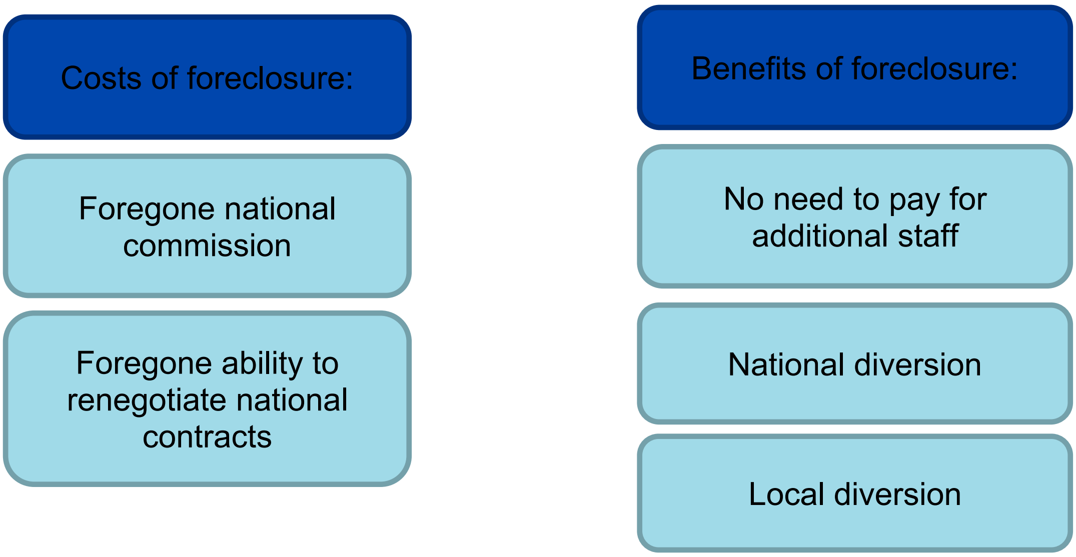
10.23 We looked at:

(a) The costs to Bauer of foreclosing local radio stations.

(b) The benefits to Bauer of foreclosing local radio stations.

10.24 The potential costs and benefits[218] of foreclosing independent local radio stations are summarised below in Figure 10. We look at each of these in turn in the sections that follow.

Figure 10: The potential costs and benefits to Bauer from foreclosing the residual FRS stations



Source: CMA analysis.

Costs to Bauer of foreclosing the residual FRS stations

10.25 Bauer argued that the benefits to it from representing the residual FRS stations were clear-cut, quantifiable and achievable in the near term. Not realising these benefits would be a cost of a foreclosure strategy. We assessed these costs:

[218] We also considered whether Bauer could benefit by refusing to represent any new entrants, thus raising barriers to entry. This could benefit Bauer if these stations would have competed with it for revenues. However, large scale future entry was likely to be limited (see paragraphs 12.8 to 12.21), therefore we have not considered this further.

(a) Loss of commission earned.

(b) Foregone ability to renegotiate contracts.

Loss of commission earned

10.26 If Bauer pursued a foreclosure strategy by not representing the residual FRS local radio stations, it would forego the commission it could earn from representing these stations.

10.27 Bauer said that it intended to offer the residual FRS local radio stations a commission rate of [✂]%. At this rate, Bauer estimated that it would generate direct commission revenues of approximately £[✂] per annum.

10.28 Bauer was not committed to this commission rate,[219] but based on current commission rates and Bauer's likely ability to raise commission rates, we considered it was likely to be an underestimate of the commission Bauer would forego if it refused to represent these stations.

Foregone ability to renegotiate contracts

Bauer's views on the ability to renegotiate contracts

10.29 Bauer said that representing the residual FRS stations would enable it to attract additional advertising and renegotiate contracts with media buying agencies because it improved Bauer's listener share and coverage.[220]

10.30 Bauer said that the additional reach and share of listening provided by the residual FRS stations would be an important part of Bauer's case when seeking to convince agencies to place a higher share of their advertising spend with Bauer instead of with Global. Bauer said that this increased share would be associated with increased volumes (measured by impacts, which was what national advertisers buy) and lower prices. It also said that this would be pro-competitive.

10.31 Bauer also said that obtaining a greater share from agencies relied on [✂] share of listening – as well as geographic coverage and demographic coverage. Any actions that Bauer might take which risked this [✂] would not

[219] Given the horizontal concerns in supply of representation, Bauer was likely to have ability and incentive to raise commission rates.
[220] Bauer has submitted that the addition of the residual FRS stations would enhance the Hits Radio network in the eyes of the agencies. They add coverage in areas where Bauer was not present. They also increase the reach of the network including in areas where Bauer was present. The residual FRS stations have a reach of 1.2 million listeners per week which would increase the reach of the Hits Radio network by nearly [✂]%, to [✂] listeners per week. [✂].

make commercial sense. This would undermine Bauer's ability to achieve an increase in agencies' committed share of spend or volumes. Bauer obtained [✂]% of its national advertising revenues from the large agencies, with which it had share or other deals. [✂].

10.32 Bauer also said that, in addition to increased scale and geographic coverage which would make Bauer a more attractive partner for media buying agencies, the Acquisitions would provide it with a significant increase in volumes of inventory (on the stations forming part of the Acquired Businesses, [✂][221]). Bauer said that this increased inventory would [✂].

Bauer's quantification of the benefits of renegotiating contracts

10.33 Bauer estimated the benefits of renegotiating contracts which it would forego if it did not represent the FRS stations. It assumed that:

(a) The Acquisitions [✂] and the residual FRS stations would enable it to increase its share of commercial listening to [✂]%.

(b) This increase in its share of commercial listening would enable it to renegotiate its deals with media buying agencies, [✂].

10.34 This increase in revenues from media buying agencies would be due to both the increased share of commercial listening from the residual FRS stations and the acquired [✂] stations. Therefore, Bauer isolated the increase in revenues resulting from representing the residual FRS stations.

10.35 It sequentially removed commission payable to media buying agencies and music royalties. It then calculated the increase in revenue due to Bauer (which it would retain in full), and the increase due to [✂] the represented former FRS stations (on [✂] which it would retain a [✂] commission).

10.36 Using this methodology, it estimated a cost of foreclosure of around £[✂] from the foregone ability to renegotiate contracts resulting from not representing the residual FRS stations.

10.37 Bauer also quantified its expected losses if refusal to represent the residual FRS stations led to them being represented by Global, either through acquisition (by it or Communicorp) or by representing residual FRS stations. This would increase Global's share of listening and Bauer assumed this would increase Global's share of revenues from media buying agencies.

[221] [✂].

Our assessment of Bauer's ability to renegotiate contracts

10.38 Bauer's ambition in representing the residual FRS stations was not just to earn commission on their existing national revenues, but also, [✂].[222]

10.39 Media buying agencies indicated that they would be resistant or unwilling to renegotiate [✂].

10.40 In 2014, Bauer acquired Absolute Radio and started to represent Orion. Together this gave Bauer a 7.9 percentage point increase in its share of commercial listening. This led to a [✂] percentage point increase in its share of national spend as a result of [✂]. We acknowledge that the addition of share of commercial listening increased Bauer's revenue share. Bauer told us that this increase in revenue was driven by increased volumes (advertising impacts on the Absolute stations doubled from [✂] in 2014 to [✂] in 2018) and utilisation (inventory utilisation on Absolute improved from approximately [✂]% in 2014 to [✂]% in 2018). Bauer told us it achieved this increase in revenue whilst keeping Absolute's prices broadly flat. We note, however, that the increase was not proportional to its increase in share of commercial listening. Bauer said that the acquisition of Absolute Radio did not produce the step-change in scale required to [✂].

10.41 Media buying agencies indicated that the value advertisers place on advertising on represented stations might not increase, particularly without brand and content licensing arrangements. The underlying offering of the stations would be unchanged from the advertiser's perspective, namely, the content and listenership would be unchanged. Therefore, the value that media buying agencies would place on represented stations was likely to be unchanged, and therefore their willingness to increase their advertising on these stations was likely to be limited.

10.42 Media buying agencies told us that even if Bauer represented these stations, this did not reduce Global's absolute number of listening hours. Therefore, it was not clear that media buyers would [✂] switch to advertising on stations owned or represented by Bauer.

10.43 We thought that representing the residual FRS stations would increase media buying agencies' willingness to advertise on these stations to some extent. This meant that Bauer could [✂].

[222] At present the residual FRS stations represent [✂] [0–5]% of share of commercial listening (Q3 2019 RAJAR Data) but only [✂] [0-5]% of revenue (UKRD Merger Notice, Table 1).

10.44 Regarding potential losses from Global representing stations discussed in paragraph 10.37, given that Bauer may have overestimated its gains from the increase in its share of commercial listening, it was possible that it has also overestimated Global's gains from any increase in its share of commercial listening. In addition, whilst Bauer argued that Global would represent these stations through acquisition or representation deals, there were some instances where it was unlikely that Global would either:

(a) acquire stations if it overlapped with them; or

(b) be willing to represent these stations (either directly or via Communicorp) due to its preference for brand and content licensing arrangements and some stations' unwillingness to enter into this type of arrangement.

10.45 Therefore, we attributed some value to the ability of Bauer to renegotiate its contracts with media buying agencies, but we did not consider it to be as high as Bauer proposed. Also, we attributed some value to potential losses from Global representing stations, because it was possible that Global would be able to acquire or represent some stations.

Benefits to Bauer of foreclosing the residual FRS stations

10.46 We considered the benefits to Bauer of foreclosure to balance against the costs or forgone revenues of foreclosure.

Cost saving benefits of foreclosing the residual FRS stations

10.47 If Bauer foreclosed the residual FRS local radio stations, it would not incur the financial costs of representing them. We assessed those costs, which were counted as benefits of foreclosing the residual FRS local radio stations.

10.48 Should Bauer represent the residual FRS local radio stations, it envisaged that it would [✂][223] [✂].[224]

10.49 Bauer said there might also be one-off costs to represent the FRS stations (eg in relation to setting up IT interfaces).

National diversion

10.50 We assessed Bauer's likely gains from foreclosing the residual FRS stations such that their national customers would switch from purchasing from FRS

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[223] [✂].
[224] [✂].

stations to purchasing from Bauer stations. We referred to this as national diversion.

10.51 Our starting point was to assume that national diversion was proportional to national shares of revenue.

Bauer's views on national diversion

10.52 Bauer submitted that the limited substitutability between Bauer's local radio stations and most of the residual FRS stations limited the scope for Bauer to benefit from diversion of national airtimes sales. It submitted that agencies used the residual FRS stations when they wished to reach listeners that they could access directly through Bauer (or Global). This was either because: they covered specific geographic areas which Bauer (or Global) did not reach, or did not reach as efficiently as the FRS stations; or because the residual FRS stations had unique listeners who added additional reach to campaigns running on Bauer and/or Global stations (and the stations were used as complements). Therefore, for national advertising sales on the residual FRS stations, Bauer's local radio stations would mostly not be a suitable alternative to FRS.

10.53 It also submitted that some of the residual FRS stations might have been able to retain some national sales revenues[225] and, if so, these sales would not be available for other radio station operators such as Bauer. It also submitted that there were likely to be substantial revenues lost to non-radio channels if the other forms of advertising were a better way to target the specific listeners and coverage areas than other radio stations. Forms of advertising other than radio might be more effective than alternative radio stations because of the specific needs that national advertisers have when they use the residual FRS stations, and because agencies would tend to use FRS only when they consider that Global and Bauer were unable to provide them with what they needed (due to the existing share deals).

Media buying agencies' views on national diversion

10.54 We asked media buying agencies to estimate how their 2018 spend with FRS would have been reallocated between if FRS was unavailable:

(a) Other forms of advertising.

[225] For example through their own national sales houses, making national sales directly to media buying agencies or using the Radio Trading Desk.

(b) Other radio stations.

(c) Reduced advertising spend.

10.55 As shown in Appendix D, several media buying agencies said that between 50% and 100% of that advertising spend would likely be transferred to non-radio advertising. Only one media buying agency said that it anticipated that advertising spend would be reduced rather than diverted and then only by 10% of its spend with FRS, and it said it would seek to place advertisements with the ex-FRS stations. A smaller number of media buying agencies said that all, or nearly all, advertising would stay within radio although few quantified the proportions going to different radio groups.

Bauer's quantification of national diversion

10.56 Bauer estimated the potential increase to its revenues from direct national advertising if residual FRS stations did not switch to Global (either through representation or acquisition).[226]

10.57 Bauer used the following methodology:

(a) Starting with the residual FRS stations' national sales, it assumed [✂]% would be lost to non-radio media.[227]

(b) It then assumed that [✂]% of national revenue would remain with the residual FRS stations through other channels.[228]

(c) It then assumed that the remainder of the national spend would divert to Global and Bauer in proportion to their shares of national advertising revenues.

(d) It removed music royalties and then calculated the total increase in revenue due to Bauer (which it would retain in full) and [✂].

10.58 Using this methodology Bauer estimated a maximum gain from national diversion of £[✂] to Global and Bauer.

[226] Bauer submitted that its analysis was conservative and that the values it used were not what it considered to be most likely. Bauer also updated its analysis in response to our working paper, but these updates are not included here.
[227] In response to our working paper on vertical effects, Bauer used the difference between our upper bound and lower bound for national diversion to estimate the diversion to non-radio. They estimated this to be around 40-50%. We consider this to be a substantial overestimate because our estimate of the lower bound had substantial missing data (in particular from a big media buying agency – [✂].
[228] Bauer submitted that certain of the residual FRS stations are part of larger corporates that have their own sales houses; smaller radio stations may be able to make some national advertising sales directly; and that radio stations can make sales via the Radio Trading Desk.

10.59 Bauer assumed a probability of [✂]% for the residual FRS stations switching to Global (either through representation or acquisition). Consequently, Bauer estimated its own potential gain from national diversion to be £[✂].

10.60 For the reasons stated in paragraph 10.44, whilst we acknowledged that it was possible that some of the residual FRS stations could end up being represented or acquired by Global, we thought that [✂]% was too high an estimate.

Our quantification of national diversion

10.61 We estimated a lower and upper bound for the benefit to Bauer of national diversion from foreclosing the residual FRS local radio stations.

10.62 In order to calculate the lower bound, we used the following methodology:

(a) For each media buying agency that responded to our diversion question, we started with its 2018 FRS spend.[229] Because this included spend with the acquired [✂] stations, we apportioned the total spend according to the residual FRS stations' share of FRS' 2018 revenues ([✂]%).

(b) We multiplied this by each media buying agency's estimate of diversion should FRS no longer exist. We used the media buying agencies' estimates of diversion in the following ways:

(i) Where media buying agencies specified the percentage of spend which would divert to Bauer, we used this in the calculation, without adjustments.

(ii) Where media buying agencies only specified the spend which would divert elsewhere in radio, but did not specify how this would be split between Bauer and other stations, we assumed a [✂]% diversion in line with Bauer's national revenue shares of supply.[230]

[229] This may include some spend with Quidem which would not divert in proportion to market shares, but we did not consider that this would substantially affect our quantification of the lower bound.
[230] See Table 5.

(iii) Because this spend included local spend via FRS,[231] we reduced this spend by [✄]% in proportion to the 'single station' spend with FRS in 2018.[232]

10.63 Using this methodology, we estimated national diversion to Bauer of around £[✄] of FRS revenues annually. However, we considered this was an underestimate as it did not include responses from all media buying agencies and significantly it was missing revenue from one of the big media buying agencies (Omnicom[233]).

10.64 Therefore, we looked at an alternative methodology:

(a) We started with the total FRS 2018 revenue on the residual FRS stations.[234] As in paragraph 10.62(b)(iii), we reduced this spend in proportion to the 'single station' spend with FRS in 2018.

(b) We multiplied this by the likely diversion should FRS no longer exist, that is, we assumed a [✄]% diversion in line with Bauer's national revenue shares of supply.

10.65 Using this methodology, we estimated an upper bound for national diversion to Bauer of around £[✄] of FRS revenues annually.

10.66 In our view, the true value of national diversion was likely to fall somewhere between these two estimates.

Our assessment of national diversion

10.67 We found a range of possible estimates for national diversion: from £[✄] to £[✄]. It was possible that residual FRS stations could be represented by Global which would reduce this.

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[231] FRS classified campaigns as follows:

- national campaigns as those including all FRS stations,
- regional campaigns as those booking FRS geographical packages and
- local campaigns as bookings for individual or group of stations.

We consider that spend on local campaigns was likely to remain with that station or divert within the local area. FRS 'single station' spend was considered as part of local diversion in paragraphs 10.81 to 10.82.

[232] Of FRS' retained commission in 2018:

- [✄] were 'national' bookings, that is, bookings on all FRS stations.
- [✄] were 'regional' bookings, that is, bookings on one or more of FRS' regional groupings of radio stations, but fewer than all stations.
- [✄] were 'single station' bookings, that is bookings for individual or groups of stations, which are not in either category above.

[233] Collectively Omnicom agencies spent around [✄] with FRS in 2018, but said that up to [✄] [80-100%] of this spend could be diverted to non-radio advertising and up to [✄] [80-100%] could be diverted to other radio stations. This meant we were not able to calculate diversion for Omnicom.

[234] This does not include any sales from Quidem.

Local diversion

10.68 We assessed Bauer's potential gains from local customers diverting from FRS local radio stations to Bauer radio stations. This could happen if the loss of national advertising significantly weakened residual FRS stations, such that their offer to local advertisers also weakened (eg because of degradation in content). In such a case, insofar as a Bauer station competed with the residual FRS station, Bauer may recoup some local customers.

Bauer's views on local diversion

10.69 Bauer said that the extent of local diversion was not only uncertain but it was likely to be minimal. This benefit would only arise in those areas where Bauer was present as a local competitor. In other areas the sole or principal beneficiary of any diversion would be other competitors present in those areas, particularly Global and/or Communicorp. Moreover, this would allow Global to increase its share of commercial listening.[235]

10.70 Of the 36 FRS local radio stations that Bauer discussed in its foreclosure analysis, there was no local overlap in 11 cases, and there was no significant overlap in a further 11 cases. It said that an attempted foreclosure strategy would thus not benefit Bauer in these areas.

10.71 Bauer looked at 12 areas where there was a substantial overlap between Bauer and a residual FRS local radio station. It said that the scope for Bauer to benefit was limited for the following reasons:

(a) In eight of the 12 areas [✄].[236] [✄].[237,238] It would earn more revenue by earning commission on the sales than on losing those commission revenues and effectively cannibalising advertising revenues on its own stations.

(b) Of the remaining four cases where there may be non-negligible scope to increase advertising on the Bauer stations, it told us:

(i) Two stations had extremely small shares of commercial listening and therefore they were unlikely to have significant local advertising revenues;[239] and

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[235] Bauer response to phase 1 decision, paragraphs 8.23-8.24.
[236] [✄].
[237] [✄].
[238] Bauer response to phase 1 decision, paragraph 8.25.
[239] [✄].

(ii) The remaining two stations ([✂]) competed with Bauer's [✂]. It was unpredictable to what extent these stations would be weakened and whether local advertising would divert and where.[240,241]

10.72 Bauer also submitted that there was uncertainty as to how the residual FRS stations might react to a foreclosure strategy. At least in some cases the local station might become more active in respect of the supply of local radio advertising as a result of the need to replace national advertising revenue. Bauer said that this was a strategy that had been successfully pursued by UKRD.[242] In these circumstances attempted foreclosure at the national level could be counterproductive as it would have provoked greater competition at the local level in those areas where Bauer might hypothetically gain some benefit.[243]

Bauer's quantification of local diversion

10.73 Bauer estimated the potential increase to its revenues from local advertising if residual FRS stations did not switch to Global (either through representation or acquisition).

10.74 Bauer used the following methodology:

(a) It assumed that the residual FRS stations' national sales revenues were [✂]% of their total revenues[244] and used this to estimate local sales revenue.

(b) Bauer assumed that, if the residual FRS stations were weakened, [✂]% of their advertising would leave the residual FRS radio stations.[245]

(c) Of this, Bauer assumed that [✂]% would be lost to non-radio media.

(d) Bauer assumed that local advertisers would divert to alternative local radio stations in line with the alternative stations' local share of commercial listening within the TSA of each residual FRS station.[246]

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[240] [✂].
[241] Bauer response to phase 1 decision, paragraph 8.25.2(B).
[242] As discussed in paragraphs 10.9 to 10.17, we consider that this would be a difficult strategy for other stations to replicate.
[243] Bauer response to phase 1 decision, paragraph 8.26.
[244] It used this figure based on public reporting by Radio Plymouth.
[245] Bauer considered this to be a high estimate.
[246] It pointed out that this may not be a good proxy for actual diversion given that differences in geographic coverage may mean that stations are not good substitutes. We consider that this may be the case and it may overestimate diversion to both Global and Bauer stations.

(e) It then multiplied this diversion factor for Bauer by the estimate of total diversion to estimate Bauer's potential increased sales from local diversion.

(f) It removed music royalties and the cost of acquiring the additional local sales.

10.75 Using this methodology, Bauer estimated the maximum local diversion to be £[✂].

10.76 As with national diversion, Bauer assumed a probability of [✂]% for the residual FRS stations switching to Global (either through representation or acquisition). As a consequence, Bauer estimated the potential gain from local diversion to be £[✂].

10.77 We acknowledged (see paragraphs 10.44 and 10.60) that it was possible that some of the residual FRS stations could end up being represented or acquired by Global, but we thought that [✂]% was too high an estimate.

Our quantification of local diversion

10.78 We calculated an estimate of potential local diversion.

10.79 Our methodology assumed that the FRS local radio stations exit and that advertisers' total spend with those stations diverted to overlapping local stations in proportion to their listener shares. This was a strong assumption and would lead to an overestimate of local diversion because it assumed that stations exit entirely when they could be weakened, seek representation or be acquired.

10.80 We calculated two elements to local diversion:

(a) diversion from single station purchases from FRS (see paragraph 10.62(b)(iii));

(b) diversion from direct spend with local stations.

Diversion from single station purchases from FRS

10.81 We calculated the total diversion from single station purchases from FRS. We used local listening shares as a proxy for shares of advertising spend in each TSA.[247] We used the following methodology:

[247] As discussed in footnote 246, this may not be a good proxy for actual diversion.

(a) For each residual FRS station's TSA, we added together the listening shares for Bauer and the stations forming part of the Acquired Businesses.

(b) For each residual FRS station's TSA, we added together the listening shares for any other residual FRS stations in that TSA. We then upweighted the listening shares of Bauer plus stations forming part of the Acquired Businesses to estimate the future listening shares for Bauer stations if all the residual FRS stations exit.

(c) We multiplied these listener shares by each residual FRS station's revenue from 'single station' purchases through FRS.[248]

(d) We aggregated these to give a UK total for local diversion of FRS spend.

10.82 Using this methodology, we estimated that total diversion from FRS 'single station' purchases would be around £[✂].

Diversion from direct spend with local stations

10.83 We also estimated the local diversion from spend from advertisers who advertised directly with local radio stations. We used the following methodology:

(a) We multiplied each residual FRS station's[249] direct local revenue by the estimated future listening shares for Bauer stations in the FRS station's TSA estimated using the methodology described in paragraphs 10.81(a) and 10.81(b).

(b) We aggregated these to give a UK total for local diversion of direct local spend.

10.84 Using this methodology, we estimated that total diversion from direct spend with local radio stations would be around £[✂].

Our assessment of local diversion

10.85 We acknowledged that our estimate of local diversion was likely to be a significant overestimate. Theoretically local diversion could be very much less or even negligible if the weakening of residual FRS stations did not lead to local advertisers switching to Bauer stations. It was possible that residual FRS

[248] This does not include Quidem.
[249] Or station group if not available at station level.

stations could be represented by Global which would have reduced our estimate.

Our view on the overall profitability of representing the residual FRS stations

10.86 Table 6 shows both our and Bauer's estimated costs to it of foreclosing the residual FRS stations. **Table 7** shows the estimated benefits.

Table 6: The estimate of annual costs to Bauer from foreclosing the residual FRS stations

Cost of foreclosure	*Our estimate*	*Bauer estimate*	*Comments on estimate*
Foregone national commission	We accept Bauer's estimate	[✂]	Likely to be an underestimate
Foregone ability to renegotiate national contracts	[✂]	[✂]	We consider that the true value of this would fall between the two extremes.

Source: CMA analysis.

Table 7: The estimate of annual benefits to Bauer from foreclosing the residual FRS stations

Benefits of foreclosure	*Our estimate*	*Bauer estimate*	*Comments on estimate*
Cost savings	We accept Bauer's estimate	[✂]	May be higher if [✂]
National diversion	[✂]	[✂]	True value is likely to be somewhere within this range. But we note that it is possible that residual FRS stations could be represented by Global which would reduce this.
Local diversion	[✂]	[✂]	Our upper estimate is likely to be a significant overestimate, the true estimate is likely to be nearer Bauer's estimate. But we note that it is possible that residual FRS stations could be represented by Global which would reduce this.

Source: CMA analysis.

10.87 We observed that the range of potential costs of foreclosure and the potential benefits were broadly similar, given that our estimates of diversion were uncertain and likely to be at the lower end of the ranges. In particular:

(a) The benefits of national diversion relied on national advertising spend with Bauer increasing substantially, but FRS was generally used for different purposes than Bauer, therefore overall diversion may be low, namely towards the lower end of the range but potentially lower.

(b) The benefits of local diversion were likely to be at the lower end of the range because the benefit relies on local radio stations being significantly weakened or exiting such that a large part of local advertising diverts to Bauer (and does not, for example, go to non-radio advertising) and it was not clear that this would be the case.

10.88 Therefore, even if some of these benefits were realised, some of the potential values were very uncertain, especially the benefits from diversion. This uncertainty was significant as Bauer could have reasonable expectations of the commission it would earn from representation and the increased scale would likely enable it to realise some benefits by renegotiating national contracts. We therefore found that when Bauer was considering whether to represent the residual FRS stations as a whole or foreclose them as a whole, it would be foregoing a reasonably certain commission stream[250] for more uncertain benefits of diversion. The costs and benefits of foreclosure were broadly similar, but the costs (the foregone revenue stream) were reasonably certain, whereas the benefits would have high uncertainty for Bauer and could be at the lower end of our estimates.

10.89 Therefore, on balance, we concluded that Bauer did not have the incentive to foreclose the residual FRS radio stations as a whole.

Effect of foreclosing the residual FRS stations on competition for local advertisers

10.90 As we did not find that Bauer had the incentive to foreclose the residual FRS radio stations by refusing to offer to represent them, we did not analyse whether the foreclosure of the residual FRS stations would have an effect on competition for local advertisers.

Conclusion on vertical effects in the supply of local radio advertising as a result of the loss of FRS as a national advertising sales house

10.91 We found that Bauer had the ability to foreclose the residual FRS stations by refusing to supply them with representation services.

10.92 We found that Bauer did not have the incentive to foreclose the residual FRS stations by refusing to supply them with representation services for the reasons set out in paragraph 10.87.

10.93 Therefore, we concluded that the Acquisitions did not and may not be expected to result in an SLC through the total foreclosure of the residual FRS stations.

[250] The main uncertainty would be whether stations would be willing to be represented by Bauer which would affect the potential size of commission.

11. Horizontal unilateral effects in the supply of local radio advertising

Background

11.1 As part of the Acquisitions, Bauer is acquiring 14 local radio stations from Celador, nine local radio stations from Lincs, 12 local radio stations from Wireless and ten local radio stations from UKRD. These will be added to Bauer's existing portfolio of 64 local radio stations.

11.2 The CMA assessed the resulting horizontal overlaps as part of its phase 1 investigation and found that the Acquisitions gave rise to a realistic prospect of an SLC in three local areas:

(a) In the West of England with regard to the overlaps between Celador’s Sam FM and The Breeze (South West) and Bauer’s Kiss West;

(b) In the West Midlands with regard to the overlaps between Wireless’s Signal 107 and Bauer’s Free Radio FM (Birmingham & Black Country) and Free Radio FM (Shropshire), especially in Wolverhampton and Shropshire; and

(c) In Yorkshire with regard to the overlaps between Lincs’ Trax FM, Dearne FM, and Rother FM and Bauer’s Hallam FM.

11.3 We assessed the possibility of an SLC as a result of horizontal unilateral effects in the supply of local advertising in each of these areas.

Assessing competition in local radio advertising

11.4 When two competing local radio stations merge they no longer constrain each other, potentially allowing the merged entity to raise prices or otherwise worsen its terms to local advertisers.[251] The likelihood and size of this effect will be greater when the local stations compete closely with each other.

11.5 To assess how closely the Parties’ local radio stations competed in the local areas of potential concern, we looked at the following:

(a) Their shares of supply both in terms of listener hours and local advertising revenue.

[251] Merger Assessment Guidelines, paragraphs 5.4.1, 5.4.6.

(b) Geographic coverage, particularly the extent to which radio stations' geographic broadcast areas overlap.

(c) Whether there were other relevant differences between the stations' offerings, for example in terms of demographics, local content and pricing.

(d) Whether local advertisers regarded these stations as being close alternatives, including considering evidence of past switching.

(e) The availability and importance of competitors; both alternative radio stations and local non-radio advertising options.

Shares of supply

11.6 We considered the shares of the Parties' radio stations both in terms of listener hours and local advertising revenue.

11.7 Radio stations' relative audience sizes within a geographic area over which they compete can affect competition between those stations. In previous radio mergers, we have found that radio stations with significantly different audience sizes were less close alternatives for advertisers, as they represent different levels of commitment in terms of advertising spend in a particular area.[252] Radio stations with greater audience penetration typically charge more to advertisers than radio stations with fewer listeners in a given area. We also considered evidence from the Parties on relative prices of different stations to assess differences in the level of commitment required from advertisers.

11.8 We measured stations' relative audience sizes by assessing the share of commercial radio listening hours each station has within its TSA and within the TSAs of overlapping stations. We used RAJAR data to estimate shares of supply of commercial listening hours.

11.9 We also estimated each station's share of local advertising revenue within its own TSA and within the TSAs of overlapping stations. To estimate shares of supply by revenue within each TSA, we estimated each competing station's relevant revenue by allocating a proportion of its non-contracted local airtime advertising revenue (as reported to Ofcom) equal to the proportion of that station's listener hours (as measured by RAJAR) that lay within the TSA of interest.[253]

[252] *Global Radio / GMG*, 21 May 2013, paragraph 6.96.
[253] For example, if a station had half of its listener hours in a competitor's TSA, the CMA would allocate half of that station's local advertising revenue to the competitor's TSA.

11.10 Because these are differentiated markets the shares of supply of revenue needed to be interpreted with caution. These shares of supply measured how much local advertising can be attributed to the broadcasting area of the overlapping stations. However, we noted that there may be important differences between the nature of the advertising sold by stations in the same area. For example, if one station covered another station's broadcast area and had a total area five times the size, our methodology would allocate a fifth of its local advertising revenue to the competing station's broadcast area. That might have given the station with the wider broadcast area a high share in the other station's broadcast area. However, it was selling advertising for a much wider area and so was likely to have had very different customers and so only competed with the other station to a limited degree, if at all.

Geographic coverage

11.11 From the perspective of advertisers, stations' broadcast areas overlap where: (i) their TSAs overlap; (ii) one or both stations offer split transmission, and one or more of each station's transmitters cover similar areas; or (iii) a collection of smaller stations' TSAs (or a collection of smaller transmitters) together overlap closely with a larger TSA (or transmitter).

11.12 We found that TSAs matter because local advertisers are often only interested in paying to reach their local customers in a specific area. Radio stations therefore only compete to the extent that they overlap. The closer the overlap, the more advertisers might consider them as close substitutes. Even if an advertiser can access an area through two radio stations, they may not compete if one broadcasts to a much wider area – there would be 'wastage' for a local advertiser using the wider broadcast.

11.13 However, different radio stations with different broadcast areas can compete with each other. Some advertisers may find both TSAs to be imperfect and moving between them changes the wastage they face rather than introducing it. Further, rather than wastage, implying that advertising in the additional areas was of no value, the additional areas may still be areas with positive advertising value.

Other forms of differentiation

11.14 There were further differences between radio stations, for example in terms of audience demographics, audience overlap, local content and pricing. Competition will be less intense where stations have differences if, and only if, enough advertisers care about those differences, for example if they wish to target young people. In that case radio stations reaching significantly different demographics would be less close alternatives for advertisers.

Views and behaviour of local advertisers

11.15 One of the sources of evidence we used to assess the factors above was the views of customers, ie local advertisers. However, we noted that customers were likely to have different preferences and reasons for advertising, making it more difficult to extrapolate views than where customers were more homogeneous. This was particularly the case when considering responses to specific questions, in specific areas, because the number of responses from advertisers available to us was low.

11.16 In addition, the customers we sent questionnaires to were not necessarily those that may be affected by the Acquisitions, for example they may not use the transmitter combinations that we have identified as being of interest. For example, advertisers who used a station to advertise to a specific area were going to be less informative about changes in competition in another area covered by that station. Furthermore, we noted that we received a relatively low number of responses.

11.17 We also considered observed behaviour of customers, including data from the Parties on the extent that customers purchase different options and switching between options.

Competitors

11.18 In our competitive assessments, we also considered the degree of any competitive constraints from alternative local radio stations, and any constraint from non-radio advertising. Radio stations would compete more closely if local advertisers have few alternative ways to advertise as effectively.

West Midlands

Background

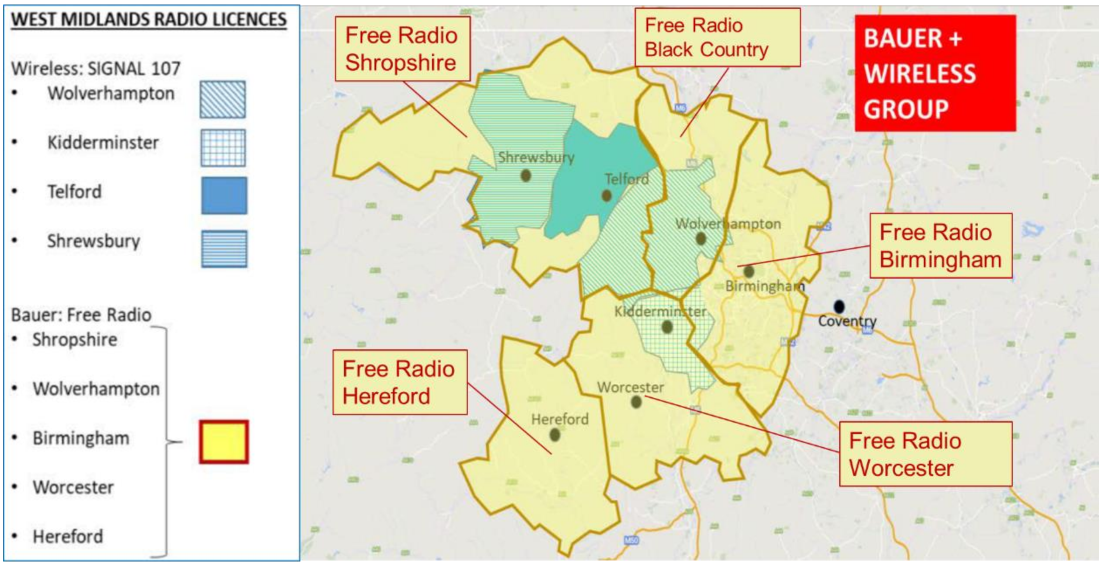
11.19 In the West Midlands, Wireless's Signal 107 overlapped with Bauer's Free Radio FM. As both stations sold advertising separately on each of their transmitters, we considered competition at the transmitter level. In our initial investigation, we found that the overlaps between Wireless's Signal 107 and Bauer's Free Radio FM (Birmingham & Black Country) and Free Radio FM (Shropshire) raised significant competition concerns. We therefore considered competition in:

(a) Wolverhampton: specifically, the overlap between Free Radio FM (Black Country) and Signal 107's Wolverhampton transmitter.

(b) Shropshire: specifically, the overlap between Free Radio FM (Shropshire) and the combination of Signal 107's Telford and Shrewsbury transmitters.

11.20 Figure 11 shows the Parties' stations in the West Midlands and shows the approximate areas covered by their transmitters.

Figure 11: Broadcast areas – Free Radio and Signal 107



Source: The Parties[254]

11.21 We first considered the evidence common to both Wolverhampton and Shropshire, before covering each area in turn.

Parties' submissions

11.22 The Parties submitted that in the West Midlands:

(a) Signal 107 was a limited constraint, in particular due to its limited share of listening and reach and limited shared audience between it and Bauer's Free Radio;[255]

(b) Bauer's strategy [✂], whereas Signal 107's key strength was its ability to offer local businesses a station that covers the specific local area without wastage (and due to Signal 107's more limited reach, at a lower price point); and

[254] Bauer response to phase 1 decision, 27 August 2019, Figure 7.
[255] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.2.

(c) Global's stations, Smooth Radio (West Midlands), Heart (West Midlands) and Capital (Birmingham), present much greater competitive constraints on Bauer.[256]

Views of third parties

11.23 We asked local advertisers who had advertised on Signal 107 or Free Radio in the West Midlands for their views on the Wireless Acquisition.[257] Three out of seven local advertisers who expressed a view had concerns about the Wireless Acquisition. One of the concerns was regarding 'price control over the broadcast area'.[258] However, we noted that the other two concerns raised did not appear directly related to competition in the relevant local areas:

(a) One of the concerns was 'with Bauer and Global taking over everything'.[259]

(b) Another concern was because the advertiser has 'a great working relationship with [Signal 107] … and we would not like to see this affected in any way and lose the team/station we have worked with'.[260]

11.24 Among the four advertisers who said they were not concerned about the Wireless Acquisition, only one appeared to have operations in Wolverhampton or Shropshire and the two that gave more details said that Signal 107 'didn't cover the geographical area and therefore audience we were looking to target for our specific campaign' [261] and does not 'broadcast to the areas where we operate'.[262] This suggested that they were unlikely to be representative of customers advertising in Wolverhampton or Shropshire, ie customers that may be adversely affected as a result of the Wireless Acquisition.

11.25 We asked local advertisers to rate how closely they perceived the stations as alternatives.[263] The small number of local advertisers that gave ratings typically did not consider the stations as close alternatives.

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256 Bauer response to phase 1 decision, 27 August 2019, paragraph 7.5.
257 We sent questionnaires to the top ten customers of each station.
258 [✂].
259 [✂].
260 [✂].
261 [✂].
262 [✂].
263 We asked the following question: 'In terms of your advertising, how close an alternative, if at all, do you consider Signal 107 to be to Free Radio? Please explain your answer including whether it would vary depending on the type of campaign or other factors (1=not at all, 5=very good alternatives)'.

(a) The three Free Radio advertisers who gave ratings, rated Signal 107 at or just above the bottom of the scale. The reasons given included that 'Signal 107 more local to listeners, Free Radio more regional to area.'[264]

(b) The two Signal 107 advertisers who gave ratings, rated Free Radio at just above the bottom of the scale. The reasons given were the more regional feel of Free Radio, the greater expense of Free Radio and their own good relationship with Signal 107.

Shares of supply

11.26 As set out in paragraphs 11.8-11.9, we calculated shares of supply for both listening and local advertising revenue, see Table 8. In this area the available RAJAR data was for the two TSAs corresponding to, respectively, the entirety of Signal 107's broadcast area and Free Radio's broadcast area in Shropshire and around Wolverhampton (Free Radio Black Country) combined. These TSAs were wider than the two areas of concern.

Table 8: Local radio stations' shares of supply Q2 2019

(%)

Share of supply of commercial radio by listening hours

Radio station	*Signal 107 TSA*	*Free Radio FM (Shropshire & Black Country) TSA*
Global	69	69
Communicorp	-	1
Quidem	-	-
Wireless	7	6
Bauer	24	24
Combined Bauer and Wireless	31	30

Share of supply of commercial radio by revenue

Radio station	*Signal 107 TSA*	*Free Radio FM (Shropshire & Black Country) TSA*
Global	[50–60]	[50–60]
Communicorp	-	[0–5]
Quidem	-	-
Wireless	[10–20]	[10–20]
Bauer	[30–40]	[30–40]
Combined Bauer and Wireless	[50–60]	[40–50]

Source: RAJAR and Ofcom data and CMA calculations.

11.27 We estimated that the Parties had a combined share of supply by listening hours of around 30% in both the Signal 107 and the Free Radio FM (Shropshire & Black Country) TSAs with similar small increments of 6% and 7%. The Parties' share of supply of local advertising revenue was higher in both TSAs, [50-60]% in Signal 107's TSA and [40-50]% in the Free Radio FM (Shropshire & Black Country) TSA. The increment was also larger, around [10-20]% in both areas. However, we placed limited weight on these shares of

264 [✂].

supply as they covered wider areas than the two areas we were concerned with, ie Wolverhampton and Shropshire.

11.28 In Wolverhampton, the value of advertising solely on the relevant transmitters[265] was similar: £[✂] for Signal 107 (Wolverhampton) and £[✂] for Free Radio (Black Country). We saw this as evidence of both options being credible options for local advertisers.

11.29 In contrast, in Shropshire only £[✂] was spent on Signal 107's Shrewsbury and Telford transmitters combined in 2018 compared with sales of local advertising solely on Free Radio (Shropshire) of £[✂].[266] We saw this usage as consistent with the Signal 107 option being seen as a less attractive or a more limited option by local advertisers.

Wolverhampton

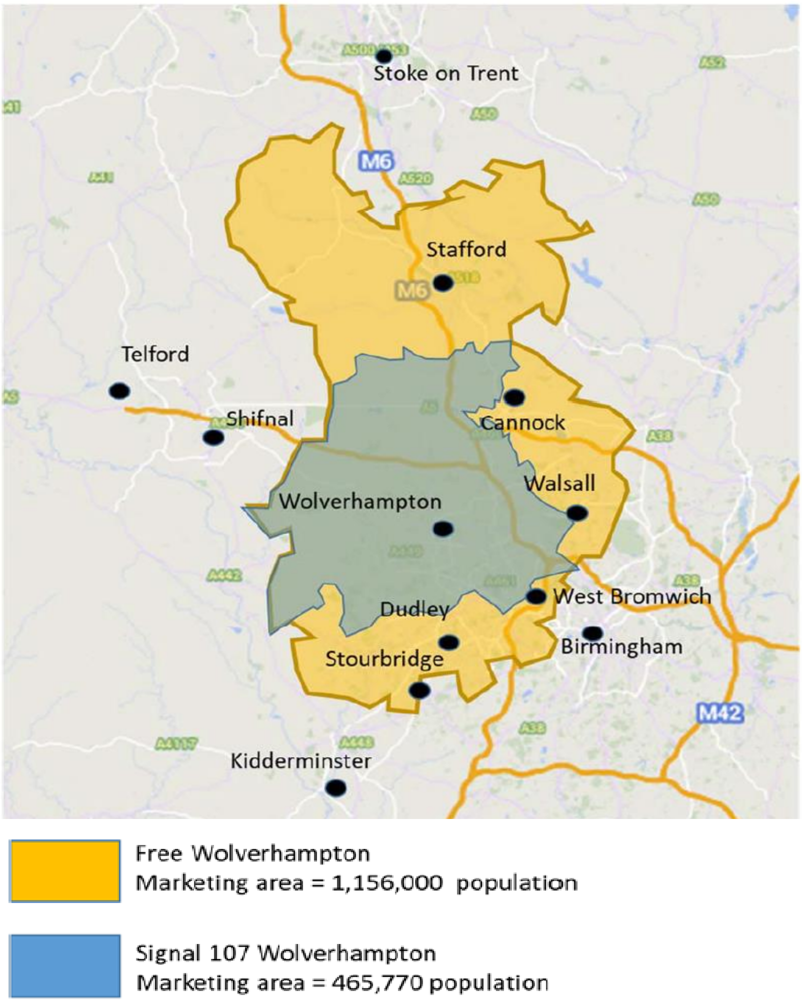
11.30 We considered the extent of competition between Free Radio and Signal 107 in the Wolverhampton area prior to the Wireless Acquisition.

Differences in geographic coverage

11.31 Bauer provided a detailed map specific to Wolverhampton and an estimate of the population overlap (see Figure 12). A similar overlap was shown in maps of the actual FM measured coverage areas of the transmitters.[267]

[265] That is excluding any advertising that is sold as part of a wider set of transmitters.
[266] As for the figures for Wolverhampton, this excludes advertising that is sold as part of a wider set of transmitters.
[267] Available from www.a-bc.co.uk/mca-measured-coverage-area-maps/

Figure 12: Map of Parties' Wolverhampton transmitter marketing areas



Source: Bauer

11.32 The Parties submitted that the Free Radio (Black Country) transmission area only covers about half of the area covered by Signal 107 (Wolverhampton) which extends further west, and it also covers an additional area to the north of Wolverhampton that was not covered by Signal 107.[268] The Parties submitted that this meant that switching between the stations would involve significant wastage as the Black Country/Wolverhampton area extended beyond the area covered by Signal 107 (Wolverhampton).[269]

11.33 They also submitted that Free Radio's option to cover just Wolverhampton was only available on the analogue broadcast because the DAB broadcast

[268] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.15.
[269] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.4.

(which accounted for over 50% of Free Radio Birmingham & Black Country listening) could be split to cover just Wolverhampton.[270]

11.34 The Parties further submitted that [✂].[271]

11.35 Figure 12 shows the area covered by Signal 107's Wolverhampton transmitter was entirely within the area covered by Free Radio's Wolverhampton transmitter. While both broadcast areas included the city of Wolverhampton, which was the major conurbation in the area, Signal 107's Wolverhampton transmitter covered just 40% of the area covered by Free Radio's Wolverhampton transmitter. Therefore, we found that the Parties' Wolverhampton broadcast areas overlapped but not to a significant extent.

Differences in listenership

11.36 The Parties submitted that:

(a) Signal 107's limited share of listening in its own TSA (just 7%) meant that it was a weak radio competitor; [272] Signal 107 was not transmitted on DAB and thus was not heard by listeners using DAB receivers.

(b) There was minimal overlap in the stations' listener base as 92% of Free Radio (Birmingham & Black Country) listeners did not listen to Signal 107 and this was evidence that the stations were clearly complementary.

11.37 We considered that Signal 107's lower share of listening meant that it had been less successful at attracting listeners. Signal 107's ability to attract advertisers in the Wolverhampton area was reflected in its revenue. Its revenue from local advertising on its Wolverhampton transmitter (£[✂]) was roughly the same as Free Radio (Black Country)'s revenue (£[✂]), which we considered showed both options being used by local advertisers to a significant extent.

11.38 The fact that there was limited overlap in terms of listeners between the Parties' stations did not necessarily imply that these stations were not substitutes for local advertisers if, for example, an advertiser did not expect to advertise to every listener and saw Free Radio's and Signal 107's listeners as having similar value.

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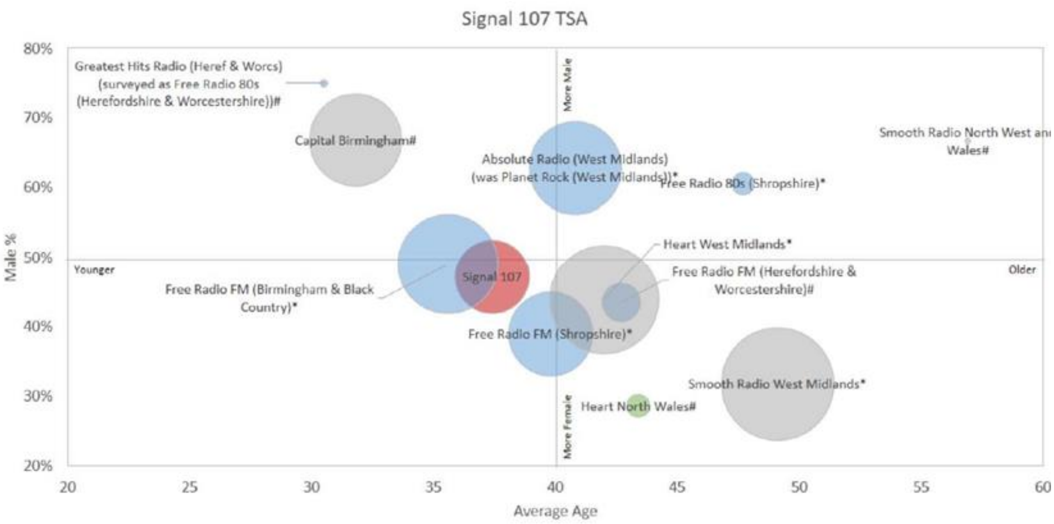
[270] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.4. Although we noted that footnote 68 in the same document suggests that from Q2 2019 the DAB broadcast will align with the new Wolverhampton and Shropshire TSA.
[271] [✂]. Source: Bauer response to phase 1 decision, 27 August 2019, paragraph 7.11.
[272] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.4.

11.39 Figure 13 shows the audience demographics, in terms of average age and proportion of males, for radio stations that broadcast in the same area as Signal 107. Signal 107's demographics were most similar to those of Free Radio (Birmingham and Black Country) and vice-versa. This demographic information was not available for Signal 107's and Free Radio's Wolverhampton transmitters.

Figure 13: Demographics of radio audiences in Signal 107 TSA



Source: The Parties using RAJAR data
Note: Stations marked with a hash cover a tiny proportion of the TSA and those with an asterisk do not cover the whole of the TSA.

Pricing differences

11.40 Advertising options with very different prices will be less close alternatives for local advertisers, as they represent different levels of commitment in terms of advertising spend in a particular area. However, even large price differences are not a clear indicator that the products are not substitutes; if products differ in quality, a high-quality product may be a close substitute for a considerably cheaper but low-quality product.

11.41 The Parties submitted that pricing evidence supported the lack of close competition or substitutability between Signal 107 and Free Radio. They submitted that the average price per minute on Free Radio (Black Country) was £[✂] compared with £[✂] on Signal 107's Wolverhampton transmitter. This was a large difference of £[✂], or [✂]% of the Signal 107 price.

11.42 However, the Parties cautioned that this pricing analysis was not necessarily analysis that Signal 107 carries out in the normal course of business and in some cases pricing data was obtained by combining datasets from different sources that do not reconcile precisely. Bauer told us that 'the data submitted was discussed with Wireless and they were comfortable that this pricing analysis indicated the broad level of average prices relative to their rate card prices. Given that this analysis showed [✄] difference in price between stations, the Parties were confident that advertising on Free Radio (Black Country) was [✄] than advertising on Signal 107.'

11.43 We found that some of this price difference may be explained by Free Radio having more listeners.[273] Whilst Free Radio was more expensive per minute, this difference in the level of financial commitment required could be partially offset by advertisers buying fewer advertisements because each would be heard by more listeners. However, Bauer submitted that advertisers did not generally attempt to increase the impact of their advertisements by buying a station with more listeners and cutting back on the number of advertisements. This was because for most advertisers there was an optimal number of advertisements to be run for each station and advertisements must be heard a certain number of times for the campaign to be effective. We found Bauer's interpretation was supported by the average spend on Free Radio's Wolverhampton transmitter only being [✄] that on Signal 107's only.

11.44 Overall, we found that the pricing data provided some evidence that the Parties' transmitters were not substitutes.

Switching

11.45 Generally, if customers regularly switch between firms this would suggest that they were close competitors. However, low levels of switching need to be interpreted with caution as they could be a result of a lack of competition or other factors, such as infrequent purchasers or a high level of churn amongst customers.[274]

11.46 The Parties submitted an analysis of customer switching for the Parties' Wolverhampton transmitters. The analysis looked at which customers advertised on at least one of the Wolverhampton transmitters during 2017, 2018 or 2019.[275] The Parties tracked whether customers stopped advertising with a transmitter during a certain year and if so, whether they started or continued advertising on the other transmitter in the following year. They found that, while more than [✄]% of customers (representing over [✄]% in

[273] RAJAR does not survey the individual transmitters of interest but we noted that Signal 107 has a 7% share of supply of commercial radio by listening hours within its TSA compared to 10% for Free Radio (Wolverhampton & The Black Country).
[274] Infrequent purchasers and a high level of churn may result in low levels of switching that don't reflect a lack of competition. This is because they result in customers leaving as a result of changes in their needs rather than as a result of finding an alternative way of meeting their needs.
[275] The 2019 data relates to January to September only. It only includes advertisers that didn't also use other transmitters. This could lead to an incorrect estimate of the level of switching because an advertiser which in 2017 used Signal in Shropshire and Free Radio for Wolverhampton and then in 2018 used Signal in Shropshire and switched to Signal for Wolverhampton as well would be excluded. However, we carried out a sensitivity test and concluded that this was unlikely to significantly affect the conclusion.

revenues) stop advertising on each transmitter each year, [✂]% or less (representing [✂]% or less in revenues) started or continued advertising on the other Wolverhampton transmitter in the following year. The Parties submitted that this showed that there was very limited competitive interaction between the stations because despite generally high customer churn from year to year there was very limited switching.

11.47 This switching evidence appeared to us consistent with the stations not competing closely. However, it was also possible that some advertisers stopped advertising because they only had a one-off need or potentially because they went out of business. For example, if an advertiser opened a new store in 2017 and decided to promote it by radio it would appear as a non-switcher in the Parties' analysis. However, this lack of switching reflected the nature of the customer's demand rather than the degree of competition between the Parties' stations. Indeed, the customer promoting its new store may have actively chosen between the Parties' stations. Three Wolverhampton radio advertisers told us that they had ceased to use radio as a result of the end of a trial period or the end of a one-off need. Further, two of Free Radio's 2018 top-20 Wolverhampton-only advertisers ceased trading. All of these customers would have appeared as customers stopping advertising on one of the Parties' transmitters and not then advertising on the other transmitters, ie as non-switchers, however, they are not evidence of a lack of competitive interaction. Accordingly, the analysis submitted by the Parties in our view did not necessarily reveal the extent to which these latter customers switched from advertising on Free Radio to Signal 107 or vice-versa.

Views of third parties

11.48 We sought the views of those local advertisers that were the top users of the Parties' Wolverhampton transmitters as a stand-alone option (ie rather than part of a wider package including the use of other transmitters). We received 12 responses with a roughly even split between the customers of each of Free Radio and Signal 107. These responses provided evidence that:

(a) Local advertisers saw a number of differences between the Parties' offerings in the Wolverhampton area including in the area covered, the price and the demographics.

(b) The Parties' offerings in the Wolverhampton area might be alternatives, with five advertisers either stating they were alternatives or saying they used or approached both.

(c) Global's Heart station might have been an alternative for some advertisers, with two advertisers either using or approaching Heart.

(d) Local advertisers used other forms of advertising than radio and for some this could have been a replacement for radio, but for others it could not.

11.49 Notwithstanding the suggestion that the Parties' offerings were viewed as alternatives by some advertisers, we found few concerns from local advertisers, with only one out of the seven that expressed a view in response to the question of whether it was concerned saying that it was. While the concerned local advertiser[276] considered that there would be reduced competition, it also considered that the Parties offer different packages and that it would not reallocate its advertising spending if the station it used became 5-10% more expensive. Further, the advertiser said some of the concern was based on the experience of the takeover of Free Radio by Bauer and they would have a similar concern if it was Global purchasing Signal 107. We thought this suggested that some of the concern was based on the change of ownership of Signal 107 rather than any loss of competition between the stations.

Competition with other radio stations

11.50 The Parties submitted that:

(a) Global's three stations (Heart, Smooth and Capital) had either a sizeable or leading share of local listening around Wolverhampton and that this suggested they were a real competitive constraint to Bauer.[277]

(b) There was an extensive degree of audience overlap between Free Radio and the Global stations; all of the top three stations also listened to by Free Radio (Birmingham & Black Country) listeners were Global stations and two of the top three stations also listened to by listeners of Free Radio (Shropshire) were Global stations (Heart and Smooth), with the other station being Signal 107.[278]

11.51 Global's Capital, Heart and Smooth stations differed significantly from the Parties' stations in terms of geographic coverage. The overlap between Free Radio (Black Country) and Global's Capital station accounted for just 43% of the population of Capital's broadcast area. The overlap with Global's Heart and Smooth stations was even lower, accounting for 31% of their population.[279] Each of Global's stations' broadcast areas included Birmingham and so could not be used to specifically target the Wolverhampton area.

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[276] [✂].
[277] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.18 and 7.20.
[278] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.19.
[279] The local Heart and Smooth stations have the same broadcast area.

11.52 Less significantly, Global's stations were relatively differentiated from Free Radio and Signal 107 in terms of the audience's average age and gender (see Figure 13).

11.53 The high shares of listening of Global's stations, particularly in the Free Radio TSA covering both areas of concern, suggested that Global was a significant presence for listeners. This did not necessarily make its stations a close alternative for local advertisers, particularly in light of their very different geographic coverage. However, two Wolverhampton radio advertisers told us that they had used or had approached Global's West Midlands Stations, providing evidence that these stations were likely to be an alternative for some customers.

11.54 From the evidence above, in particular the views of Wolverhampton radio advertisers and the fact that Global's stations cover significantly larger areas, we concluded that other radio stations may be an alternative for some but would not be close alternatives for most customers using the Parties' Wolverhampton transmitters.

Competition from non-radio advertising alternatives

11.55 The Parties submitted that in Wolverhampton there were particularly strong out-of-market constraints from local press (and other forms of media).[280]

11.56 The Parties submitted that if they were to increase prices further, local advertisers would divert their radio advertising expenditures to other media, in particular to digital advertising in the West Midlands. In Wolverhampton, the Parties submitted that their stations were also constrained by local press.[281]

11.57 The Parties also provided examples of radio advertisers who have reduced their spending on radio and increased it on digital advertising. However, it was not clear whether these customers switched as a result of changes in the offering of the Parties (and so were something that they could affect) or for other reasons that the Parties could not affect, such as changing circumstances, that would not influence the Parties' incentives.

11.58 Almost all of the specifically Wolverhampton radio advertisers said that they had also used non-radio advertising. However, they had mixed views on whether other forms of advertising could replace radio advertising. Three advertisers were clear that radio would definitely be part of their advertising mix which suggested that other forms of advertising would not be substitutes.

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[280] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.4.
[281] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.4.

Four advertisers had dropped radio entirely and either used other forms of advertising or relied on word of mouth (although three appeared to have done so after trials and so may not be representative of more consistent radio advertisers). We concluded that non-radio alternatives would exert some constraint on the Parties in the Wolverhampton area.

Finding on competition in Wolverhampton

11.59 Based on the evidence set out above, we concluded that there were sufficient differences between the Parties' offerings in Wolverhampton, particularly in terms of the geographic area covered (and the related differences in the advertising options provided by the two stations), to mean that at present they competed with each other to only a limited degree and to some extent they would remain constrained by non-radio advertising.

11.60 We therefore concluded that the Wireless Acquisition had not resulted, and was not be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.

Shropshire

11.61 We now considered the extent of competition between Free Radio and Signal 107 in the Shropshire area prior to the Wireless Acquisition.

Differences in geographic coverage

11.62 Signal 107's broadcast area covered 77% of Free Radio Shropshire's. However, part of this was coverage from Signal 107's Wolverhampton transmitter. As such, the overlap between Signal 107's Shropshire transmitters, those in Telford and Shrewsbury, and Free Radio Shropshire would be lower than 77%.

Differences in listener demographics

11.63 Figure 13 shows that Signal 107's demographics were relatively similar to Free Radio (Shropshire)'s. However, they appeared less similar than with Free Radio FM (Birmingham and Black Country). Separate information was not available for Signal 107's Shropshire transmitters.

11.64 The Parties submitted that there was minimal overlap in the stations' listener base as 89% of Free Radio (Shropshire) listeners did not listen to Signal 107; they said that this was evidence that the stations were clearly complementary. However, for the reasons set out in paragraph 11.38, we did not consider that this implied that these stations were not substitutes.

Pricing differences

11.65 The Parties submitted pricing data for the average prices per minute of advertising on the relevant transmitters in Shropshire. These data showed that the average price per minute on Free Radio (Shropshire) was £[✂] compared to £[✂] on Signal 107's Telford and Shrewsbury transmitters combined. For the reasons set out in paragraph 11.43, we considered that this pricing data had limitations. It also implied that Free Radio (Shropshire) was cheaper despite having more listeners and covering a larger area.

Switching

11.66 The Parties submitted an analysis of customer switching for the Parties' Shropshire transmitters (see paragraph 11.46 for a description). In Shropshire they found that, in each year, [✂] of the customers that stopped advertising on Free Radio (Shropshire) only started or continued advertising on Signal 107's Shrewsbury and Telford transmitters only in the following year and vice versa. For the reasons set out in paragraph 11.47, while this switching evidence appeared consistent with the stations not competing closely, it was also consistent with other explanations.

Views of third parties

11.67 None of the local advertisers that responded to our questionnaire specifically mentioned Shropshire.

Competition with other radio stations

11.68 As with Wolverhampton, the Parties submitted that Global's stations have sizeable shares of listeners in Shropshire and an extensive overlap with Free Radio's listenership.[282] Despite not being available on analogue, the Parties submitted that Global's stations could be received in Shropshire via DAB.[283]

11.69 We found that Global's stations were a very limited constraint in Shropshire due to the limited overlap with their stations; for example, Global's stations' overlaps with Signal 107's Shropshire transmitters accounted for less than one percent of each of their broadcast areas. In terms of their presence on DAB, Global told us that it sold [✂].

[282] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.18.
[283] Bauer response to phase 1 decision, 27 August 2019, paragraph 7.20.

Competition from non-radio advertising alternatives

11.70 The Parties submitted that if they increased prices further, local advertisers would divert their radio advertising expenditures to other media, in particular to digital.

11.71 While we found little evidence specific to Shropshire, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expected that non-radio alternatives would exert some constraint on the Parties in the Shropshire area.

Finding on competition in Shropshire

11.72 Based on the evidence above, we found that competition was reduced as a result of the Wireless Acquisition because the Parties' offerings in Shropshire overlapped significantly and were the only radio options for customers wishing to specifically target the area. However, although we found there was some lessening of competition, we found that this lessening was not substantial because of the limited amount spent on the combination of Signal 107's Shrewsbury and Telford transmitters in comparison to Free Radio (Shropshire) (see paragraph 11.29) and local advertisers expressed no concerns.

11.73 Therefore, on balance, we concluded that the Wireless Acquisition had not resulted in and was not expected to result in an SLC in the supply of local radio advertising in the Shropshire area.

Finding on competition in the West Midlands

11.74 As set out in paragraph 11.59, we found that the Wireless Acquisition had not resulted in and was not expected to result in an SLC in the supply of local radio advertising in the Wolverhampton area.

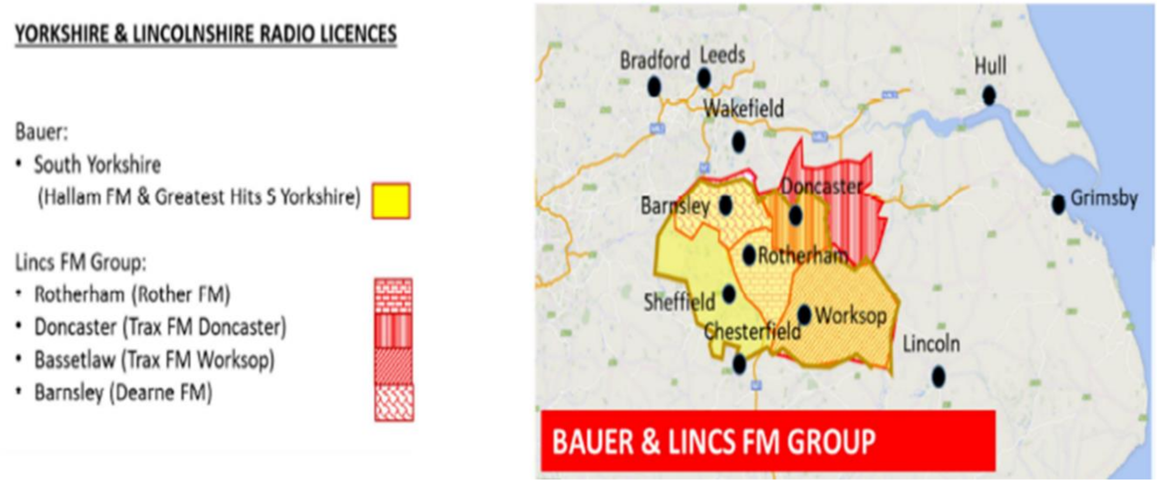
11.75 As set out in paragraph 11.73, we found that the Wireless Acquisition had not resulted in and was not be expected to result in an SLC in the supply of local radio advertising in the Shropshire area.

Yorkshire

Background

11.76 In Yorkshire, Lincs' Trax FM, Dearne FM, and Rother FM (the Lincs Stations) each overlap with Bauer's Hallam FM. In our initial phase 1 investigation, we found that the overlaps between any of the Parties' stations were not likely to raise concerns individually. However, we considered that advertisers might switch between Bauer's Hallam FM and the combination of the Lincs Stations. Therefore we considered competition between Hallam FM and the Lincs Stations. The Parties' stations are shown in Figure 14.

Figure 14: The broadcast areas of Hallam FM and the Lincs Stations



Source: The Parties.[284]

Parties' submissions

11.77 The Parties submitted that there would not be an SLC in Yorkshire for the following reasons:

(a) the Lincs Stations were not a competitive constraint on Hallam FM primarily because of differences in geographic coverage, audience shares and audience demographics;[285]

(b) advertisers did not purchase to any significant extent from all three Lincs Stations together. To the extent they do, it remained the case that Hallam FM would not be a credible alternative given the differences between it and the Lincs Stations;[286] and

(c) Hallam FM was constrained by Global and Communicorp as well as out-of-market non-radio advertising.[287]

284 Bauer response to phase 1 decision, 27 August 2019, Figure 4.
285 Bauer response to phase 1 decision, 27 August 2019, paragraph 6.2.
286 Bauer response to phase 1 decision, 27 August 2019, paragraph 6.3.
287 Bauer response to phase 1 decision, 27 August 2019, paragraph 6.3.

Views of third parties

11.78 Six out of nine local advertisers who expressed a view did not have concerns about the Lincs Acquisition.[288] Of those who were concerned, one was about the possibility that the Lincs Acquisition would impact the cost of advertising on the Parties' stations.[289] The two other concerns were not directly related to competition in the relevant local areas but were about a possible loss of local support, content and coverage. One respondent said its concern was that 'Bauer would end up syndicating key shows like Heart have done with the Breakfast Show and the local passion for the area would be lost.'[290]

Shares of supply

11.79 We calculated shares of supply in each of the TSAs of interest for both listening and local advertising revenue (see paragraphs 11.8 and 11.9). These shares are set out in Table 9.

Table 9: Local radio stations' shares of supply Q2 2019

		(%)
	Share of supply of commercial radio by listening hours	
Radio station	*Hallam FM TSA*	*Combined Lincs Stations TSA*
Global	27	22
Communicorp	14	14
Wireless	1	-
Lincs	17	27
Bauer	40	37
Combined Bauer and Lincs	57	64
	Share of supply of commercial radio by revenue	
Radio station	*Hallam FM TSA*	*Combined Lincs Stations TSA*
Global	[20–30]	[20–30]
Communicorp	[10–20]	[10–20]
Wireless	[0–5]	-
Lincs	[10–20]	[20–30]
Bauer	[30–40]	[30–40]
Combined Bauer and Lincs	[50–60]	[50–60]

Source: RAJAR and Ofcom data and CMA calculations.

11.80 We estimated that the Parties' combined share was relatively high, over 50% in each TSA by each measure. Similarly, the increment was relatively large, at least [10-20]% in each TSA by each measure. As noted in paragraph 11.10,

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288 A further respondent did not express a view on the merger but said that they 'have not considered Hallam FM as an option because it's five or six times more expensive for us', suggesting that they did not see the Parties' stations as alternatives. ([✂])
289 'I have concerns that the merger may impact on the cost of advertising on Dearne FM. At the moment it is a more cost-effective option for advertising compared to Hallam and Capital but if this changes we wouldn't allocate more budget to radio ads so would just have to advertise less on radio, or only advertise on Hallam or Dearne (not both).' ([✂])
290 [✂]. We further noted that this concern was raised by a customer that also said they would not switch spending between the stations if either was unavailable.

the differentiation in stations' offerings meant that market shares needed to be interpreted with caution.

11.81 In 2018, local advertisers spent £[✄] on the three Lincs Stations combined[291] compared with sales of local advertising on Hallam FM of £[✄]. We thought that this usage was consistent with the combined Lincs Stations being a more limited option.

Closeness of competition

Geographic coverage

11.82 We found the combined Lincs Stations overlapped with 61% of Hallam FM's population, however they did not provide coverage of Sheffield, which was the largest city in Hallam FM's broadcast area.

11.83 Moreover, Hallam FM only offered the ability to advertise evenly across its broadcast area, whereas the Lincs Stations allowed advertisers to focus more on particular stations within the combination even where they wished to advertise on all three. For example, one of the largest advertisers that bought advertising on each of the Lincs Stations in 2018 spent [✄]% of its advertising spending on just one of the three stations.

Other differences

11.84 The Parties submitted that Hallam FM and the Lincs Stations further differed in the following ways:

(a) Demographics of listeners: The Parties submitted that Hallam FM attracted a largely female audience as compared to the Lincs Stations and that this demographic was generally considered to be more attractive to local advertisers.[292]

(b) Localness: The Parties submitted that the Lincs Stations had a hyper-local focus on specific towns in the area, meaning that these stations were most suitable for local advertisers seeking to target specific local towns rather than a region.[293] The Parties also submitted that Hallam FM's top local advertisers (by revenue) included shopping centres and retailers, domestic installers (doors, windows, roofing, flooring), and firms

[291] [✄].
[292] Bauer response to phase 1 decision, 27 August 2019, paragraph 6.18.
[293] Bauer response to phase 1 decision, 27 August 2019, paragraph 6.22.

in the motor and travel and leisure sectors, whereas local advertisers on Trax, Rother and Dearne tended to be small locally focussed retailers.

(c) Pricing: The Parties submitted that there were significant differences in prices between the Parties' stations. The average price per minute of Hallam FM (£[✂]) was [✂] times higher than the equivalent price for the Lincs Stations combined (£[✂]). Moreover, the additional reach that a Lincs customer would get by advertising on Hallam FM would be 1.95 the reach of the Lincs Stations. While products with different prices were still able to compete if one was more valuable, the Parties highlighted that it was unrealistic that a Lincs customer would value the additional reach on Hallam FM as much as the price difference would require and therefore decide to switch to Hallam FM.

Views of third parties

11.85 Local advertisers typically did not consider Hallam FM and the Lincs Stations as alternatives. The reasons given were that the Lincs Stations were too narrow in terms of reach and audience or that Hallam FM was more expensive, had a broader audience and had different content. Local advertisers generally saw the Parties' stations as different in the following ways:

(a) Geographic coverage: local advertisers appeared to consider differences in the stations geographic coverage as important. For example, one advertiser said that they used Hallam FM because it covered the 'whole South Yorkshire area, 'as does our programme' whereas '[the Lincs Stations] were all more localised'.[294] Another said that they used a Lincs station because it was local and they would 'only choose station (sic) that concentrates on our coverage'.[295]

(b) Pricing: Local advertisers' views on price differences supported the Parties' view that this was an important element of difference. For example, one advertiser said it had 'not considered Hallam FM as an option because it's five or six times more expensive for us'.[296]

Switching

11.86 The Parties submitted a similar analysis of customer switching for Yorkshire as they had submitted for Wolverhampton (see paragraph 11.46) covering the

[294] [✂].
[295] [✂].
[296] [✂].

three year period 2016-2018. The analysis showed that, despite a high level of advertiser churn in each year, there had been few examples of customers ceasing to use one of the Parties' stations during one year and starting or continuing to use the other station in the following year.

11.87 Although these results were consistent with the Parties' submissions that there was no actual competition between the Parties' stations, we noted the same caveats applied to the analysis as in paragraph 11.47. In Yorkshire, the Parties also analysed why the advertisers that switched radio station had done so.

Competitors

Radio competitors

11.88 The Parties submitted that Global and Communicorp were closer competitors to Hallam FM than the Lincs Stations, whether considered individually or in combination. Furthermore, rivalry between Hallam FM, Global and Communicorp was of key importance in the South Yorkshire region and continuing close competition between Hallam FM.[297] The Parties also submitted that Hallam FM competed with Global and Communicorp for advertisers in the broader Yorkshire region by combining with Bauer's Aire and Viking stations.[298]

11.89 Global's and Communicorp's radio stations had wider broadcast areas than Hallam FM or the Lincs Stations and as a result overlapped less with them. Hallam FM covered just 43% of Heart Yorkshire's broadcast area and 29% of Capital Yorkshire's. Only in combination with Aire did it cover 65% of Heart Yorkshire's broadcast area. The Lincs Stations covered even less of these stations' broadcast areas, less than 25% of each.

11.90 We found the views of local advertisers supported the Parties' view that Global and Heart were the main competitors to Hallam FM. All three local advertisers who considered how they would reallocate their spending if Hallam FM was unavailable said they would move most or all of their spend to Heart or Global. Only one also thought that they would move some spend to a Lincs station.

[297] Bauer response to phase 1 decision, 27 August 2019, paragraph 6.24-6.26.
[298] The Parties submitted that [✂] of campaigns run on Hallam FM were also run on Bauer's Aire and/or Viking stations, to reach a coverage area far larger than that of Lincs' stations, in order to compare with the larger coverage area of Capital Yorkshire and Heart Yorkshire and that for these advertisers, Trax, Rother and Dearne even in combination could not be a substitute.

Non-radio alternatives

11.91 The Parties submitted that they were constrained by non-radio advertising options in Yorkshire. They submitted examples of Hallam FM advertisers shifting to other forms of media.

11.92 Of the Hallam FM customers that told us what they would do if the Parties' radio stations were unavailable, only one out of three said they would switch any spending to non-radio advertising.[299] In contrast, four of six Lincs Stations customers who responded to this question suggested they would move half or all of their spending to non-radio advertising.

11.93 Due to the limited amount of evidence, we put less weight on the evidence specific to Yorkshire. However, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expected that non-radio alternatives would exert some constraint on the Parties in Yorkshire.

Finding on competition in Yorkshire

11.94 Based on the evidence above, we found that competition between Bauer's Hallam FM and the combination of Lincs' stations was limited due to:

(a) the low level of concern from local advertisers about the impact of the acquisition on competition;

(b) the limited use of the combination of the Lincs Stations in comparison to Hallam FM;

(c) the differences between the stations' offerings, particularly in terms of geographic coverage;

(d) few customers switching between the stations' relevant options;

(e) the remaining constraint from other radio competitors; and,

(f) the presence of non-radio advertising alternatives that potentially exerted some constraint on these stations.

11.95 We therefore concluded that the Lincs Acquisition had not resulted in and was not expected to result in an SLC in the supply of local radio advertising in Yorkshire.

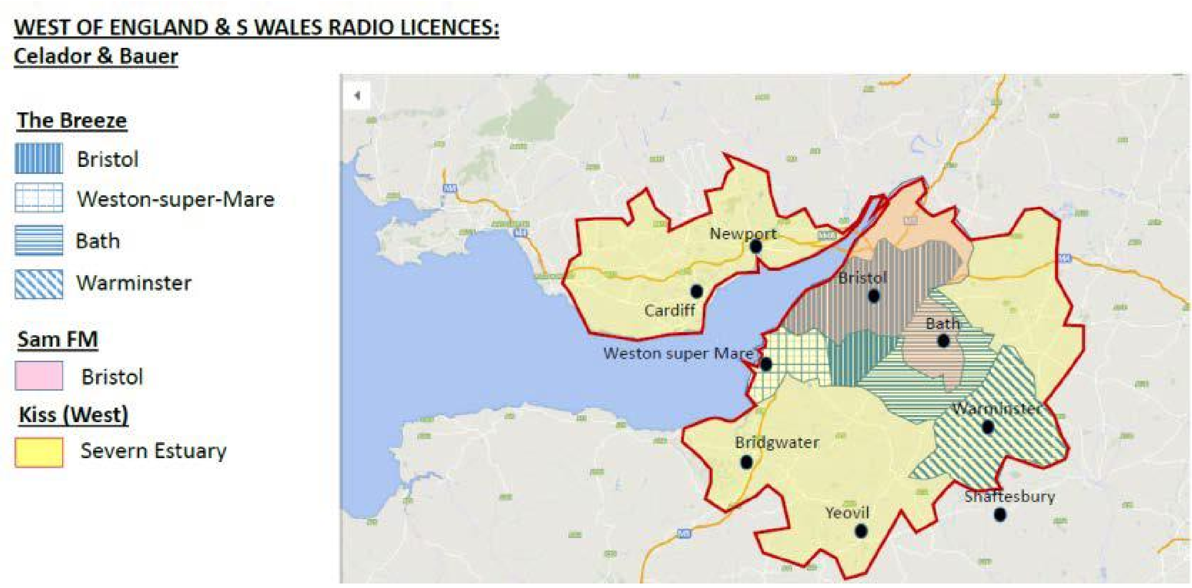
[299] As stated in paragraph 11.90, these customers would mostly switch to Heart or Global rather than the Lincs Stations.

West of England

Background

11.96 In the West of England, Celador's The Breeze South West FM (Bristol/Weston/Bath and West Wilts) and Sam FM (Bristol), each overlapped with Bauer's Kiss West FM. In our phase 1 investigation, we found that the overlaps between the Parties' stations raised significant competition concerns. Figure 15 shows the Parties' stations in the West of England.

Figure 15: Broadcast areas – Kiss West, Sam FM (Bristol) and The Breeze (South West)



Source: The Parties[300]

Parties' submissions

11.97 The Parties submitted that there was not an SLC in the West of England for the following reasons:

(a) Kiss West did not compete to any significant degree with the Celador stations because of differences in geographic coverage, audience shares and audience demographics.[301]

[300] Bauer response to phase 1 decision, 27 August 2019, Figure 1
[301] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.2.

(b) Kiss West was [✂][302] and its ability to offer local advertising was limited, which was reflected in the low revenues it generates from local advertising and the fact that it [✂].[303]

(c) Both Kiss West and the Celador stations were constrained by Global as well as out-of-market non-radio advertising.[304]

Views of third parties

11.98 Eleven out of 13 local advertisers who expressed a view did not have concerns about the Celador Acquisition because they thought for example, the stations had 'completely different audiences', as one of these advertisers explained.[305] Two local advertisers expressed concerns, although these did not appear to be directly related to a reduction in competition in the area:

(a) One advertiser said it would be concerned 'if Sam FM was closed'.[306]

(b) The other advertiser said that 'Kiss is already an expensive option, which is why our spend is already limited. Its broadcast area is so vast that spend against impact in our area is difficult to justify.' [307] However, it also said that there were no alternatives to Kiss for it.

Shares of supply

11.99 As set out in paragraphs 11.8 and 11.9, we calculated shares of supply in each of the TSAs of interest for both listening and local advertising revenue. These shares are set out in Table 10.

302 Bauer response to phase 1 decision, 27 August 2019, paragraph 5.17.4.
303 Bauer response to phase 1 decision, 27 August 2019, paragraph 5.17.4.
304 Bauer response to phase 1 decision, 27 August 2019, paragraphs 5.22–5.24.
305 [✂].
306 [✂].
307 [✂].

Table 10: Local radio stations' shares of supply Q2 2019

			(%)
	Share of supply of commercial radio by listening hours		
Radio station	*Sam FM TSA*	*The Breeze (South West) TSA*	*Kiss West TSA*
Global	52	52	57
Nation Broadcasting	-	-	6
Communicorp	-	-	11
Celador	32	34	15
Bauer*	16	14	10
Combined Bauer and Celador	48	48	25
	Share of supply of commercial radio by revenue		
	Sam FM TSA	*The Breeze (South West) TSA*	*Kiss West TSA*
Global	[50–60]	[50–60]	[50–60]
Nation Broadcasting	-	-	[10–20]
Communicorp	-	-	[10–20]
Celador	[30–40]	[30–40]	[10–20]
Bauer	[5–10]	[5–10]	[0–5]
Combined Bauer and Celador	[40–50]	[40–50]	[10–20]

Source: RAJAR and Ofcom data and CMA calculations.
Note: Kiss West's shares of supply have been adjusted to reflect only FM transmission, as Kiss West's DAB listeners can only be reached with national advertising.

11.100 We estimated that the Parties would have a combined share of supply of [40-50]% by listening hours and [40-50]% by revenue in Sam FM's TSA, with a modest increment to Celador's previous share of supply. Shares of supply were similar in The Breeze (South West)'s TSA. In Kiss West's TSA more competitors were present and the Parties had lower shares of supply. As noted in paragraph 11.10, the differentiation in stations' offerings meant that market shares needed to be interpreted with caution.

11.101 Kiss West's local advertising revenue (£[✂]) was low compared to Sam (£[✂]) and The Breeze (£[✂]).[308] Furthermore, we noted that:

(a) Even this local revenue was overstated as many of Kiss' 'local' advertisers were regional or national but had been booked as local since they were generated by other Bauer local sales teams.

(b) Kiss West's digital service (as broadcast via DAB, IP and DTV) was national and therefore carried only national advertising. In Q2 2019, 44% of Kiss West's listening hours as recorded by RAJAR were via digital platforms which do not carry any local advertising.[309]

[308] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.16.
[309] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.17.5.

Closeness of competition

Differences in geographic coverage

11.102 Kiss West covered a much broader area than Sam FM and The Breeze, which covered just 33% and 43% of Kiss West's broadcast area respectively and less than 50% if combined.[310]

11.103 We considered the similarity of the stations' broadcast areas. We found that Kiss West could not split transmission so it broadcasted the same content and advertising across its whole broadcast area, while Sam FM and The Breeze could separately target four areas serving specific towns.[311] Accordingly, local advertisers who wished to target the smaller areas served by Sam FM and The Breeze would incur significant wastage if they advertised on Kiss as they would pay to reach listeners across a wider area including South Wales.[312]

Other differences

11.104 The Parties submitted that Kiss West was less attractive to local advertisers because of its younger audience and lack of local content. They submitted that in contrast to Kiss West, Celador's stations were locally focused, and their local nature was potentially an important factor of differentiation for their local advertisers.[313]

11.105 As noted in paragraph 11.14, the significance of differences between radio stations depends on the importance of those differences to local advertisers. In this area, ten out of 13 local advertisers who responded to our questions said that demographics played a role in their choice of stations in this area.

11.106 We found that local advertisers had mixed views on how important local content was, so we put limited weight on this factor.

[310] Bauer response to phase 1 decision, 27 August 2019, paragraphs 5.9–5.10 and Table 1.
[311] Bauer response to phase 1 decision, 27 August 2019, paragraphs 5.5–5.6.
[312] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.8.
[313] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.13.

Views of third parties

11.107 We asked local advertisers to rate how close the stations were as alternatives.[314] Those who responded did not consider the stations as close alternatives.

11.108 We asked local advertisers who advertised on the Parties' stations why they did so. Most gave the geographic area as the main reason, eg because these stations matched the locations of their stores. We also asked advertisers to rate how similar the Parties' stations were in terms of broadcast area. The views of advertisers who used the Celador stations differed from those who used Kiss West:

(a) The three Celador stations' advertisers who gave ratings considered the Parties' stations to be very similar or quite similar in broadcast area. However, they also suggested that the similarity either did not affect their choice between the stations or was not sufficient to make the two stations alternative options.

(b) The one Kiss West advertiser who gave ratings considered the Parties' stations not to be similar at all in broadcast area.

Competitors

Radio competitors

11.109 The Parties submitted that there was strong competition in the West of England between Global's Heart stations and Celador's stations, and that Global was the closest competitor of the Celador stations and would continue to constrain them following the Celador Acquisition.[315]

11.110 The Parties submitted analysis to show how similar the offerings of the Global and Celador stations were and how this was reflected in the significant degree of advertiser overlap between them (as compared to Kiss West)[316]

(a) Of the 194 local advertisers across The Breeze (South West) and The Breeze (West Country) only five also advertised on Kiss West. By contrast, 35 also advertised on Global's stations in the area.

[314] 'In terms of your advertising, how close an alternative, if at all, do you consider The Breeze and/or Sam FM to be to Kiss West? Please explain your answer including whether it would vary depending on the type of campaign or other factors' (1=not at all, 5=very good alternatives).
[315] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.20 and 5.24.
[316] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.20.

(b) Similarly, of the 76 local advertisers on Sam FM (Bristol) only five advertised on Kiss West while 21 advertised on Global's stations.

11.111 We found Global's Heart stations had similar geographic coverage to The Breeze and had a high share of listening hours in The Breeze's TSA. They also had a physical presence in the areas served by the Celador stations and were supported by dedicated local sales teams.

11.112 We asked local advertisers to list the stations they used for advertising and to explain why they used those stations. The clear majority of the advertisers on both Kiss West and Celador's stations used Global's Heart stations as well.

11.113 We also asked local advertisers how they would reallocate their advertising spending if the Parties' stations were unavailable. We found that four out of the five advertisers who answered the question would allocate a portion of their current radio spend with the Parties' stations to Global's stations.[317]

Non radio alternatives

11.114 The Parties submitted that Kiss West would continue to be constrained by advertisers' ability to switch to non-radio advertising, in particular local online, newspaper and outdoor advertising.[318]

11.115 We asked a sample of local customers what they would do if the Parties' radio stations were unavailable. The one Kiss West customer that answered this question said it would switch 50% of its spending to non-radio advertising. Two of four Celador customers who responded suggested they would move spending to non-radio advertising, one said it would move all of it and another just a portion of it.

11.116 Due to the limited amount of evidence, we put less weight on evidence specific to the West of England. However, in line with our general view of local non-radio constraints set out in paragraph 7.29, we expected that non-radio alternatives would exert some constraint on the Parties in the West of England.

[317] Only two of these specified how much of their spending they would allocate, 50% and 100%.
[318] Bauer response to phase 1 decision, 27 August 2019, paragraph 5.21.

Finding on competition in West of England

11.117 Based on the evidence above, we found that Kiss FM was a limited competitor for local advertising in the narrower areas of the Celador stations, and Global was and would remain a more important constraint the following reasons:

(a) the nature of the geographic overlap, particularly the much larger area covered by Kiss West and its inability to split its transmission;

(b) Kiss West sold very little local advertising;

(c) the differences in demographics between the stations' audiences, particularly the substantially younger audience for Kiss;

(d) Global's stations would remain as closer competitors to the Celador stations than Kiss West;

(e) the presence of non-radio advertising alternatives that potentially constrained these stations to some extent; and

(f) the low level of concern from local advertisers about the impact of the Celador Acquisition on competition.

11.118 We therefore concluded that the Celador Acquisition had not resulted and was not be expected to result, in an SLC in the supply of local radio advertising in the West of England.

12. Countervailing factors

12.1 In this section, we consider whether entry by a new entity to represent independent radio stations to national advertisers, and/or entry by new radio stations, and/or the exercise of buyer power by the Parties' customers might prevent or counter the SLC we have identified.

12.2 As the Parties put it to us that the effect of the Acquisitions could be pro-competitive, we also consider whether the Acquisitions give rise to rivalry-enhancing efficiencies, which would be timely, likely and sufficient to prevent SLCs arising in the markets for the representation of independent radio stations for national advertising.

Entry into the representation of national advertising to independent radio stations

12.3 We considered whether there would be potential for entry into the market for representation of national advertising to independent radio stations, post-Acquisitions. If so, the entrant could, as a competitor to, or replacement for, FRS offer representation to independent stations and therefore potentially prevent the SLC identified in relation to representation.

12.4 Pre-Acquisitions, we have seen no evidence that any party was considering entry into the market for representation of national advertising to independent radio stations. The Acquisitions will make any such entry even more challenging because the scale of business available to such an entrant based on the remaining independent stations would be limited. It would face the same challenges as FRS in terms of achieving sufficient commissions from advertising to cover costs. Such an entity would be of limited attractiveness to national advertisers given that the extent of geographic coverage it could offer would be substantially reduced compared to the situation faced by FRS prior to the Acquisitions, even if the entrant were able to agree representation with all the remaining independent stations. Therefore, the quantity of advertising and the rates it could achieve would be limited, and so independent stations might be more ready to consider BCL agreements with the large radio groups.

12.5 We also considered whether there were alternative, lower-cost models for representing independent radio stations, for example using an on-line booking tool which did not require as many sales staff. In our view this is unlikely to be attractive to media buying agencies who have stressed their preference for dealing with larger networks, especially if the on-line booking tool did not have any active sales representation, and so is likely to be used only where advertisers have very specific geographic targeting requirements.

12.6 Therefore, based on the evidence we have seen, we conclude that entry into the market for representation of independent radio stations for national advertising would not be likely to occur so as to prevent the identified SLC from arising.

Entry into radio broadcasting

12.7 We now address the prospects for entry into radio broadcasting, and whether large-scale entry (ie on a sufficient scale) could prevent the SLC found in the market for representation of independent radio stations for national advertising.

Large-scale entry

12.8 Entry into the market for the representation of national advertising to independent radio stations is addressed in paragraphs 12.3 to 12.6. Here, we consider whether entry into broadcasting would be on a sufficient scale to establish a significant new competitor in national advertising sales, providing an alternative to Bauer and Global in representing independent radio stations. Large scale entry would be necessary to create an entity able to compete effectively for national advertising and so avoid the pressures that have applied to FRS because of its scale (see paragraphs 6.62 to 6.64). We have looked at whether such entry would be feasible, likely and sufficient to prevent an SLC.

12.9 Ofcom told us that no new analogue commercial radio licences are being issued. This is an absolute barrier to entry to creating new analogue AM/FM services. It is feasible that a licensee may not renew a licence so the licence could be re-advertised by Ofcom, however, this is very unlikely to occur, and even then would likely only apply to a single local licence. Therefore, it is very unlikely that there could be potential for large-scale new entry in analogue broadcasting. A new entrant could attempt to purchase analogue stations to build scale, however, given that independent radio stations (ie excluding Global and Bauer) have a small overall market share, there seems little opportunity to build significant scale in this way.

12.10 There are opportunities for entry via DAB or IP broadcasting. As noted at paragraph 2.15, the majority of commercial radio listening is now on digital rather than analogue broadcasts. Bauer and Global operate several digital-only stations, broadcast either jointly on DAB and IP, or IP only. In the main, these are variants of established brands, eg in Bauer's case Magic, Absolute, Kiss and Heat. There have been stand-alone stations launched, eg Bauer launched Scala Radio in 2019.

12.11 Looking at internet broadcasting, Bauer submitted that for IP services, capacity is limitless (and low cost) and so as IP grows it will become more economic for new services to be offered via IP. It said that there are a vast number of IP-only radio stations available to UK listeners, many of which originate in the UK. It also said that distributing these services online does not require either expensive infrastructure nor an Ofcom licence. However, it also acknowledged that due to the limitless capacity and much greater competition (both UK and overseas stations), it is also harder for radio broadcasters on IP platforms to build audiences.

12.12 Given that online-only stations have not tended to achieve large audiences, we do not consider that relying on IP-only broadcasting is likely to facilitate large scale entry, such that the entrant could establish itself as a significant competitor in the provision of national radio advertising.

12.13 We next look at whether entry into DAB broadcasting could facilitate large scale entry. As at August 2019 there was no spare capacity on either of the two national multiplexes open to commercial radio. Therefore we considered whether significant entry could be achieved through use of multiple local multiplexes.

12.14 We have not identified any non-cost barriers to launching local stations on DAB, except where the local multiplex is full. This appears to be the case in some areas, such as Manchester, Birmingham, and South Yorkshire.

12.15 In these cases, there may be opportunities to utilise small scale DAB multiplexes, although Ofcom told us that the necessary legislation to enable it to roll out a network of small-scale multiplexes is yet to be approved.[319] When these are introduced, it is anticipated that the costs of broadcasting on them will be considerably lower than existing standard multiplexes, although their transmission area is expected to be only around 40% of that of existing local multiplexes.[320] The cost of DAB transmission through existing multiplexes is significant. For example, Bauer said in a submission on the benefits arising from the transaction, that most of the stations forming part of the Acquired Businesses were not broadcast on DAB 'likely because DAB distribution is a significant expense…as such, DAB distribution may be prohibitively expensive to many stations'.

12.16 The next question is whether an entrant could attract sufficient radio audiences so as to make itself an attractive option for national advertisers. We have not seen examples of DAB-only entrants establishing large audiences. Nation told us that given the current industry parameters and available spectrum, it was impossible for anyone to build a business that could rival Global or Bauer in share or influence. Whilst it is possible that new entrants may use individual (or a combination) of small-scale DAB licenses to expand, Nation considered it most likely that these multiplexes will be filled with hyper-local or niche services and therefore unlikely to have a significant impact on a BCL network audience.

12.17 Wireless further submitted that small-scale DAB multiplexes are by their very nature 'small-scale'. Consequently, it did not anticipate these networks having

[319] See Summary of Hearing with Ofcom, 11 September 2019
[320] See Summary of Hearing with Ofcom, 11 September 2019.

the ability to a significant proportion of commercial radio listening, either within specific local advertising markets or in aggregate.

12.18 Global submitted that in its view, it is likely to be very difficult to make a profit from broadcasting a stand-alone local digital-only station outside London which does not benefit from cost savings and joint marketing with an existing national or analogue station.

12.19 Bauer, in its response to a CMA working paper, said:

> In view of the capacity constraints on national DAB multiplexes and on some local DAB multiplexes, Bauer agrees with the assessment …that there is limited scope for new national DAB entry. As such, the main channels for new entry are launches on specific local DAB multiplexes … and on small scale DAB multiplexes … In addition … online radio is expected to continue to be a major channel for entry and expansion. Stations entering via these means are likely to be either highly locally targeted or focused on a particular audience segment. As such, they are likely to be structured around a funding model that does not depend on national advertising.

12.20 We have not heard of any party intending to enter into radio broadcasting in the UK on a large scale, using this to establish itself as a competitor in the provision of national radio advertising, and then offering representation to independent radio stations.

12.21 Because of the limited availability of DAB capacity, the costs of widespread DAB broadcasting, and the challenges in attracting large audiences to new digital-only stations, we concluded that we do not expect that there will be significant large scale entry into broadcasting, such that the entrant could establish its own national advertising sales function which could then offer representation of national advertising to independent radio stations which would provide effective competition to prevent the identified SLC from arising.

Buyer power

12.22 The CMA's Merger Assessment Guidelines identify the possible existence of countervailing buyer power as a factor in making an SLC finding less likely.[321] Bauer submitted that media buyers [✂].

[321] *CC2 Revised*, paragraph 5.9.1.

12.23 Our Guidelines note that countervailing buyer power applies where 'an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices',[322] and state 'typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch, or the customer has the ability to sponsor new entry or enter the supplier's market itself by vertical integration.'[323]

12.24 We have seen no evidence to suggest that these factors apply in the case of media buying agencies purchasing radio advertising. Rather, we have seen evidence of agencies and advertisers having a limited number of choices for procuring radio advertising, and we have not identified any separate, additional constraints in this regard that are not already factored in to the competitive analysis of the theories of harm.

12.25 In any event, the SLC we have found in representation relates to the market for representation of national advertising to independent radio stations. We have seen no evidence that independent radio stations have buyer power in this market. Rather, the evidence indicates that they perceive that they have few options (and those may include having to accept a BCL) and little negotiating power.

12.26 In light of the above, we concluded that buyer power is unlikely to prevent the SLC that we have identified.

Potential benefits from the Acquisitions

12.27 Bauer has argued that the effect of the Acquisitions will be to allow it to compete more effectively against the market leader, Global, and in consequence will enhance competition and create benefits for customers. The CMA Merger Guidelines recognise that 'Efficiencies arising from a merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms'.[324]

12.28 Bauer's rationale for the Acquisitions and its strategy to achieve this are set out in paragraphs 4.9 to 4.19. In summary, Bauer submitted that in order to

[322] *CC2 Revised,* paragraph 5.9.1.
[323] *CC2 Revised,* paragraph 5.9.3.
[324] *CC2 Revised,* paragraph 5.7.2.

compete more effectively with Global and persuade media buying agencies [✂].

12.29 We acknowledge that Bauer's intended short-term strategy is to offer a larger network and [✂]. We also acknowledge that Global might be expected to respond to any prospective loss of business and this could include price cuts.

12.30 Our Guidelines state:

> To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC … on the basis of compelling evidence, [we] must expect, that the following criteria will be met:
>
> - the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and
>
> - the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.[325]

12.31 We note that Bauer's submissions on benefits of the Acquisitions appear to relate to competition in the market for national advertising. This is not a market in which we have found an SLC. As a result, any such benefits cannot prevent the SLC we found in the market for the supply of representation for national advertising to independent radio stations in the UK.

12.32 We are also unpersuaded that we can necessarily expect a persistent reduction in prices and that customers will benefit in the longer term. Given the concentrated nature of the market for commercial radio broadcasting, and for national radio advertising, there may be limited incentives to pass efficiencies through to customers.

12.33 Bauer also submitted that the Acquisitions would deliver demonstrable benefits to advertisers, listeners and the acquired stations in the near term, and in the longer term, will safeguard the continuing commercial viability of the acquired stations.

12.34 Our Guidelines describe how the CMA will take efficiencies in the form of relevant customer benefits into account, including benefits to customers arising in markets other than where the SLC is found, and benefits to future

[325] *CC2 Revised*, paragraph 5.7.4.

customers.[326] The CMA takes account of possible relevant customer benefits in deciding on the question of remedies, and will normally do so by considering the extent to which alternative remedies may preserve such benefits.[327]

12.35 The potential benefits raised by Bauer are therefore addressed in the context of remedies in paragraphs 14.127 to 14.153.

13. Conclusions

13.1 As a result of our assessment, we have found that each of the Acquisitions has resulted in the creation of a relevant merger situation.

13.2 We conclude that the Acquisitions, as a result of each of: (1) Bauer's acquisition of the ability to exercise material influence over FRS; and (2) its acquisition of a large proportion of FRS' customers (by share of business), have resulted, or may be expected to result, in an SLC in the market for the supply of representation for national advertising to independent radio stations in the UK.

14. Remedies

14.1 Having concluded that the Acquisitions have resulted, or may be expected to result, in an SLC, we are required, pursuant to section 35(3) of the Act, to decide the following:

(a) whether action should be taken by it under section 41(2) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect that may be expected to result from the SLC;

(b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect that may be expected to result from the SLC; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

14.2 The Act requires that the CMA, when considering possible remedial actions, shall 'in particular, have regard to the need to achieve as comprehensive a

[326] *CC2 Revised*, paragraph 5.7.3 and Merger remedies guidance CMA87 paragraphs 3.14-24.
[327] Merger remedies guidance CMA87 paragraph 3.15 (based on sections 35(5), 36(4) and 36(6) of the Act).

solution as is reasonable and practicable to the SLC and any adverse effects resulting from it'.[328]

14.3 To fulfil this requirement, as set out in the Merger Remedies Guidance,[329] the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. Where the CMA is choosing between remedies that it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive. The CMA will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects. When considering the costs associated with a remedy, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture since in the case of a completed merger, the merger parties have taken the foreseeable risk that the CMA may require divestiture, and so the divestiture costs are in essence avoidable. However, it will consider costs such as those resulting from distortions in the market, compliance costs, and the loss of any RCBs arising from the merger.

14.4 The Merger Remedies Guidance sets out four aspects to be considered in assessing the effectiveness of a remedy:

(a) Impact on the SLC and its resulting adverse effects: normally, the CMA will seek to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.

(b) Appropriate duration and timing: the CMA will prefer a remedy that quickly addresses competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.

(c) Practicality: a practical remedy should be capable of effective implementation, monitoring and enforcement.

(d) Acceptable risk profile: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.

14.5 On 5 December 2019, along with our provisional findings, we published a Notice of possible remedies (Remedies Notice),[330] in which we sought views on possible remedies to the SLC we had provisionally identified.[331] We sought responses on possible structural remedies and invited views on whether there were potential behavioural remedies that may be effective in remedying the

[328] Section 35(4) of the Act.
[329] Merger remedies guidance CMA87.
[330] Remedies Notice.
[331] The Remedies Notice was supplemented by the Provisional Findings Addendum on 4 January 2020.

provisional SLC or any resulting adverse effects. The Remedies Notice set out a number of issues that we considered would need to be included for a behavioural remedy to be effective.

14.6 In response to the Remedies Notice, Bauer put forward a proposal which we published on the inquiry page on 22 January 2020.[332] Bauer amended this proposal in response to the Addendum and in response to concerns we had over its effectiveness (see paragraph 14.76 onwards).

14.7 The rest of this chapter is structured as follows:

(a) an overview of remedy options;

(b) an assessment of the effectiveness of potential remedies;

(c) an assessment of Relevant Customer Benefits;

(d) an assessment of the proportionality of the effective remedies identified;

(e) the implementation process for any remedies; and

(f) our decision on remedies.

Overview of remedy options

14.8 As set out in the Merger Remedies Guidance,[333] remedies are conventionally classified as either structural or behavioural:

(a) Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market through a direct change in market structure.

(b) Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of the merging parties with the aim of restoring or maintaining the level of competition that would have been present absent the merger.

14.9 Bauer submitted that the most proportionate and effective remedy to the SLC was a behavioural remedy and that a structural remedy would be both disproportionate and ineffective.[334] Further, it submitted that a structural remedy posed greater risks for Third-Party Stations than approving the Acquisitions unconditionally. It argued that if FRS was to fail in the near future

[332] Bauer's proposed remedy.
[333] Merger Remedies: Competition Commission Guidelines (CC8), Part 2.
[334] Bauer, Response to Notice of possible remedies (20 December 2019) paragraph 2.1.1.

(as Bauer submitted it would), this would potentially leave a third party without an immediate option for representation, and/or seeking to negotiate a new representation deal urgently. This could be disruptive to the Third-Party Stations. By contrast, its behavioural proposal would ensure continuity of service.

14.10 Bauer stated that if the stations it had acquired were sold the more attractive stations would be picked up by different players, most likely Global or Communicorp, which would withdraw them from FRS and as such make the structural divestment ineffective as it would guarantee the immediate demise of FRS.

14.11 We received 21 different third-party responses to the Remedies Notice comprising both written and oral submissions. Some of these responses only expressed views on structural or behavioural remedies whilst others expressed views on both. Many respondents' views were nuanced, seeing pros and cons in both types of remedy and so the summaries in this chapter necessarily simplify their views. The views of third parties are set out in full on our webpage.[335]

14.12 Four third-party respondents, namely Global, FRS Customer 1, [✂] and [✂], submitted that a structural remedy involving the divestment of the Acquired Businesses (Bauer's 50% shareholding in FRS and the acquired radio stations) represented the best remedy option. In addition, [✂] submitted that a partial disposal of Bauer's acquisitions including FRS seemed appropriate. [✂] submitted that it would like to see FRS independent from Bauer.

14.13 A number of these respondents expressed concern in relation to a behavioural remedy, describing it as:

(a) having considerable risk as it would not address the SLC and require the CMA to specify and regulate all of the terms of FRS's representation of its entire constituent body of local radio stations for a significant period of time (Global);

(b) less likely to be effective in addressing the SLC than a structural remedy ([✂]);

(c) more likely to create distortions in market outcomes than a structural remedy ([✂]): requiring significant monitoring over a ten-year period ([✂])

[335] Bauer Media Group merger inquiry.

and being difficult from an enforcement/governance perspective (FRS Customer 1).

14.14 [✄] submitted that it had concerns over fair treatment of smaller stations under FRS ownership by one of the large radio businesses. Global argued that a behavioural remedy does not meet the CMA's Guidance for adopting a behavioural remedy.[336]

14.15 Two respondents, Credible Media and [✄] believed both structural and behavioural remedies had merits and could work in practice.

14.16 We received 12 responses where the third party either stated a preference for a behavioural over a structural remedy (11)[337] or a positive view towards being represented by Bauer (1)[338]. These respondents also raised more detailed concerns about how a behavioural remedy would work in practice and highlighted a need for appropriate safeguards to be in place. One other party did not state a preference for a remedy or comment on which option it thought would be appropriate.

14.17 We also note that a number of these respondents expressed concerns in regard to structural remedies. [✄] for example told us that 'if a structural remedy is put in place, it would introduce uncertainty, and it is not clear to us how deliverable it would be given the challenges FRS currently face'.

Structural remedies

14.18 A successful divestiture will effectively address at source the loss of rivalry resulting from the merger by changing or restoring the structure of the market.[339] In nearly all completed mergers full divestiture[340] would clearly form the basis of an effective remedy. However, we recognised that there were a number of very unusual aspects in this case:

(a) The SLC arose from the combined effect of the four Acquisitions;

(b) These four Acquisitions represented a non-contiguous and relatively disparate set of radio stations that could not reasonably be said to represent a stand-alone business unit;

[336] See Merger remedies guidance CMA87 paragraph 7.2
[337] Mi-Soul, [✄], [✄], KM Group, Dee Radio Group, Radio Plymouth, [✄], Adventure Radio (Radio Essex), [✄], Media Sound Holdings, and Phil Riley.
[338] Star Radio Cambridge.
[339] Merger remedies guidance CMA87, paragraph 3.38.
[340] Full divestiture is the divestiture of all the assets acquired as part of the transaction.

(c) At the heart of our concerns is the loss of FRS as an independent source of representation for independent commercial radio stations (see paragraph 8.81. The 50% shareholding in FRS acquired as part of these Acquisitions is only a small component of the value of the Acquisitions; and,

(d) The Acquisitions resulted in Bauer acquiring only 50% of FRS rather than the whole of that business.

14.19 We took these features into account in our assessment of divestiture options.

14.20 In assessing the effectiveness of a divestiture remedy we considered:

(a) the appropriate scope of any divestiture package;

(b) the identification and the availability of suitable purchasers; and

(c) the divestiture process.

Scope of the divestiture package

14.21 Our starting point for a structural remedy is generally the divestiture of all or part of the acquired business.[341] In this case we found that the four Relevant Merger Situations (RMS) in combination resulted in the SLC in the representation of independent radio stations for national advertising in the UK, ie each RMS in combination with the other RMSs resulted in the SLC.[342] Given this, our starting point was the divestiture of the Acquired Businesses as a whole including the 50% shareholding in FRS (Full Divestiture).

Views of Bauer and Third Parties

14.22 Bauer stated that no structural remedy could make FRS an effective competitor for the duration of the SLC. It argued that FRS was in decline and that it was not in a position to arrest this situation. As such it was impossible for FRS to be preserved as an effective competitor even in the short term. A number of respondents also considered that a structural remedy was not the

[341] The CMA takes divestiture of all or part of the acquired business as its starting point because 'restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy' and be an effective one (Merger remedies guidance CMA87, paragraph 5.6). In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired (Merger remedies guidance CMA87, paragraph 5.7).
[342] We also found that the UKRD Acquisition alone gave rise to the SLC because it gave Bauer effective control of FRS. However, divestment of the FRS shareholding alone would not remedy the SLC because the loss of a large proportion of FRS' customer base through all the Acquisitions together would still give rise to the SLC.

preferred solution and that it would not be effective for the same reasons (see paragraph 14.17).

14.23 Four third parties considered that Full Divestiture would be effective and stated a preference for it.[343] They were of the view that anything less than this would render FRS subscale and would likely lead to its closure. Some third parties suggested that there might be a level of divestment below Full Divestiture where a divestiture could be effective based on creating a critical mass of radio stations or listener hours for FRS. However, no party was able to provide evidence as to what this level would be.[344] Below this (unknown) sufficiency level, these third parties said that FRS would become unviable as a long-term competitor for national sales advertising and as such the remedy would be ineffective.

14.24 No respondent considered that a divestiture of the 50% shareholding in FRS alone would be sufficient to address the SLC. Third Parties views were that if this shareholding in FRS was sold on its own and the radio stations from the Acquired Businesses remained with Bauer, FRS would lose the majority of its revenue and as set out in the Provisional Findings it would become unviable.

14.25 Bauer submitted that the inclusion of non-radio assets which were part of the Acquired Businesses, eg multiplexes, would not make any difference to the remedy as there was already ‘fair and effective price and access to [that] market’. In contrast Global and [✂] thought that they needed to be included to ensure the purchaser is able to compete effectively and independently. FRS Customer 1 thought that acquiring infrastructure as part of the transaction may be necessary to attract a suitable purchaser and that the decision should be one for the purchaser to make.

14.26 Bauer submitted that a remedy that included preventing Bauer from competing with FRS’ offering for national sales representation to independent radio stations would not be effective in addressing the SLC as well as infringing the Chapter I prohibition in the Competition Act 1998. Further, FRS stations are required to serve a notice period before ending their representation contract with FRS. Bauer stated that any enhanced commitment would go beyond the pre-merger position and more importantly would not result in an effective remedy as it would lead to there being no competition for the representation of those stations.

[343] FRS Customer 1, [✂], [✂], and Global.
[344] [✂] estimated that this would be [✂] it was not able to provide evidence as to why this level would be sufficient and how this level could be arrived at.

14.27 Third-party responses were mixed regarding the need for behavioural protections in addition to a divestiture remedy. FRS Customer 1 submitted that behavioural conditions would need to be attached to a divestiture to make it effective.[345] Specifically, divestiture would need to come with an exclusive commitment to FRS for a period of time and that any future change of control of FRS within the 10 year SLC period would need some degree of similar vetting of the purchaser(s)'s suitability. Radio Plymouth submitted that to make the structural option more attractive it would be beneficial if it had the same guarantees as with the behavioural proposal in terms of contract term and guaranteed income[346]. However, Global submitted that there should be no requirement for additional behavioural remedies (with the exception of transitional arrangements) as long as the purchaser was committed to operating FRS as an independent sales house.

Our assessment

14.28 Based on the disparate nature of the assets acquired and on the fact that the combination of these acquisitions gave rise to the SLC, we considered it likely that all four Acquired Businesses were needed to ensure the financial viability of FRS. Anything short of Full Divestiture of all the radio assets of the Acquired Businesses would not be likely to enable FRS to be a viable long-term competitor. Divestiture other than Full Divestiture would involve at least one of the Acquired Businesses being retained by Bauer (and being removed from FRS). Therefore, divesting some but not all of the radio stations acquired by Bauer meant that FRS would be in a materially weaker position with the remedy in place than it had been prior to the merger and, , carry materially greater risks that any purchaser would not be able to ensure the long-term viability of FRS. Neither Bauer nor any third party provided evidence that this was not the case.

14.29 We therefore found that of potential structural remedies only Full Divestiture could, at least in principle, be effective at addressing the SLC.

Effectiveness of Full Divestiture

14.30 In addition to finding that Full Divestiture would, at least in principle, be effective at addressing the SLC, we found that the Acquired Businesses would also need to be divested to one single purchaser rather than to multiple

[345] FRS Customer 1 response to Remedies Notice.
[346] Bauer's proposed remedy.

purchasers in order to align the ability and incentives of the purchaser to operate FRS in the long term and, thereby, in principle address the SLC.

14.31 Full Divestiture to a single purchaser also minimises execution risks: if the radio groups were sold separately it would introduce more risk and uncertainty regarding the likely outcome and introduce practical challenges regarding completing the divestiture to appropriate bidders within a reasonable period. In particular, it would increase the risks that some of the Acquired Businesses would choose to leave FRS.

14.32 By owning all of the Acquired Businesses, the new owner would have control over a majority of FRS revenues. By retaining, through ownership, the majority of FRS's scale it would therefore have a greater ability to ensure that FRS would remain profitable. However, this would represent a departure from the position pre- merger where the stations operated as four separate, independent radio groups.

14.33 In considering the likely effectiveness of Full Divestiture to a single purchaser, we had regard to the highly unusual nature of this case as set out at paragraph 14.18. We have been particularly mindful of the challenges this creates in replicating the incentives of a new owner to operate FRS in a way similar to that of the owners pre-merger, so as to address the SLC.

14.34 Given that the SLC we have found arises from the combined effect of the four Acquisitions by Bauer of operations from four different vendors, we recognise that under Full Divestiture to a single purchaser it will not be possible to restore fully the pre-merger conditions of competition. Moreover, the significant difference in size of FRS to the Full Divestiture package (eg in terms of revenue and profit generated per annum) and the different nature of the service that FRS provides compared to the bulk of the Full Divestiture package (ie national representation services as opposed to operating local radio stations) makes this a highly unusual divestiture proposition. This is because the critical element of the divestiture package which remedies the SLC (the 50% stake in FRS) is of only marginal relevance to the commercial attractiveness of the package to potential purchasers.

14.35 Given these unusual circumstances we consider that Full Divestiture could lead to inherently conflicting incentives on the purchaser in regard to FRS.[347] FRS, pre-merger, was a standalone entity solely incentivised to serve its customers, but any new owner under Full Divestiture would need to weigh up a number of conflicting incentives, which we set out below.

[347] Evidence from [✂] (see Appendix E) was consistent with our concerns.

14.36 Full Divestiture would result in the new owner holding a larger portfolio of radio stations than any individual owner of the Acquired Businesses did pre-merger. In our view, this might make it more attractive for a new owner to market all or some of these stations through a representation agreement and/or BCL, which may yield higher revenues and/or profits in the short-term and/or have greater growth potential over the longer term, than through FRS.[348] Moreover, entering into a single agreement covering a large number of stations would be attractive to Bauer or Global in terms of gaining a larger share of audience (and thereby preventing any rival from growing its market share through representation). This could incentivise Bauer or Global to offer better representation terms than for the individual station groups.

14.37 In a Full Divestiture, the new owner of at least a 50% shareholding in FRS would need to weigh up the impact of a representation or BCL agreement on the revenues and profits from its owned radio station businesses (including the Acquired Businesses), against the adverse impact on the residual commission and profit (if any) that it would receive from FRS customers from operating a significantly smaller FRS (which would be more likely to be loss making in this eventuality).

14.38 We have had the opportunity to discuss potential future approaches to operating FRS with some potential purchasers (see paragraph 14.54), and consider there is inherent uncertainty as to whether these conflicting incentives will mean any new owner of at least 50% of FRS will continue to support the strategic direction of FRS over the long term to compete sufficiently to represent independent radio stations.

14.39 It is therefore difficult to be confident that the outcome of Full Divestiture will be fully effective at remedying the SLC. Given this inherent uncertainty, we had material concerns about whether a structural option would be effective by itself. We also considered whether additional safeguards would be required to protect independent stations, together with a structural remedy (see paragraphs 14.43 to 14.45 below).

14.40 We set out our view at paragraph 14.28 that, as a minimum, any divestiture package would need to include all of the stations acquired by Bauer plus the shareholding in FRS. However, even with this package, material concerns remained as to whether such a divestiture would be fully effective. We therefore further considered whether the package to mitigate these concerns

[348] The new owner may also have an added incentive to enter into a BCL or similar arrangement to realise cost savings at the acquired radio stations.

would need to be supplemented through the addition of a) non-local radio assets and b) behavioural remedies.

14.41 Depending on the identity of a purchaser, we considered whether it would be necessary to include non-radio assets (which were acquired with the Acquired Businesses) to ensure that the divested business is financially viable on a stand-alone basis.

14.42 The responses of third parties on the inclusion, or not, of non-local radio assets in any divestiture package were mixed. We note that multiplexes, which were the main/only non-local radio asset mentioned, are covered by Ofcom regulations that are designed to allow fair, non-discriminatory access. The exclusion of these assets should not therefore affect a purchaser's ability to access digital radio. No other non-local radio assets were discussed by respondents. We cannot be certain that there are other such assets within the package that may be required by a purchaser. Because we are required to find a comprehensive remedy to the SLC, in our view all assets acquired as part of the Acquired Businesses would need to be included in any divestiture package and it would be up to the potential purchasers to decide whether they wanted non-local radio assets or not. However, this consideration has not had a material bearing on our assessment of whether Full Divestiture would be effective at addressing the SLC.

14.43 We received a mixed response to whether behavioural conditions would need to be added to a divestiture package.

14.44 Without an upfront buyer, we are do not have the power to require behavioural commitments from a purchaser, such as continuation of service provision or constraints on pricing. We have the ability to impose behavioural requirements on the seller, for example time-limited non-compete arrangements, though these cannot constrain the subsequent actions of the purchaser.

14.45 Non-compete clauses are common in business sale agreements and we have required them in association with other divestiture remedies provided they are limited in time and do not infringe the Chapter I Prohibition in the Competition Act 1998.[349] We consider that a clause which restricts Bauer's ability to compete for FRS customers following a Full Divestiture would need to be limited in both time and scope, so as not to restrict the choices available to smaller radio stations for representation. In our view this type of restriction on Bauer would not materially increase the incentive of the purchaser to operate

[349] Non-compete clauses are often part of the sales agreement between the parties rather than part of the undertakings. This is agreed through the purchaser approval process.

FRS over the long term to compete sufficiently to represent independent radio stations, and so we do not consider imposing such clauses would materially enhance the effectiveness of Full Divestiture in addressing the SLC.

Conclusion on effectiveness of Full Divestiture

14.46 We found that Full Divestiture is the only structural remedy that could be effective in principle. The scope of the Full Divestiture package could potentially be amended depending on the choice of purchaser, although any divestiture would need to include as a minimum all of the stations acquired by Bauer plus the shareholding in FRS. Some short-term behavioural conditions may also need to be considered. However, for the reasons discussed above, there is material uncertainty as to whether a Full Divestiture will be fully effective at addressing the SLC.

Identification and availability of suitable purchasers

14.47 The effectiveness of a divestiture remedy is dependent on finding a suitable purchaser with both the ability and incentive to operate FRS as an effective competitor.

14.48 In light of the risks associated with the divestiture, in order for Full Divestiture to be effective at addressing the SLC, we thought it was necessary for the package to be sold to one purchaser rather than multiple purchasers.

Parties' views

14.49 Bauer told us that 'it would be extremely challenging to find a single buyer, because the opportunity of deregulation, and the benefits that deregulation enables a scale-player to bring, cannot be replicated'. It believed that the lack of synergies available meant that it would not be an attractive proposition for a small existing player, a new entrant or a buyer from an adjacent industry (eg newspapers). Further, it believed that any buyer would need to invest significantly in the businesses to meet future industry developments and compete effectively in the market.

14.50 Third parties raised two main issues regarding identification and suitability.[350] First was the limited attractiveness of FRS given its customer base and the inability to grow this without significant investment. Second, the disparate nature of the Acquired Businesses. Specifically, because Bauer made the acquisitions with its existing footprint in mind, a single buyer would find it

[350] Third party responses to the Remedies Notice. See Bauer Media Radio Group Inquiry page.

difficult to operate these businesses as a single integrated standalone business. This lack of coherence between the businesses meant there was little scope to take advantage of cost and operational synergies. Further, the stations were active in secondary and tertiary markets (ie not in major urban areas) and these areas were not especially attractive to national advertisers on their own but they would only be attractive to advertisers as part of a wider network which includes the major urban areas. This meant that it was unlikely to be an attractive proposition for a single purchaser which may not be able to achieve synergies as large as Bauer would be likely to achieve, as a result of the nature of the businesses and the specific fit to Bauer's footprint. We thought that some synergies may still be available in each of the individual four radio groups acquired.[351] In particular, a UK acquirer may have some strategic fit with the assets which could provide both financial and structural synergies.

14.51 However, we recognised that the potential buyer pool may be small for two reasons: the major acquisitive radio groups in the UK may not be eligible due to the likelihood of raising competition concerns; and, the size of the divestiture package might be too large for smaller businesses (raising execution risks and risks around the successful integration of a much larger business into a smaller one).

14.52 We considered whether an overseas acquirer might see a Full Divestiture as a means of entering the UK radio sector, but we considered this unlikely given the lack of synergies between the Acquired Businesses and the lack of an obvious expansion route. In our view, a Full Divestiture package is not likely to interest private equity houses as opportunities for growth following acquisition is limited and there is no obvious exit route. We would also be concerned about interest from a distressed asset acquirer as this would raise significant concerns that such a buyer would not be looking to invest in FRS.

14.53 Bauer and some third parties raised a number of concerns regarding the likelihood of finding a purchaser who had the experience and financial capability to acquire a Full Divestiture package and with the incentive to operate FRS for the long term.

14.54 We received expressions of interest from four parties. Two expressed an interest in a Full Divestiture, while the other two expressed an interest in only FRS with the potential for other asset acquisitions. Details of these are set out in Appendix E.

[351] Synergies within the Acquired Businesses have been highlighted by Phil Riley during the inquiry process but have not been instigated as a result of the IEOs being in place.

14.55 The two expressions of interest in a Full Divestiture appeared, in principle, to be credible. However, the submission from one of them ([✂]) gave rise to some concerns over the incentives of an acquirer to operate FRS in the long term as a competitor in the representation market. We noted that this risk could potentially be mitigated in the divestiture process when potential purchasers would have the opportunity to evaluate the opportunities with the Full Divestiture package in more detail, and we would have the opportunity to assess potential purchasers' suitability and have oversight of the sale process. However, we consider despite this process the very unusual aspects of this case mean there would remain a material and unmanageable residual risk that an acquirer would not operate FRS in the long term as a competitor in the representation market.

14.56 However, we also expected that if Bauer were to seek offers for the Acquired Businesses that there may be other interested parties who may potentially have different plans for FRS.

Conclusion on the likely availability of a suitable purchaser

14.57 When reaching our conclusions on the likely availability of a suitable purchaser we consider first the likelihood that a purchaser could be found for the Acquired Businesses. We received indications of interest, two of which appeared credible, but also had risks associated with them. We thought there may be more interested parties which had not yet come forward. On balance, although the pool of purchasers was limited we thought it likely that a purchaser could be found for a Full Divestiture.

14.58 However, as set out in paragraph 14.54 we had concerns about the incentives of any purchaser to run FRS as an effective competitor in representation services to independent radio stations in the longer-term. These concerns arise from the very unusual aspects of this case (see paragraph 14.18). In line with our normal procedures we could seek to mitigate these concerns through the purchaser approval process and oversight of the divestiture process. Even if we were to do so ultimately our concern in this case relates to the inherent challenge of determining a package that would effectively remedy the SLC, in these unusual circumstances, rather than the availability of a specific purchaser. As a consequence, we concluded that it was not possible to fully manage these risks through the oversight of the sales process.

The divestiture process

14.59 An effective divestiture process safeguards the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.[352]

14.60 For the timescale to divest, we could see no reason to deviate from our guidance and therefore thought a period of six months would be appropriate for an Initial Divestiture Period. A Full Divestiture did not appear to be a complicated process given the lack of integration following the Acquisitions and Bauer's original timeframe for the four Acquisitions. The key element in the transaction from a remedy perspective was the suitability assessment of the purchaser and, in particular, assessment of a purchaser's strategy for FRS.

14.61 To ensure a timely completion of this remedy and in line with our normal practice, we would reserve our right to appoint a Divestiture Trustee if:

(a) Bauer failed to complete the divestiture process within the Initial Divestiture Period;

(b) we reasonably believed that there was a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;

(c) Bauer was not engaging constructively with the divestiture process; and/or

(d) There was a material deterioration in the Divestiture package during the divestiture process.

14.62 In line with our normal practice,[353] if a Divestiture Trustee was appointed it would be tasked with completing the divestiture of the Divestiture package to a potential purchaser approved by us and at no minimum price and also be given the ability to reconfigure the package (eg by taking out or adding in whatever elements of the Acquired Businesses are necessary) to achieve a successful divestiture.

14.63 We noted there was a risk Bauer could divest to a weak competitor, but this risk in our view is no greater than normal in these circumstances and could be managed through oversight of the divesture process and through the purchaser suitability assessment.

14.64 Interim measures would be kept in place until final undertakings were given or a final order made. The Acquired Businesses would be kept separate during a divestiture process and the Monitoring Trustee would remain in place. The

[352] Merger remedies guidance, CMA87, paragraph 3.51.
[353] Merger remedies guidance, CMA87, paragraph 5.43.

Monitoring Trustee's role would be expanded to include the monitoring of the divestiture process.

Conclusion on the effectiveness of divestiture

14.65 We found that a Full Divestiture to a single purchaser could be capable, at least in principle, of remedying the SLC. We also found that it was likely on balance that a purchaser for the Acquired Businesses would be found.

14.66 However, the profile of risks in this case was materially higher than would normally be expected with a full divestiture remedy because of the very unusual aspects of this case.

14.67 A particular source of risk related to the inherent uncertainty regarding the incentives, likely appetite and strategic focus of any purchaser in relation to maintaining FRS as an active competitor to represent independent stations following any divestiture and the diverse set of radio stations which would make up the Full Divestiture package. Consequently, we did not have the usual level of certainty that a structural remedy would be effective in remedying at source the loss of rivalry resulting from the merger.[354] While these risks could potentially be mitigated to some extent through our oversight of the divestiture process and our assessment of purchaser suitability, there remained a material and ultimately unmanageable residual risk so that, in our view, it would not be feasible to implement a structural remedy that comprehensively remedied the SLC.

Behavioural remedies

14.68 Behavioural remedies are ongoing measures that are designed to regulate or constrain the behaviour of merger parties. In our Guidance,[355] we state that 'we will generally only use behavioural remedies as the primary source of remedial action in a Phase 2 merger investigation where:

(a) structural remedies are not feasible;

(b) the SLC is expected to have a short duration; or

(c) behavioural measures will preserve substantial Relevant Customer Benefits (RCBs) that would be largely removed by structural measures.'

[354] Merger remedies guidance CMA87, paragraph 3.38.
[355] Merger remedies guidance CMA87, paragraphs 7.1 to 7.3.

14.69 Given our concerns that there was a material, and ultimately unmanageable residual risk that a Full Divestiture to a single purchaser would not be feasible to comprehensively remedy the SLC, we considered whether a behavioural remedy would be more effective at addressing the SLC. This is despite our finding that the other two circumstances, namely a time limited SLC and the need to preserve RCBs (see paragraph 14.153) did not arise in this case.

14.70 Bauer submitted detailed behavioural proposals in response to the Remedies Notice. These were published on the inquiry page.[356] We received a number of responses from third parties (including FRS customers that would be directly affected by the proposal). These responses showed a level of support from some third parties as well as identifying some risks. Bauer submitted a revised proposal taking account of responses from third parties. In addition, Bauer submitted amendments following publication of the Addendum and our Remedies Working paper, in which we identified a number of issues that we expected to be addressed in order for a behavioural remedy to be effective.

14.71 Behavioural remedies regulate or constrain the behaviour of merger parties. Unlike structural remedies, behavioural remedies do not normally address the source of an SLC directly. In this case the behavioural remedy would aim to control the adverse effects expected to arise from the merger such as the deterioration of terms and conditions and reduced access to national advertising revenues for independent radio stations.

14.72 We assessed whether Bauer's proposal would be effective with regard to the four main categories of risks associated with behavioural remedies as set out in our Guidance: namely Specification; Circumvention; Distortion; and Monitoring and Enforcement[357]

14.73 We also had regard (under these risk categories) to the components that we considered would be necessary for an effective remedy as set out in our Remedies Notice (see paragraph 14.74), and to the key issues highlighted by Third Parties in response to the Remedies Notice and in response to Bauer's proposal.

14.74 In the Remedies Notice[358] we set out that to be effective any behavioural remedy would need to include:

(a) Representation of independent radio stations on at least the same or better terms than customers currently have with FRS. Terms would include, but not be limited to: the commission payable, customer payment

[356] Bauer's proposed remedy.
[357] Merger remedies guidance CMA87, paragraph 7.4.
[358] Remedies Notice.

terms and general representation terms eg the current geographic clusters that stations are sold under.

(b) Mechanisms to ensure that these terms do not deteriorate over time. These would need to take account of:

(i) Changes in listener hours.

(i) Changes in the level of national advertising spend in commercial radio as a whole.

(ii) Other market changes might also need to be addressed eg changes in advertising slots per hour.

(iii) Access to both analogue and digital national advertising (if the station currently has both or expands into digital channels).

(c) New customers would need to be able to access these same terms. This might occur through a re-advertising of a licence or a change in ownership of a station.

(d) A mechanism to ensure access for all current FRS stations on a non-discriminatory basis, ie Bauer should not be able to favour its own stations over overlapping stations it represents.

(e) Monitoring and enforcement, including any adjudication, arbitration or other dispute resolution mechanism.

14.75 We received 12 responses to the Remedies Notice where the third party either stated a preference for a behavioural over a structural remedy (11)[359] or a positive view towards being represented by Bauer (1)[360]. These respondents also raised concerns about how a behavioural remedy would work in practice and highlighted a need for appropriate safeguards to be in place

14.76 The key points highlighted in these and other third-party responses were – in line with our Remedies Notice requirements – around: equality of treatment with Bauer's own stations (non-discrimination), contract terms, fair share of revenue generated, inventory management, treatment of new entrants and

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[359] Mi-Soul, [✂], Gaydio, KM Group, Dee Radio Group, Radio Plymouth, [✂], Adventure Radio (Radio Essex), [✂], Media Sound Holdings and Phil Riley.
[360] Star Radio Cambridge.

new stations, own brand integrity and transparency. Of these, equality of treatment was the key concern of most respondents.[361]

14.77 Following publication of Bauer's proposal, we received further responses from third parties. Bauer amended its proposal following publication of the Addendum and our Remedies Working Paper in which we had set out areas of concern in regard to its proposal.

14.78 Bauer's proposal committed it to providing national advertising sales representation to all Third-Party Stations receiving national advertising sales representation from FRS as at the date of acceptance of undertakings. Bauer's offer of representation would be on the Third Parties' existing terms as agreed with FRS and in effect as at 31 March 2019 (the date on which Bauer completed its acquisition of UKRD). Those terms would be supplemented by additional protections including a Minimum Revenue Guarantee (MRG). There would be a dispute and adjudication mechanism.[362] Bauer's proposal as amended in response to the Addendum and our Remedies Working Paper is set out in Appendix F.

14.79 We set out below our assessment of this amended proposal along with the views of Bauer and third-parties. This assessment is structured on the basis of our risk assessment process[363] as follows:

(a) Specification and circumvention risks

(b) Duration of the remedy

(c) Monitoring and Enforcement.

Specification and circumvention risks

14.80 Specification risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance. Circumvention risks arise as a consequence of behavioural remedies generally not dealing with the source of an SLC. It is possible that other adverse forms of behaviour may arise if particular forms of behaviour are restricted. Therefore, to avoid or reduce these risks, behavioural measures need to deal with all the likely substantial forms in which enhanced market power may be applied.

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[361] Third party responses. See Bauer Media Radio Group Inquiry page.
[362] Bauer's proposal in response to the Remedies Notice was for a period of up to five years. This was changed following the publication of the Addendum so that the remedy would match the length of the SLC.
[363] Merger remedies guidance CMA87 paragraph 7.4

14.81 Behavioural remedies are inherently difficult to specify so that they remain effective for long periods of time. It is also difficult to effectively protect all parties adversely affected by the SLC in a way that circumvention is not possible at some point in the future.

14.82 The main elements of Bauer's proposal which address specification and circumvention risks are:[364]

(a) Provision of national advertising sales representation to all Third-Party Stations receiving national advertising sales representation from FRS as at the date of acceptance of undertakings.

(b) Representation on Third-Party Stations' existing terms as agreed with FRS and in effect as at 31 March 2019.[365] These terms may be amended or replaced at any time by mutual agreement with the Third-Party Stations having the sole discretion as to whether to accept any new or amended terms or retain their existing terms.

(c) An MRG guaranteeing Third-Party stations a minimum revenue from Bauer based on their existing FRS revenue. This would be subject to adjustments, which could increase or decrease the MRG, to take account of changes in the overall market for national advertising (Market Revenue multiplier[366]) and changes in the individual stations' listening hours (Listening Hours multiplier).[367]

(d) New stations would be represented on terms which were materially equivalent to the terms being offered by Bauer at that point in time by Bauer to other stations.

(e) A dispute resolution process involving an Independent Adjudicator.

(f) Compliance monitoring by a Monitoring Trustee.

14.83 Bauer also committed:

(a) to provide a professional sales service and use all reasonable endeavours to promote an awareness of the Third-Party Station to media buying agencies on the same basis in all material respects as for Bauer's own stations;

[364] Full details are set out at Appendix F.
[365] This is the date on which Bauer completed its acquisition of UKRD which included the 50% shareholding in FRS.
[366] The Market Revenue multiplier adjusts the MRG for changes (both up or down) in UK annual national commercial radio revenue [✂].
[367] The Listening Hours multiplier adjusts the MRG for changes (both up or down) in a station's audience. [✂].

(b) to negotiate and conclude sales contracts on behalf of the Third-Party Stations in good faith and acting in their commercial interests;

(c) to use reasonable commercial endeavours to negotiate the best price for each sale of national advertising taking account of the marketplace and agreement between Bauer and the Third-Party Station as to how the advertising is to be sold;

(d) to promptly notify the Third-Party Station of any material concerns that it may have regarding the identity of an advertiser or subject matter of a campaign on the same basis as for Bauer's own stations; and

(e) to act in good faith and in a timely fashion in relation to the performance of all of its obligations under the representation agreement and comply with all reasonable instructions and requests of the Third-Party Station.

14.84 Further, Bauer offered to include [✂][368][✂] maintaining existing FRS buying points (ie station groupings). Bauer would also adopt appropriate safeguards to ensure security of confidential information.

14.85 Bauer submitted that its proposal was clear and simple and the basic design avoided Third Parties receiving worse terms and conditions than they received from FRS prior to the Acquisitions, in that:

(a) the current FRS terms would remain available to Third-Party Stations as a backstop option throughout the duration of any remedy;

(b) the MRG meant that the national advertising revenue currently achieved by Third-Party Stations (subject to adjustments) was guaranteed and gave Third-Party Stations a clear baseline against which they can measure the revenues delivered by Bauer.

14.86 Bauer told us that it had strong commercial incentives through commission income and competition with Global to perform as effectively as FRS (if not more so) and this was underpinned by the obligations in the proposal which was further supported by the dispute resolution mechanism.

Our assessment

14.87 We considered that basing a remedy on the terms on which Third-Party Stations currently receive national advertising sales representation from FRS was clear, easily understood and relatively difficult to circumvent without detection. The ability for Third-Party Stations to amend these terms by mutual

368 [✂].

agreement would enable Bauer and the Third-Party Stations to come to more mutually beneficial terms if these were appropriate, while retaining the base line of current FRS terms. Furthermore, the dispute resolution mechanisms (see Appendix F) provided a means to resolve any disputes regarding current terms.

14.88 We found that third parties were most concerned with ensuring equality of treatment by Bauer, in particular: non-discrimination in presentation to MBAs; obtaining a fair share of revenue generated; and control over inventory management.

14.89 Although Bauer's proposal included a commitment to fair treatment (see paragraph 14.83) and the inclusion of stations in its Hits Radio Network alongside the current FRS station groupings, the nature of selling national advertising carried with it a risk that these commitments could be circumvented. However, Bauer's proposal includes a MRG, which we considered to be essential to minimise circumvention risk. It provides a simple, transparent mechanism for Third-Party Stations to assess whether they are obtaining the service levels as set out in their contracts and as promised by Bauer.

14.90 One of our concerns with Bauer's initial proposal was how to ensure the MRG would provide equal incentives for Bauer to sell national advertising on the Third-Party Stations and for the Third-Party Stations to compete as under the counterfactual to attract listeners and advertisers. We thought the inclusion of a simple minimum revenue would not achieve this.

14.91 The responses we received indicated that the MRG would need to ensure Bauer was not incentivised to price Third-Party Stations' inventory too high or too low or to otherwise divert advertisers' revenue to its own stations.[369] We concluded that the inclusion of the two multipliers to the MRG, covering station listenership and total national advertising revenues, meant that Bauer would be incentivised to represent Third-Party Stations impartially and to the best of its ability in line with the remedy commitments. It also meant that Third-Party Stations could not simply rely on the MRG for a set revenue level but must continually compete for listeners at the local level.

14.92 We wanted to ensure that the MRG could not be circumvented by Bauer forcing national sales inventory onto the Third-Party Stations in two areas where we had particular concerns:

[369] By pricing inventory at a higher level than its own stations Bauer could make Third-Party Stations unattractive to advertisers compared with its own stations. By pricing low, Bauer could use up significant portions of a third-party station's inventory thus reducing the level of inventory available for these stations to sell to local advertisers.

(a) rejection of advertising for capacity reasons, ie where a large national campaign would take up too high a proportion of a station's inventory and this would affect its local advertiser base. Bauer proposed [✄]; and,

(b) rejection of advertisers on ethical/editorial grounds. Bauer proposed that [✄]

14.93 Third parties expressed concerns that the MRG would not be transparent because of the information asymmetry between Bauer and Third-Party Stations. We found the key elements of the MRG were either known by the Third Party (ie its revenue) or were sourced from public data. We thought these public data sources would provide a sufficient degree of transparency.

14.94 The MRG required a base level of revenue from which the annual minimum revenue is calculated. In its response to the Remedies Notice, Bauer suggested using 2019 calendar year as a base period. We received responses suggesting a two to three-year period or a different year may be more appropriate, eg in cases where 2019 had been a poor or unrepresentative year for national advertising revenues. [✄]. The different circumstances of Third-Party Stations make it unlikely that one base period will be acceptable to all parties. Therefore, our view was that a base period universal across all Third-Party Stations should be included. The definition of this base period should be finalised during the implementation phase, as currently we have insufficient data to define the most appropriate period.

14.95 One third party suggested that the base period should be adjusted for inflation. In our view, the market adjuster element of the MRG takes account of changes in advertising prices and therefore inflation and should ensure that the base revenue figure is adjusted each year to take account of inflation. Accordingly, we have not required additional indexation in the calculation.

14.96 Concerns were raised by Non-RAJAR stations that the MRG would not be applicable to them. Bauer stated that non-RAJAR stations' MRGs would be calculated in a similar way to RAJAR stations: [✄].

14.97 We thought that without an audience adjuster there would be a risk that the stations' revenues would not reflect their performance over time. However, because the audiences of these stations are small at present and they have the ability to join RAJAR if their audiences grow, we considered the risks to revenue of not including an audience adjuster for Non-RAJAR stations and only using a Market Adjustor mechanism as small.

14.98 We were concerned that the use of an MRG could become a barrier to Third Party Stations looking for alternative national sale representation, as they would lose the MRG cover if they left Bauer but subsequently returned. [✂].[370] We considered this proposal adequately reduced the potential exit barrier as it reduced the risk to the Third Party Station of using an alternative supplier.

14.99 Bauer proposed that new stations would be represented on terms which were materially equivalent to the terms being offered at that point in time by Bauer to other stations. We were concerned that the specification of materially equivalent terms might enable circumvention of any remedy. However, the main service levels could be compared to those of existing clients by the Monitoring Trustee, and the Monitoring Trustee would also be able to interrogate the rationale for any differences in terms offered to the new station as compared to exiting equivalent stations. While the inability to specify terms now is not an ideal situation, we considered the use of the Monitoring Trustee to audit terms was sufficient to reduce specification and circumvention risks to acceptable levels.

14.100 Confidentiality was an issue for Third-Party Stations. In order for Bauer to represent Third-Party Stations, Bauer would need to have access to commercially sensitive data from potential competitors. In response, Bauer set out a number of controls, including [✂], which would be incorporated in any remedy. We will require that these arrangements are audited and agreed by the Monitoring Trustee during implementation to provide the maximum level of control possible.

14.101 Third party responses also noted that there was also a possibility of Bauer having a conflict of interest between selling its own stations' inventory and that of Third-Party Stations. In order to mitigate this concern, Bauer will [✂]. We thought this would provide a positive framework from which to develop a sales structure that incentivises the sale of Bauer or Third-Party

[370] [✂].

Station inventory equally. The Monitoring Trustee would be required to approve this at implementation stage and will audit this for the duration of the remedy. There may well be some residual conflicts that require additional control in certain areas, and these would need to be addressed further in the implementation phase.[371]

Duration

14.102 We then considered the appropriate duration of any behavioural remedy. Behavioural remedies may create market distortions (distortion risks) that reduce the effectiveness of the remedy and/or increase the effective costs over time. Distortion risks may result from remedies overriding market signals or encouraging circumvention behaviour.

14.103 Because we did not find a time-limited SLC, we were concerned that the longer the remedy operates the more likely that distortion risks will occur. We looked at whether there was a specific event or a time in the future when we could foresee that the conditions that precipitated the requirement for the remedy no longer existed. We could not identify such an event. Similarly, neither Bauer, nor any third party, identified such an event.

14.104 Our view is that, over time, the need for the remedy will reduce and there will be a point at which it is no longer necessary. The industry is undergoing change - for example the growth of IP and changes in Ofcom regulation around localness.[372] These changes will have an impact on the traditional commercial local radio network. However, it is not clear when this will happen. Given this and our concerns about the scope for distortion risks with an open-ended remedy we came to the view that a time-based sunset clause would be appropriate in this case, after which the remedy would no longer apply. This would also be consistent with our guidance on sunset clauses used in relation to reacquisition or in market investigations (see CMA 3 paragraphs 4.19-4.25).

14.105 In line with this guidance, and based on our judgement in this case, taking into account the balance between the desirability of achieving an enduring solution (which argues for a longer sunset clause) and the risks of distortion which increase the longer the remedies are in place, we considered a sunset clause of 10 years from the date of implementation would be appropriate.

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[371] [✂].
[372] DCMS also launched a review of digital radio on 27 February 2020

Monitoring and enforcement

14.106 Even clearly specified remedies may be subject to significant risks of ineffective monitoring and enforcement. This may be due to a variety of causes, such as the volume and complexity of information required to monitor compliance; limitations in monitoring resources; asymmetry of information between the monitoring agency and the business concerned; and the long timescale of enforcement relative to a rapidly moving market.

14.107 Because of the long term nature of this remedy, we thought monitoring and enforcement of would need to be robust and sufficiently flexible to continue to apply until the expiry of the sunset clause. The costs of monitoring and enforcement to Bauer and the CMA was particularly relevant in this context as well.

14.108 Bauer submitted that an Adjudicator, a dispute mechanism and a Monitoring Trustee would allow for monitoring and dispute resolution. The adjudicator's role and the dispute mechanism are set out in detail in Appendix F.

14.109 Bauer submitted that the remedy will operate in a highly transparent marketplace and the Third-Party Stations are long-term and experienced users of FRS and will have all of the information they need to detect potential breaches of Bauer's obligations and bring a dispute before the adjudicator. It submitted that the MRG would be easily monitored and Bauer would periodically provide the Monitoring Trustee with the information it required in order to certify compliance with the remedy (including the MRG).

14.110 In addition, Bauer stated that it would appoint a member of Bauer radio UK senior management as a compliance officer and an annual compliance report to the monitoring trustee would be prepared.

Our assessment

14.111 Bauer proposed a package of enforcement and monitoring arrangements to ensure compliance with the remedy, which included a dispute resolution mechanism to apply to all disputes between Bauer and Third-Party Stations. Details of this is set out in Appendix F. In our view this is a useful provision but we would hope that disputes could be resolved without resort to it.

14.112 Bauer suggested [✂], to act as adjudicator in the event of any disputes. Bauer submitted that, combined with the transparency described above, this meant that Third-Party Stations would be readily able to identify when they have grounds for a potential dispute, so that no monitoring and enforcement risk can arise.

14.113 We considered that the use of an organisation as adjudicator was more appropriate than an individual, to allow continuity, especially given the 10-year timeframe of the remedy. However, we will be testing the suitability of other organisations put forward for consideration as an adjudicator in our implementation phase, looking specifically at industry expertise and independence from Bauer.

14.114 Appendix F sets out a timeframe for the adjudication process which we considered reasonable.

14.115 In order to ensure transparency, we would require that decisions of the adjudicator are made available to other Third-Party Stations. We do not see this as requiring commercially sensitive data to be made public, but that enough information is disclosed so that Third-Party Stations can understand the nature of the dispute, the outcome and whether it has an impact on their relationship with Bauer. We also decided that the adjudicator should report direct to the Monitoring Trustee (or to the CMA) rather than doing so through Bauer. The exact remit of the adjudicator will be defined during the implementation process.

14.116 A regular audit of compliance with the remedy will be undertaken by the Monitoring Trustee with direct input from the adjudicator as well as Bauer. This will be provided to the CMA and will include for example (but not be limited to):

(a) steps taken to ensure compliance with the remedy;

(b) instances where a breach or potential breach of the remedy has been identified and steps taken to rectify it;

(c) whether any matters were referred to the Adjudicator and how these matters were resolved; and

(d) how the report was compiled.

14.117 Bauer proposed an annual stakeholder meeting to discuss issues in relation to the remedy and its adherence. We will explore this concept in the implementation phase.

14.118 We did not see the need for a person representing the Third-Party Stations to be permanently sited within the Bauer organisation as proposed by some third parties[373]– an implant – because of the other safeguards out lined above.

14.119 We identified the main costs of the remedy as being the initial implementation of the remedy (its systems and employee education), the Monitoring trustee (implementation and annual auditing) and the adjudicator (if and when required). These costs, with the exception of some of the cost of the adjudication process, will be borne by Bauer. We expect the CMA costs to be limited to review of the annual report, if the remedy is successful. We considered that the level of anticipated costs is borne by the right parties and is proportionate to the remedy.

Conclusion on the effectiveness of Bauer's proposed behavioural remedy

14.120 A behavioural remedy is only capable of mitigating or removing the adverse effects of the SLC rather than remedying the SLC itself. This is an inherent shortcoming of behavioural remedies relative to structural interventions which normally precludes their use in merger investigations. However, in light of our conclusion at paragraph 14.67 that we do not have the normal level of certainty that a structural remedy will necessarily be effective in addressing at source the loss of rivalry resulting from the Acquisitions, we consider that a behavioural remedy with elements proposed by Bauer and also elements required by us would be a more targeted and effective remedy than Full Divestiture.

14.121 Behavioural remedies may create market distortions (distortion risks) that reduce the effectiveness of the remedy and/or increase the effective costs over time. Whilst we thought that these distortion risks would be low in the immediate period following implementation, the inevitable changes in the market would, in our view, create a different situation from that the remedy was intended to address. Therefore, we thought that over time the behavioural remedy (amended as above) was likely to become less effective and increasingly risks distorting the market. We thought that it would not be possible to design it so that it adjusts to changes in the market (as these are not foreseeable) and continues to be effective indefinitely. For these reasons we considered that the remedy would need to include a sunset clause (see paragraphs 14.104 and 14.105) such that it fell away at some point in the future and we considered that sunsetting the remedy after 10 years strikes the right balance and would be an appropriate point at which the remedy should fall away.

[373] [✂], [✂] and Credible Media put forward the idea of using an implant integrated within the Bauer team to ensure compliance and to monitor Bauer's operations and behaviour. [✂].

14.122 We identified specific costs associated with this remedy – to the CMA, Bauer and potentially the wider industry (see paragraph 14.157). These included the cost to Bauer of the Monitoring Trustee, the Adjudicator and general compliance costs built into the remedy and costs incurred by us in our role to monitor and enforce the remedy. We considered that these costs are likely to be modest and would not outweigh the benefits of the remedy.

Conclusion on remedy effectiveness

14.123 We concluded that Full Divestiture would be capable, at least in principle, of remedying the SLC. We also concluded that it should be to one purchaser and that it is likely, although the buyer pool would be limited, that Bauer would be able to find a purchaser willing to purchase the Acquired Businesses.

14.124 We found, however, that the risk profile in this case is materially higher than would normally be expected of Full Divestiture. There is therefore substantial uncertainty that a Full Divestiture will be effective in addressing at source the loss of rivalry, which relates specifically to the representation of independent radio stations in respect of national advertising, resulting from the Acquisitions (which we would typically expect a structural remedy to provide).[374] While we considered these risks could potentially be mitigated through our oversight of the divestiture process and consideration of purchaser suitability, there remains a material and ultimately unmanageable residual risk that it would not be feasible to implement a structural remedy that comprehensively addresses the SLC we have found.

14.125 Given the abnormally high risks associated with Full Divestiture in this case (which could only be mitigated to a limited extent), we gave careful consideration to Bauer's proposal. Behavioural remedies in merger control have limitations. However, we concluded that a behavioural remedy including aspects proposed by Bauer and elements required by us, would be effective in mitigating the adverse effects of the SLC with a high degree of certainty. We concluded that the remedy would become less effective over time and would need to be limited. The remedy should therefore have a 10-year sunset clause.

14.126 Unusually, and on balance, we therefore concluded that a behavioural remedy would be the most appropriate remedy to the adverse effects of the SLC because of the unusual circumstances of this case. We recognise that it

[374] Merger remedies guidance CMA87, paragraph 3.38.

only addresses the adverse effects of the SLC rather than the SLC itself and therefore does not restore the competitive structure of the market.

Relevant Customer Benefits

14.127 When deciding on remedies, we may have regard to the effects of remedial action on any Relevant Customer Benefits (RCBs).[375] An effective remedy to an SLC could be considered disproportionate if it extinguishes substantial customer benefits arising from the merger. Foregone RCBs are considered as costs of that remedy.

14.128 The merging parties are expected to provide us with convincing evidence on the nature and scale of the claimed RCBs and to demonstrate they fall within the statutory definition. The threshold is necessarily high as the presence of RCBs may prevent the implementation of a remedy to an otherwise anti-competitive merger.[376] The level of information required to demonstrate a benefit will vary on a case-by-case basis, but we would expect to see evidence in support from customers and third-parties and evidence that the parties have tried to realise these benefits by means other than an anti-competitive merger.

14.129 In the case of completed mergers, to be properly considered as an RCB, we must be convinced that:

(a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and

(b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.[377]

14.130 When assessing the evidence on the claimed benefits, the CMA must therefore ask itself whether each claimed benefit has or may be expected to accrue as a result of the merger ((a) above), and, whether that benefit was, or is, unlikely to accrue without the merger or a similar lessening of competition ((b) above). In practice we will consider whether the merger parties' evidence is sufficient to demonstrate that the claimed benefit could not be achieved by plausible, less anti-competitive alternatives to the merger.[378]

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[375] RCBs are lower prices, higher quality or greater choice of or innovation in goods or services. RCBs must accrue or be expected to accrue in a reasonable period of time to relevant customers, which are direct and indirect customers (including future customers) of the merger parties. (s.30 EA02)
[376] Merger remedies guidance CMA87, paragraph 3.20.
[377] Section 30(2) of the Act.
[378] Merger remedies guidance CMA87, paragraph 3.24.

14.131 In response to our Provisional Findings and Notice of Possible remedies Bauer submitted that the Acquisitions resulted in the following RCBs which are relevant to the CMA's assessment:

(a) Lower prices for national advertisers;

(b) More efficient purchasing for advertisers;

(c) Improvements in the quality of the content and distribution of the acquired stations benefitting listeners and advertisers.

14.132 We assessed each of these claimed RCBs in our Remedies Working Paper in accordance with our framework.[379] Bauer's response to the Remedies Working Paper concentrated on the claimed RCB of lower prices for national advertisers (the national pricing RCB). Bauer submitted that this RCB by itself outweighed the Representation SLC. Bauer submitted that the other claimed RCBs (more efficient purchasing for advertisers and enhanced content and distribution of acquired stations) were 'qualitative in nature' and therefore 'more challenging to ascribe a specific value to them' and there was 'little practical purpose would be served by quantifying them because the national pricing RCB alone outweighed the Representation SLC and would not be available absent the Acquisitions'. Bauer did not address its response to these other claimed RCBs.

14.133 In view of Bauer's response to our Remedies Working Paper we concentrated our RCB analysis on the lower prices RCB. Our analysis of the other claimed RCBs, for completeness, is set out below.

Lower prices for advertisers

14.134 Bauer submitted that it undertook the Acquisitions in order to increase audience size and geographic coverage, which would allow Bauer to improve its product offering and become a stronger competitor to Global. The [✂] audience and network size coupled with its representation of Third Parties, would give it an improved product offering (including greater geographic coverage) and therefore an opportunity to [✂]. As a result, Third-Party stations would receive increased national revenue. [✂]. Bauer stated that this is borne out in the historical evidence.[380]

14.135 Bauer did not quantify the extent of the likely price reductions. It submitted that its internal documents revealed the planning behind the

379 Merger remedies guidance CMA87, paragraph 3.24.
380 [✂].

Acquisitions showed that [✂]. It submitted that a previous submission [✂]. Bauer submitted that the benefit of the price reduction would accrue to the agencies which were the relevant customers and they then, through competition, would pass through the lower prices to their advertiser clients. Bauer also submitted that [✂]. Even a modest price reduction by Bauer or Global would be sufficient to offset the scale of the SLC.

14.136 Bauer submitted that the RCBs would arise within a reasonable time after integration because the Acquisitions had enabled it to increase its network size and coverage and which would allow it to [✂]. Bauer submitted the Acquisitions were the only way to realise [✂] these RCBs. Without the [✂] improved product offering, [✂] and Bauer submitted [✂].

14.137 Finally, Bauer submitted that, contrary to the CMA's suggestion that 'Bauer could potentially attract enough of these stations to replicate the efficiency gains through acquisition by representation' the RCBs could not be realised through competition with FRS for representation. [✂].

14.138 In addition, Bauer submitted that the CMA's suggestion that RCBs could be realised by Bauer competing with FRS and Global to represent the Target Stations and Third Party Stations is logically inconsistent with its finding of an indefinite SLC. If Bauer could agree representation deals with several major radio groups, this would threaten the financial viability of FRS and there would no longer be an indefinite SLC. If FRS did not fail, then this would be because Bauer failed to compete effectively and win enough business from FRS. Logically, in this scenario, then the lower pricing RCBs could not arise from representation.

Our assessment

14.139 We assessed Bauer's evidence on whether lower prices for advertisers were expected to accrue as a result of the Acquisitions and were unlikely to accrue without them.

14.140 We thought Bauer's evidence related more to its commercial strategy for deciding to make the Acquisitions rather than demonstrating that the Acquisitions would result in lower prices for advertisers and the extent of the price reductions. In our view, the evidence Bauer submitted showed that the lower prices which were expected to arise depended on the ability of Bauer to use the increased network size and coverage acquired as a result of the Acquisitions and pricing concessions to negotiate better deals which would lead to lower prices. The expected benefit would only arise if Bauer were successful in its negotiations with individual agencies; it would not accrue to the agencies (the relevant customers) as a result of the Acquisitions. The extent of the lower prices also depended on Bauer's negotiating ability although some thought had been given in the 'strategic calculus'.

14.141 In our view Bauer did not provide convincing evidence that agencies would benefit from lower prices as a result of the Acquisitions.

14.142 We then assessed whether the benefit of lower prices could be achieved by a plausible, less anti-competitive alternative. In our view it is plausible to expect competitive rivalry to produce lower prices rather than rely on an unremedied anti-competitive merger. Accordingly, in our view lower prices for agencies (and for advertisers as a result of pass through) could have been achieved through competition between Bauer, FRS and Global for representation of radio stations rather than through the Acquisitions with the resulting substantial lessening of competition.

14.143 Bauer submitted we were 'logically inconsistent' with our finding of an indefinite SLC to hold this view because if it successfully competed with FRS, FRS' financial viability would be at risk and that would end the SLC and if the SLC endured as a result of Bauer's failure to compete effectively, the lower pricing RCB could not arise from representation. This leaves the Acquisitions as the only route by which the national advertising pricing RCBs could arise. In our view this misunderstands the concept and role of RCBs. As stated above at paragraphs 14.127 to 14.129 an RCB is a benefit that arises from an anti-competitive merger which would be lost if a remedy is imposed. We take account of RCBs in deciding either between equally effective remedies or to impose a remedy at all. We test if a benefit is an RCB for the purposes of the Act by asking if there is another plausible less anti-competitive way to realise that benefit and if there is, the claimed benefit does not pass the test.

14.144 We therefore concluded that the benefit of lower prices for advertisers claimed by Bauer was not an RCB for the purposes of the Act.

More efficient purchasing for advertisers

14.145 Bauer submitted that the Acquisitions would provide national advertisers with easier access to a greater range of stations. Bauer submitted that the Third-Party Stations are represented by an ineffective sales house which does not have share or volume deals with agencies. It submitted that bringing the Third-Party Stations within Bauer's sales operation [✂] will allow national advertisers easier access to these stations. Giving easier access to the Third-Party Stations' inventory is pro-competitive and can only benefit advertisers.[381]

14.146 In response to the Remedies Notice, which proposed Full Divestment as a possible remedy, a significant number of Third Party Stations told us that they believed they would benefit from national advertising being sold by Bauer and being part of Bauer's Hits Radio Network.[382] The reason for this was that the scale of Bauer's network and its market presence compared to FRS enabled it to attract greater advertising spend. Mi-Soul, for instance, stated that 'the larger the network, the better the price that a sales house is able to negotiate per listener.'[383]

Our assessment

14.147 We assessed the evidence of the RCB submitted by Bauer to determine if the benefit claimed (more efficient purchasing for advertisers) is expected to accrue as a result of the Acquisitions and then if it is unlikely to accrue without the Acquisitions. A key question was the level of efficiency gains that would be passed on to advertisers.

14.148 We also noted of the evidence from third parties although not directly on the point of RCBs.

14.149 We consider that it is not clear from Bauer's evidence why this benefit to advertisers is expected to accrue as a result of the Acquisitions and is unlikely to accrue without the Acquisitions. In our view these efficiency gains could largely be achieved through competition with FRS and Global for representation of stations. While Bauer may not obtain all the current FRS stations through competition (the outcome of competition being uncertain) we noted above that a number of third parties indicated they would look kindly on being represented by Bauer in the right circumstances. Accordingly, Bauer could potentially attract enough of these stations to replicate the efficiency gains through acquisition by representation. It is also unclear from the evidence provided as to what the level of any efficiency savings advertisers would be able to achieve from this merger effect.

Enhanced content and distribution

14.150 Bauer submitted that it would make the necessary investment in digital distribution and innovation in order that the Acquired Businesses would be

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[381] Bauer Response to Provisional Findings paragraph 6.49.
[382] For instance: Star Radio Cambridge, [✂], KM Group and [✂].
[383] [✂].

able to compete with non-radio media. Investment would mean the Acquired Businesses would be broadcast simultaneously on DAB which would materially increase listening hours and the reach of the stations. Bauer's expertise in IP distribution would 'fund further investment which would allow the Target stations to provide a better offering to listeners. [✂]. This would deliver substantial benefits to the Target stations, providing a means to materially increase listening hours and reach.'[384]

14.151 In addition, Bauer submitted that the Acquisitions would enable the local stations to better enjoy the benefits of deregulation by accessing high-quality national networked content produced by Bauer that they are not currently able to access, meaning that they must invest heavily in developing their own content, which is often of a lower quality.[385]

CMA Assessment

14.152 We have assessed the evidence of the RCB submitted by Bauer to determine if the benefit claimed (enhanced content and distribution) is expected to accrue as a result of the merger and then if it is unlikely to accrue without the merger. A key question was how the better offering to listeners and advertisers is realised.

14.153 It is not clear from Bauer's evidence why this better offering to listeners and advertisers meets the requirements of the Act to amount to an RCB by being expected to arise as a result of the Acquisitions and unlikely to arise without them. Although we acknowledge that investment in digital technology is a benefit, in our view, investment and innovation, albeit at a slower rate, is likely to occur as an outcome of competition. Similarly, access to nationally networked high-quality content would be a benefit but the evidence does not enable us to conclude that the only way this could be realised is through the Acquisitions.

Conclusion on RCBs

14.154 Although there might be benefits from the Acquisitions to Third-Part stations, agencies and advertisers, we found the RCB of lower prices to advertisers claimed by Bauer did not qualify as an RCB for the purposes of the Act. We found Bauer's evidence related to its commercial strategy and goals rather than providing convincing evidence of a benefit which was likely to arise within a reasonable period as a result of an anti-competitive merger.

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[384] Bauer Response to Provisional Findings paragraphs 6.8-6.10.
[385] Bauer Response to Provisional Findings paragraphs 6.11-6.13.

We did not believe that the potential benefits were expected to accrue within a reasonable period. The evidence we received showed this benefit was dependent on Bauer's negotiating ability and the competitive response of Global.

Proportionality

14.155 Our Merger Remedies Guidelines state that having first considered the effectiveness of remedy options, we will then select the least costly remedy that it considers to be effective.[386] As set out in the Merger Remedies Guidelines, we will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.[387]

14.156 We concluded at 14.125 that Bauer's proposed behavioural remedy was an effective remedy to the adverse effects of the SLC.

14.157 We first considered whether the proposed remedy was no more onerous than was required to achieve that aim. We recognise that the behavioural remedy will have costs associated with it and that these will fall on Bauer, the CMA and (if there are distortionary effects) the industry more broadly. We concluded that the costs to us and to the industry more broadly, would be low as the majority of the costs would be borne by Bauer. We thought the design of the remedy set out above (including the ten-year sunset clause) meant the distortionary effects will be limited and that the majority of the monitoring and enforcement costs will be borne by Bauer. We were unable to identify a less onerous remedy that would be similarly effective.[388]

14.158 We therefore concluded that the behavioural remedy is no more onerous than is required to achieve the legitimate aim of effectively mitigating the adverse effects arising from the SLC.

14.159 We then considered whether the remedy itself was disproportionate in relation to the SLC and its adverse effects.[389]

14.160 Bauer submitted that:

[386] Merger remedies guidance CMA87 paragraph 3.4.
[387] Merger remedies guidance CMA87 paragraph 3.4.
[388] Full Divestiture would, in this case, appear to be more onerous given the greater risks that the remedy would not be effective at remedying the SLC, which would be borne by the industry.
[389] Merger remedies guidance CMA87 paragraph 3.11. In exceptional circumstances, even the least costly but effective remedy might be expected to incur costs that are disproportionate to the scale of the SLC and its adverse effects (eg if the costs incurred by the remedy on third parties are likely to be greater than the likely scale of adverse effects). In these exceptional circumstances, the CMA will not pursue the remedy in question

(a) the magnitude of the SLC is 'very small' stating that FRS earned just £[✂] in commission revenue from representing the Third-Party Stations in the year to March 2019 and that a 5% increase in commissions would only have a 'negligible' £[✂] change in this figure.

(b) The Transaction would give rise to benefits which would offset any anti-competitive effects.[390]

14.161 We do not consider that we are required to do the type of quantification exercise. The case law has established that the assessment of the proportionality of a remedy need not involve any quantification of the SLC.[391] We have found the loss of competition from the Acquisitions to be substantial and its harmful effects affect the market as a whole and must be presumed to be indefinite. Balancing the benefit of the removal of this indefinite market wide harm, against the costs to Bauer (which as noted in paragraph 14.3 are treated by the courts and our guidance as avoidable in the context of a completed merger), and costs to CMA and third parties which we have sought to mitigate through the specification of the remedy, we do not consider the behavioural remedy to be disproportionate, particularly when compared to the significant risk that Full Divestiture would not, in this case, be fully effective at addressing the SLC we have found.

14.162 As we stated above, foregone RCBs may be considered as costs of that remedy. We found no RCBs which would be lost as a result of this remedy. Accordingly, we did not consider the costs of the remedy would be disproportionate to the SLC or its adverse effects.

14.163 We found that the behavioural remedy was the remedy more likely to effectively mitigate the adverse effects of the SLC. We found that Full Divestiture would be capable at least in principle of remedying the SLC but we considered that, unusually, the risk profile in this particular case meant that it is unlikely to be feasible to implement an effective structural remedy.

Conclusion on proportionality

14.164 We therefore concluded that a behavioural remedy was the least onerous effective remedy and was not disproportionate to the SLC or its adverse effects and was proportionate and effective at mitigating the adverse effects of the SLC.

[390] Bauer response to Remedies Notice paragraphs 2.5 to 2.7
[391] See Global Radio Holdings v Competition Commission [2013] CAT 26 at 24.

Implementation

14.165 We will seek to implement the behavioural remedy by obtaining Final Undertakings from Bauer. However, if agreement on Final Undertakings is not forthcoming on a timely basis, the CMA will impose a Final Order. During this period we will consult with Bauer and other parties affected by the remedy in determining the Final Undertakings or Final Order.[392]

Conclusion on Remedies

14.166 We concluded that a behavioural remedy (as described in summary in Appendix F) is the most appropriate remedy to the adverse effects of the SLC.

[392] The CMA is subject to a statutory deadline of 12 weeks following its final report (Section 41A(1) of the Act) to accept Final Undertakings (Section 82 of the Act) or to make a Final Order (Section 84 of the Act) This period may be extended once for up to six weeks (Section 41A(2) of the Act) if the CMA considers there are special reasons to do so.