

EXHIBIT 16

Herbert Smith

24 August 2012

Bauer Media

Completed acquisition of GMG Radio Holdings Limited by Global Radio Limited

Response to Ofcom's Invitation to Comment

1. EXECUTIVE SUMMARY

1.1 This submission has been drafted by Herbert Smith as instructed by Bauer Media Group ("**Bauer**"). It sets out the reasons why Bauer considers that Ofcom must recommend to the Secretary of State that he refer the completed acquisition by Global Radio Holdings Limited ("**Global**") of GMG Radio Limited ("**GMG**") (the "**Transaction**") to the Competition Commission. This is on the basis that Bauer expects the Transaction to lead to a situation of insufficient plurality of persons with control of media enterprises serving commercial radio audiences at a local, regional and national level in the UK. We set out in this section a brief summary of the principal grounds on which Bauer believes this to be the case.

1.2 In making its assessment of the impact of the Transaction on media plurality in the UK, Ofcom should:

1.2.1 focus on the medium of radio and, in particular, commercial radio (i.e. excluding BBC radio stations) (see paragraphs 2.6-2.9 and 2.25-2.29 below);

1.2.2 consider the impact of the Transaction at a local, regional and national level (see paragraphs 2.10-2.16 below); and

1.2.3 take into account the likely effects of the Transaction on the availability of a range of different content types including news, documentary, sports and music content (see paragraphs 2.17-2.23 and 2.28-2.32 below).

Combined Global/GMG audience shares

1.3 From the perspective of the audience, Global overlaps with GMG in a number of regional and local areas and in each of these areas:

1.3.1 the Transaction will result in a reduction of major commercial radio providers from four to three or, in several cases, three to two;

1.3.2 the consolidation of Global and GMG's audience shares will result in significant increments to already large audience shares; and

1.3.3 in many cases, the combined Global/GMG would have the largest audience share by some way (for example in Wales and East Midlands, where it would have 81% and 72%, respectively)

(see section 3 below).

1.4 At a national level, the Transaction would give the combined Global/GMG an audience share of 47%, which is some way ahead of the next two most significant operators: Bauer (24%) and UTV (7%).

Likely loss of popular and distinctive national and local content

- 1.5 In recent years Global has sought to grow its Heart and Capital brands into networks with schedules featuring no more local content than the minimum amount required under applicable regulation, with the majority of their schedules being taken up with generic content aired across all of the stations within each of these networks. The application of this approach to GMG's stations will lead to a situation of insufficient media plurality because GMG's stations currently offer a range of highly valued and distinctive content which will be lost. For example:
 - 1.5.1 GMG provides significantly more and higher quality local and national news content than Global's stations.
 - 1.5.2 GMG makes a far greater commitment to sports content which has proven to be very popular with its listeners. The cancellation of certain sports programming immediately after completion of the Transaction (which Bauer can only assume was orchestrated by Global) indicates strongly that Global does not intend to retain this content in spite of its popularity.
 - 1.5.3 GMG has won numerous awards for its documentary content, while Global's stations do not include any such content on their schedules.
 - 1.5.4 GMG provides a far more diverse selection of music content than Global's stations.
- 1.6 Recent relaxation of the rules on media ownership and, in particular, Ofcom's *Statement on commercial radio localness regulation* and *Revised localness guidelines* of April 2010 (the "**Localness Statement**") suggest that Global may be allowed to remove the localness obligations in its current regional licenses and to share all of its programming nationally, thereby further reducing the local content available on GMG's stations.

[]

- 1.7 []

Other threats to plurality arising from the Transaction

- 1.8 The Transaction would strengthen Global's ability to leverage its enlarged audience share to further the interests of its music publishing arm at the expense of record labels and musicians.
- 1.9 []

Ofcom's invitation to comment

- 1.10 In making this submission, we have addressed the five factors which Ofcom stated in its invitation to comment that it would consider in its assessment of the Transaction, namely:
 - 1.10.1 content types (see in particular paragraphs 2.17-2.34 and 4.3-4.42 below);
 - 1.10.2 audiences (see in particular section 3 below);
 - 1.10.3 media platforms (see in particular paragraphs 2.6-2.9 below); and
 - 1.10.4 future developments in the media landscape (see in particular section 8 below).

- 1.11 We consider the effect on control of media enterprises to be inherent in Global's acquisition of control of GMG.

Enders Analysis

- 1.12 Bauer has commissioned from Enders Analysis an independent report on the application of the media plurality test to the Transaction. That report is entitled *Global Radio/GMG*

Radio: Media Plurality (the "**Enders Report**") and is attached as **Annex 1** to this submission.

2. INTRODUCTION AND CONTEXT FOR THE REVIEW

About Bauer Media

- 2.1 Bauer is a multinational media and publishing company, which comprises over 400 magazines, more than 100 websites, and 50 TV and radio stations. The Bauer Media Group is the second-largest commercial radio provider in the UK with 42 stations on AM, FM, digital, satellite and the Internet in England, Scotland and Northern Ireland. Bauer Radio operates 41 local analogue radio licences and 12 DAB multiplex licences. The UK Bauer radio network reaches 15.1 million adults each week (according to Rajar Q2 2012).
- 2.2 Bauer acquired its radio interests through the acquisition of Emap plc's radio business, Emap Radio, in January 2008. Emap entered the radio industry as a shareholder in the license application for Kiss FM (now called Kiss 100) launched in 1990, followed by the acquisition of Liverpool's Radio City in 1991, Trans World Communications (in 1994) and the Metro Group (in 1996). In June 2005, Emap acquired Scottish Radio Holdings, a Scottish media company that owned 22 radio stations, including Radio Clyde and Radio Forth.
- 2.3 Bauer Radio has built on its strong heritage of reflecting and amplifying the personality of each of its local communities through significant levels of relevant local programming connecting listeners to the places in which they live. Bauer Radio's local strategy is executed through local teams responsible for tailoring content for each of its radio stations to reflect the specific unique needs of local audiences.
- 2.4 Bauer considers that the Transaction raises significant public interest concerns. This is in addition to significant competition concerns, on which Bauer is providing a detailed submission to the OFT (see section 7 below). In particular, Bauer strongly believes that the Transaction will result in an insufficiency of plurality of persons with control of media enterprises and, in particular, commercial radio stations serving certain audiences in the UK.
- 2.5 Before setting out Bauer's specific concerns arising from the Transaction, the remainder of this introduction explains why Ofcom's assessment of media plurality in this case should focus specifically on commercial radio. It also addresses why it is necessary for Ofcom to consider (i) the impact of the Transaction on regional and local, as well as national, radio broadcasting, and (ii) the potential impact of the Transaction on all types of content, including news, documentary, sports and music.

The significance of radio

- 2.6 It is essential, in making an assessment of the likely effect of the Transaction on media plurality, to recognise that radio is and continues to be a highly significant broadcasting medium in the UK.
- 2.7 In its recent report on *The Communications Market 2012* (the "**Communications Report**")¹, Ofcom set out findings that the weekly reach of radio was 90.8% of the UK population in 2011), and that, on average, radio listeners in the UK listened to 22.5 hours of radio each week in 2011. A seminar paper published in preparation for a "Communications Review" seminar in September 2012 (the "**DCMS Seminar Paper**")² noted that radio was the second most consumed form of media in the UK.
- 2.8 Bauer also considers that radio has a number of features which set it apart from other forms of media. For example, in his government-commissioned *Independent Review of the Rules*

¹ Paragraph 3.1.1.

² Paragraph 16.

Governing Local Content on Commercial Radio (the "**Myers Review**"),³ Myers notes that radio's robust performance in comparison to other traditional media such as newspapers, magazines and TV derives from some of radio's core characteristics:

- 2.8.1 portability (consumers can listen in cars, in bathrooms, on public transport, or while walking);
 - 2.8.2 its usage as a secondary medium, enabling listeners to listen while pursuing a primary activity (at work, driving, using the internet, for example);
 - 2.8.3 radio's ability to provide instant live access to a combination of information and entertainment simultaneously;
 - 2.8.4 radio's intimate usage as "company" for individuals listening on their own; and
 - 2.8.5 radio is free at the point of use (after hardware purchase).
- 2.9 Bauer agrees with these findings. It considers that, given these features, Ofcom's review of the Transaction should focus on its impact on the plurality of persons with control of radio enterprises.

The regional/local aspect of radio

- 2.10 For the reasons set out below, the Transaction will have a material impact in particular cities and regions, where local and regional radio is highly valued for its ability to provide listeners with relevant news, current affairs and music relating to local areas, regions and communities.

Radio is crucial for the provision of regional/local content

- 2.11 As noted in the DCMS Seminar Paper, radio in the UK is principally a regional and local medium, with around 47% of the commercial analogue radio market providing services to fewer than 500,000 households. Good local and regional radio produces content which informs and engages with local people and communities, supports local and regional charities and events and has a physical presence within the communities it serves. Research conducted by Ofcom in 2011 (the "**2011 Research**")⁴ suggests that listeners value highly the provision of local radio and the production of content specifically produced for their local area or region. For example, 71% of people said that small-scale local radio was of high importance in the provision of local information (compared to Local Newspapers (56%) and websites (53%)).
- 2.12 The DCMS Paper also explains that it is because consumers value radio and the important role it plays in a healthy local democracy that Government has historically reserved spectrum for radio. In addition, it is important to note that the current legislation requires that local radio be licensed via a 'beauty parade' system (based on quality of service), rather than auctions (i.e. highest bidder wins), to ensure that services which are licensed provide content of the highest value to listeners.

Local/regional content is highly valued by consumers

In the Myers Review,⁵ Myers stated that "*The one area where I do not believe we should compromise is localness*". The Myers Review cites ample evidence of the enduring value of local and regional content to radio listeners:

- 2.12.1 In a MORI survey commissioned by Ofcom for its *Radio – Preparing for the Future* report in 2004 (the "**2004 Report**") respondents were asked how

³ Page 35.

⁴ Ofcom (2011) "The future of small scale radio", Page 5, para 2.

⁵ Paragraph 13.

important certain attributes of radio were to them in making their decision to listen to a particular station. Out of twenty attributes, four of the top seven responses were examples of local content: local news, local travel, local weather and issues affecting the local community.

- 2.12.2 The same survey also showed consumers' views that local press could not compete with radio in offering time-critical local content or in providing accessibility to users whilst driving or at work.
- 2.12.3 The survey carried out to inform a similar Ofcom report in 2005 revealed that, when respondents were offered the option of more local radio stations or more national radio stations, twice as many opted for new "local" services. Respondents voiced an even stronger preference for local presenters, rather than nationally networked presenters, and one of the most significant findings of that report was that *"Local radio was felt to involve communities in very tangible and positive ways. The visibility of presenters in the community, road shows, and other ways of supporting local events and causes help to create empathy and trust. Local voices, requests and competitions and more direct community participation help to create a sense of ownership."*
- 2.13 The Myers Review also cites another Ofcom study in 2007 (*New News, Future News – Research and Evidence Base*), which highlighted the following as attributes of local radio that were important to listeners: local presenters with local knowledge, the station to be based near their locality and station staff based in the local area.
- 2.14 The importance consumers place on regional and local radio content also emerged as a clear theme from a consumer survey conducted independently by Ipsos for Bauer as recently as January-June 2012 (for reasons unrelated to the Transaction) (the "4Ps"),⁶ which showed that weekly music radio listeners said that five out of six content attributes to do with local news, information and listener interaction were important when choosing a station.⁷
- 2.15 Both the government and Ofcom have also recognised the need to protect regional and local content on radio:
- 2.15.1 For example, the DCMS Seminar Paper states the following:
- (A) *"Radio in the UK is principally a local medium";*
- (B) *"Good local radio produces content which informs and engages with local people and communities, supports local charities and events and has a physical presence within the communities they serve";*
- (C) *"Local radio is an important part of the local media landscape. Alongside local newspapers, and in future local TV, they have an essential role in both supporting and defining local communities".*
- 2.15.2 Moreover, Ofcom's Localness Statement, while recognising the need to ensure the financial viability of the radio industry, refers to the fact that:
- (A) Ofcom's duties include securing a range and diversity of local commercial radio services;⁸ and

⁶ A document setting out the findings of this survey is provided as **Annex 2** to this submission.

⁷ These attributes were local news, weather reports, traffic and travel reports, information about what's going on in my local area, sports news/information/debate and listener participation.

⁸ Paragraph 1.4.

- (B) Ofcom's research shows that audiences continue to value local content on commercial radio: both for key information (local news, traffic and weather), and for other local programming (such as local sport or community issues) that reflects local identities.⁹

2.16 On this basis, Bauer submits that Ofcom's review of plurality must include a review of the impact of the Transaction on radio at a regional and local level.

The importance of radio to both listeners and artists

2.17 Sufficient plurality of ownership of radio stations in the UK is also crucial to (i) the discovery and consumption of music by UK consumers and (ii) the health of the music industry in the UK and, in particular, the success of new artists.¹⁰

The listener perspective

2.18 We note that the RadioCentre (which, as explained below, is controlled by Global) has stated that *"There is a symbiotic relationship between the music and radio. Despite being a relatively small industry, commercial radio injects a significant amount of its revenue into the music industry which is highly aware of radio's influence on consumer behaviour. This impact was demonstrated in a recent RadioCentre Survey, which found:*

- *64% of people say that radio is the most important source to find out about new music (twice as important as any other source)*
- *36% of consumers report radio at the most important influence on their recorded music purchases (compared to 16% for TV and 12% for internet)*
- *On average radio listeners spend 36% more on music than non-radio listeners."*

2.19 These findings were echoed in a survey carried out by Bauer in October 2011¹¹ in order to evaluate the role that radio continues to play for listeners in the discovery of new music (a presentation setting out the findings of this survey is provided as **Annex 3** to this submission). This survey found that:

2.19.1 radio was the largest means of music consumption by some distance (88% of respondents said that they had consumed music via radio in the past week, while only 61% had listened on an iPod/MP3 player);

2.19.2 radio remains by far the largest "main means" of music consumption (more than twice as many respondents cited radio (48%) than iPod/MP3 (22%));

2.19.3 radio (83%) is the most important means of discovery of new music, far ahead of other options including TV music channels (50%), internet video sites (38%) and social networking (37%); and

2.19.4 radio is the most trusted source of opinion regarding new music recommendations (again, far ahead of the alternatives).

2.20 Bauer considers that the results of this survey are particularly telling as the listeners surveyed were recruited from radio station Facebook pages and websites so as to capture those who are most active online and in social media.

⁹ Paragraph 1.5.

¹⁰ See Enders Report, *Plurality in local media markets*, page 12.

¹¹ *Passion Portfolio Survey for TB*.

- 2.21 We also note the observation made in the Enders Report¹² that commercial radio plays a key role in music discovery due to the presence of a pre-release "airplay" window, promoting new releases from established and breaking artists.

The artist perspective

- 2.22 Radio is key to the promotion and sale of music. It is also important to bear in mind that record labels and artists rely on a variety, choice and independence of radio stations to support and promote a variety of artists, and the consolidation of GMG's radio business (i.e. the third largest commercial radio group) with that of Global will, as illustrated in section 3 below, further reduce the variety of radio stations available to the labels to promote their acts and will, therefore, materially reduce the number of new artists able to launch successful careers, thereby diminishing the range of music available to UK listeners.
- 2.23 Some artists depend heavily on local radio stations for support. For example, Rebecca Ferguson has benefited significantly (both in her success on the ITV show *The X Factor* and in launching her career since) on support from radio stations in her local area (Liverpool).
- 2.24 Bauer therefore submits that Ofcom must, as part of its assessment of media plurality in this case, give serious consideration to the potential impact of the Transaction on the provision of music content available to radio listeners and the number of stations available to give airtime to new and current artists.

The BBC should not be included in Ofcom's assessment of media plurality

- 2.25 Bauer does not consider that the BBC should be included in Ofcom's review of the Transaction and notes that the Barnett Report advised the Leveson Inquiry to "*counsel caution in including the BBC on an equal footing with privately owned media enterprises...*" in any calculation of plurality.
- 2.26 One of the reasons he cited for this caution was the fact that a 16% cut in BBC funding was imposed in October 2010, which, in Professor Barnett's view, suggests that "*the BBC's size and influence is likely to diminish over the next few years.*" Bauer shares this view, and also refers Ofcom to its Communications Report,¹³ which refers to the fact that BBC radio content spend fell 1.8% in 2011/12.
- 2.27 Professor Barnett also points to the fact that the BBC cannot express any views, either explicitly or implicitly. He notes that, because of its public ownership, there are no proprietorial or corporate influences which guide its output, which is not just a matter of the application of impartiality rules, but also the absence of any overarching corporate pressure which can dictate agendas. For this reason, he states that the BBC can have little impact in determining (as opposed to informing) the formation of attitudes and opinions.
- 2.28 Further, we note the observation made in the Enders Report that the BBC does not provide local radio services in every area where local commercial radio services operate.¹⁴
- 2.29 It seems unlikely, therefore, that the BBC would have the desire, the finance or the ability to fill any gaps left when GMG exits the market, and Bauer considers that Ofcom's review of media plurality in this case should focus on commercial radio.

¹² Overview, page 2.

¹³ Paragraph 3.2.4.

¹⁴ Plurality applied to commercial radio, page 10.

The plurality test

- 2.30 Ofcom has been asked by the Secretary of State to report on the effects of this transaction on *"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience."*
- 2.31 As explained above, radio is a highly valued and distinct medium. On this basis, Bauer submits that in the context of a transaction such as this one, although Ofcom may wish to consider other media, it is crucial that Ofcom's review of the impact on plurality focuses on radio itself. Moreover, Bauer considers that Ofcom's review should focus specifically on commercial radio.
- 2.32 In doing so, Ofcom should take into account the impact of the transaction on a variety of types of radio content offered by broadcasters in the UK and, in particular, by Global and GMG. Bauer submits that, while the scope of this review will certainly include news content (it being noted that its *Measuring Media Plurality* advice to the Secretary of State in June 2012 focused heavily on the importance of news services to ensuring sufficient media plurality), UK radio listeners place a great deal of value on a wider range of content than just news, and Ofcom itself acknowledged in its *Measuring Media Plurality* advice that *"In their plurality reviews to date, Ofcom and other regulatory authorities have focused on news and current affairs but are not required by the current regulatory framework to do so"*¹⁵(emphasis added). Plurality has not been considered in the context of radio to date, but the purpose of introducing the media plurality test into the Enterprise Act 2002 ("**EA02**") was to protect UK citizens from undue concentration of media ownership. Bauer therefore submits that in order for Ofcom to discharge its duty under section 44A EA02, it must include in its assessment other types of locally oriented non-news programming such as music (see above), documentary, speech and sports programming. It is to be noted, for example, that the DCMS Seminar Paper refers to the potential for an intervention in relation to mergers involving music channels which indicates strongly that it considers that the concept of media plurality applies to a far broader range of programming than just news.¹⁶
- 2.33 Indeed, the significance of a broad range of content to a plurality review appears to have been endorsed by Professor Steven Barnett (member of the Media Standards Trust's Press Review Group) in Module 4 of his evidence to the Leveson Inquiry (the "**Barnett Report**"), in which he spoke of *"media conglomerates whose expansion went unchecked"* and stated his view that *"...there must be a recognition that the reasons for inhibiting unhealthy media concentration go well beyond guaranteeing a multiplicity of voices that are essential for a healthy democracy."* In particular, he commented that *"Plurality goes beyond the narrowly political and must embrace the wider cultural environment. A corporate culture can determine cultural output across the board...thus helping to shape ideas that circulate within the public sphere"* (emphasis added). He also noted that editorial decisions, which are often dictated by the corporate culture of a media company, *"will have an impact on the knowledge and ideas that circulate in civil society...for example, about whether to invest resources in foreign bureaux or in investigative journalism or to shift the emphasis to more celebrity-driven coverage [and] will have a material effect on the nature of the information circulating....Thus it is important to understand that plurality does not only mean – and in my view was not intended by Parliament to mean – simply allowing opposing views to be*

¹⁵ Paragraph 3.11.

¹⁶ Paragraph 8.8.

aired on matters of controversy or political import...This wider view of plurality needs to be acknowledged...".

- 2.34 Bauer agrees with these views and urges Ofcom not to limit its review of media plurality in this case only to formal news programming.¹⁷

What is "sufficient" plurality?

- 2.35 The legislation provides no guidance on what constitutes sufficient plurality. The DCMS Seminar Paper¹⁸ notes that *"A strong radio sector in the future is likely to be one which embraces diversity and choice in its formats; services which find and promote new music and speech services, rather than purely chasing the popular bands and personalities of today"*. This is a useful statement of what the plurality test is seeking to achieve. There needs to be a sufficient number of radio operators to secure this diversity and choice.
- 2.36 In light of the already highly-concentrated nature of the UK commercial radio industry, and for the reasons set out below, Bauer believes that the Transaction will result in an insufficient degree of plurality of persons with control of radio stations in the UK and certain regions and locations within the UK.

3. COMBINED AUDIENCE SHARES: LOSS OF CHOICE

A combined Global/GMG would have very significant audience shares in already concentrated markets

- 3.1 As illustrated below, Global already has a large share of commercial radio listeners, both nationally and in a number of regional/local markets.¹⁹ Further, it also overlaps with GMG in a number of these locations. Bauer submits that the significant combined audience share figures for a combined Global/GMG are particularly relevant to Ofcom's assessment of the effects of the Transaction on *"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience"* because:
- 3.1.1 In each of the regions referred to below, the Transaction will result in a reduction of major commercial radio providers from four to three or, in several cases, three to two.
- 3.1.2 The consolidation of Global and GMG's audience shares will result in significant increments to already large audience shares.
- 3.1.3 In many cases, the combined Global/GMG would have the largest audience share by some way (for example in Wales and East Midlands, where it would have 81% and 72%, respectively).
- 3.1.4 At a national level, the combined Global/GMG would have a 47% audience share, some way ahead of the next two most significant competitions: Bauer (24%) and UTV (7%).²⁰

¹⁷ See Enders Report, *Plurality in local media markets*, page 12.

¹⁸ Paragraph 3.3.

¹⁹ See Enders Report in relation to the consolidation that has taken place in the commercial radio landscape since the passage of the Communications Act 2003 and, in particular, *Commercial radio consolidates* (page 4) and *Impact of consolidation on listening audiences* (page 5).

²⁰ We note that audience shares for certain TSAs listed below appear to add up to either 99% or 101%. This is a result of rounding.

Regional and local

*Scotland*²¹

	GMG	Global	GMG/Global combined	Others
Scotland	35%	22%	57%	Bauer (39%) and UTV (4%)

3.2 Global's audience share for the Central Belt of Scotland is 22%. The acquisition of GMG will increase Global's share by 35%, leading to a combined share of 57%. Bauer is the next major operator with a 39% audience share, with UTV following on 4%. The Transaction would therefore reduce the number of major operators in the Central Belt of Scotland from 3 to 2. Moreover, Global's Capital Scotland and GMG's Real Radio Scotland are the only two stations that cover the Central Belt of Scotland. The Transaction is therefore likely to reduce the variety available to Central Belt listeners who choose to listen to a Scottish nation-wide radio station.

*Glasgow*²²

	GMG	Global	GMG/Global combined	Others
Glasgow	43%	20%	63%	Bauer (30%) and UTV (6%)

3.3 The combined Global GMG entity would have a 63% share in Glasgow, followed by Bauer with a 30% share. Again, the transaction would lead to a reduction from three radio station owners to two.

*Wales*²³

	GMG	Global	GMG/Global combined	Others
Wales	37%	44%	81%	UTV (11%) and Town & Country Broadcasting (9%)

3.4 The Transaction will increase Global's audience share across Wales by 37%, resulting in an extremely high combined audience share of 81%. UTV has 11% and Town and Country Broadcasting's Nation Radio has 9%.

North West and North Wales

	GMG	Global	GMG/Global combined	Others
North West and North Wales	23%	43%	66%	Bauer (26%) and UTV (8%)

²¹ RAJAR 2012 Q2 based on Global Capital Scotland TSA.

²² RAJAR 2012 Q1 based on GMG TSA.

²³ RAJAR 2012 Q1 based on GMG TSA.

- 3.5 The Transaction will increase Global's audience share across North West and North Wales by 23%, resulting in a combined audience share of 66% a reduction in competition of four radio station owners to three.

*South Wales*²⁴

	GMG	Global	GMG/Global combined	Others
South Wales	30%	45%	75%	Town & Country Broadcasting (9%), Bauer (8%) and UTV (8%)

- 3.6 The Transaction will increase Global's audience share across South Wales by 30%, resulting in an extremely high combined audience share of 75%, which is more than eight times larger than the next largest player.

*North East England*²⁵

	GMG	Global	GMG/Global combined	Others
North East England	31%	26%	57%	Bauer (38%) and UTV (5%)

- 3.7 GMG has a 31% audience share in North East England, which, combined with Global's 26% share, will result in a combined share of 57%. Bauer is the next largest operator with 38%. The Transaction would therefore result in a reduction in the number of major operators from four to three.

*Yorkshire*²⁶

	GMG	Global	GMG/Global combined	Others
Yorkshire	12%	41%	53%	Bauer (35%), UTV (10%) and an one independent (1%)

- 3.8 The combined audience share of Global (41%) and GMG (12%) is 53%. Bauer is the next largest operator with 35%, followed by UTV with 4%, meaning that the Transaction would result in a reduction in the number of major operators from four to three.

*East Midlands*²⁷

	GMG	Global	GMG/Global combined	Others
East Midlands	23%	49%	72%	Orion (24%) and UTV (3%)

²⁴ RAJAR 2012 Q2 based on Global Capital South Wales TSA

²⁵ RAJAR 2012 Q2 based on Global Capital North East TSA

²⁶ RAJAR 2012 Q2 based on Global Capital Yorkshire TSA

²⁷ RAJAR 2012 Q2 based on Global Capital East Midlands TSA

- 3.9 The combined entity would have an extremely high audience share of 72% (an increment of 23% on Global's current share of 49%). Orion will remain as a major operator in the East Midlands with UTV as a very distant fourth, meaning that the Transaction will lead to a reduction from three to two major operators.

*Manchester*²⁸

	GMG	Global	GMG/Global combined	Others
Manchester	34%	35%	70%	Bauer (22%), UTV (7%) and an one independent (1%)

- 3.10 Global and GMG's combined audience share is very high in Manchester (70%). Bauer is the next largest operator with 22%. Seven of the eleven commercial radio stations in Manchester would be owned by Global post-transaction and the transaction lead to a reduction from four to three major operators.

*West Midlands*²⁹

	GMG	Global	GMG/Global combined	Others
West Midlands	18%	50%	68%	Orion (25%) and Bauer (7%)

- 3.11 Global's audience share of 50% in this area would be increased by GMG's 18% share to a very significant 68% share. Orion is the next largest operator with 25% and Bauer a distant third with 7%, meaning that the Transaction will lead to a reduction from four to three major operators.

*Birmingham*³⁰

	GMG	Global	GMG/Global combined	Others
Birmingham	18%	50%	68%	Orion (23%), UTV (5%) and Bauer (5%)

- 3.12 Global's audience share of 50% in this area would be increased by GMG's 18% share to a very significant 68% share. Orion is the next largest operator with 23%, with Bauer and UTV a distant third and fourth with 5% each.

²⁸ RAJAR 2012 Q2 based on Global Capital Manchester TSA
²⁹ RAJAR 2012 Q2 based on Global Heart West Midlands TSA
³⁰ RAJAR 2012 Q2 based on Global Capital Birmingham TSA

*London*³¹

	GMG	Global	GMG/Global combined	Others
London	2%	56%	58%	Bauer (26%), TIML Radio (i.e. Absolute Radio London) (6%), UTV (5%), Sunrise Radio Group (3%) and Premier Christian Media Trust (2%)

3.13 The combined entity will enjoy an audience share of 58%. Bauer is the next largest operator with 26%. Although a number of other smaller operators will remain in the market and the increment is relatively small, Global would own 9 out of 15 radio stations post transaction, meaning it would control 60% of the radio voices in London, which is recognised to be the most significant radio market in the UK. Bauer submits that this clearly does not constitute a sufficient plurality of persons with control of the media enterprises serving the commercial radio audience.

National

	GMG	Global	GMG/Global combined	Others
National	10%	37%	47%	Bauer (24%), UTV (7%), TIML Radio (i.e. Absolute Radio London) (5%), Orion (2%) and others (14%)

3.14 At a national level, Global's already significant 37% share of audience figure will be increased by 10% to 47% as a result of the Transaction. Although four other well-established operators remain, it is to be noted that Bauer, as the next largest has a significantly lower audience share (24%, i.e. approximately half that of the combined Global/GMG), while the audience shares of UTV, Absolute and Orion are relatively insignificant by comparison.

3.15 The picture painted by these figures is clear: at a national level, the operator with the third largest audience share would be removed as an independent "voice" in UK commercial radio (i.e. the third largest source of music discovery for listeners and promotion/exposure for artists) if the Transaction were to proceed. Bauer submits that this would result in insufficient media plurality at a national level, given that, as stated above, Bauer, has a significantly lower audience share (24%), while UTV, Absolute and Orion are relatively insignificant by comparison.

3.16 At a regional and local level, Bauer notes that the Transaction would, if permitted to proceed, give the combined Global/GMG an audience share in excess of 50% in each of the regions and cities referred to above. Most notably, it would give the merged Global/GMG audience shares of 81% and 75% in Wales and South Wales, respectively. Moreover, it would result in a reduction from three to two major operators in each of the Central Belt of Scotland, Glasgow and the East Midlands which, Bauer submits, would clearly constitute insufficient media plurality.

³¹ RAJAR 2012 Q2 based on Global Capital London TSA

4. **THE TRANSACTION IS LIKELY TO RESULT IN MORE NETWORKING AT THE EXPENSE OF DIFFERENTIATED CONTENT**

Global has a policy of networking content across its Capital and Heart brands

4.1 In the past, stations acquired by Global have been rebranded as either Capital or Heart: the Communications Report observes that these brands have been rolled out to 30 local radio stations across the UK already and we note that as recently as 14 August 2012, Ofcom published a consultation document in relation to a request made by Global to change the format of Atlantic Broadcasting Ltd, which holds a local FM commercial radio licence for Cornwall, with regard to its service 'Heart Cornwall'. Atlantic wishes to change the 'Character of Service' of Heart Cornwall's published Format so it can bring the output of the station more closely into line with other stations in the Heart network. In particular, we note that the proposed format no longer includes a reference to "*locally focused news, information and speech*".

4.2 Stations across Global's Capital and Heart networks currently broadcast their own breakfast and drive-time shows on weekdays, as well as local news bulletins (so as to satisfy their regulatory obligations to provide a minimum amount of local/regional content), but air generic content across all of the stations which make up each of these networks outside of these time slots.³² Bauer has no reason to believe that on this occasion Global will not seek to extend the scope of its existing networked content to cover the GMG channels to the maximum extent permissible under applicable regulation;³³ in fact, Bauer expects that the cost-savings associated with networking would have been one of the key reasons why Global was prepared to pay what has been reported to be an unexpectedly high price for GMG, and that Global would not have entered into the Transaction if it were not confident of being able to extend its networking policy to GMG. On this basis, Bauer submits that GMG will, in all likelihood, provide a far less differentiated offering if the Transaction is permitted to proceed – i.e. the GMG regional/local "voice", and the highly valued and differentiated content it provides, will be lost.

GMG's stations currently offer highly valued and differentiated content, much of which Global can be expected to seek to replace with generic networked content

Local news is likely to be lost/marginalised

4.3 Regional or local news is broadcast on all Real Radio stations between the hours of 6 am and 7 pm on weekdays and 7 am to 2 pm on weekends. News bulletins are broadcast every hour and, at peak times,³⁴ headlines are broadcast every thirty minutes. All weather and travel news during these times is also local. Local sports bulletins are included as part of, or as an extension to, the news bulletins on the Real Radio stations. These normally run at peak times, except if there is a major breaking sports story, which would be broadcast at the relevant time, irrespective of scheduling.

4.4 Ofcom has indicated recently in its advice on *Measuring media plurality* that it considers that news should be a key concern when assessing media plurality. While, as stated above, Bauer strongly believes that Ofcom must take into account other forms of content, it acknowledges the scope of this review will *inter alia* include news content.

4.5 Annex 1 of Ofcom's Localness Statement sets out what local news provision should include. Examples include:

4.5.1 A station should be able to react on-air to major local events in a timely manner.

³² See Enders Report, *Relaxation of localness guidelines*, page 9.

³³ See Enders Report, *Rebranding Real Radio stations to Heart*, page 13.

³⁴ Peak times are considered to be weekday breakfast and drive-time, and weekend late breakfast.

- 4.5.2 The amount of local news, and the balance of local and national news in any particular bulletin, should be subject to professional journalistic judgments, but local news will always be an essential characteristic of a local station's overall output.
- 4.6 GMG's Real Radio stations are markedly better-equipped than Global's stations to satisfy these criteria for the reasons set out below.
- 4.7 GMG's local news content on its Real Radio stations is produced locally/regionally (as appropriate), with each station enjoying editorial independence in the production of its news bulletins, news "specials" and documentaries. We note, for example, that GMG has a particularly sizeable local news team in Manchester, where Real Radio 104.4 broadcasts bulletins from its North West news centre, with a mix of North West, UK and international news every hour between 6 am and 7 pm on weekdays, and between 7 am and 2 pm on Saturdays and Sundays. These bulletins on Real Radio generally last 3.5 minutes.³⁵
- 4.8 In contrast, Capital and Heart provide a significantly smaller quantity of regional/local news, and a significantly smaller quantity of news content overall. Taking Manchester as an example again, we note that Capital Manchester does not have any Manchester-based journalists, and that its hourly broadcasts during the daytime,³⁶ which include both local and national news, last for only one minute. These broadcasts are aired from a news centre in Leeds as Global closed the Manchester news centre when it acquired Galaxy FM. In total, Capital has a four-man news team, three of whom are based in Leeds and one in Newcastle, to provide news bulletins for Yorkshire, the North West and the North East. If a major event takes place in Manchester, Capital either has to send a reporter to Manchester from Yorkshire, or relies on Sky News to provide it with a report. This means, firstly, that it is unable to respond and report as quickly as Real. For example, Bauer does not believe that Global had local reporters on the scene for the reporting of high-profile stories such as:
- 4.8.1 the shooting of Anuj Bidve in Manchester on Boxing Day 2011;
- 4.8.2 the gas explosion in Oldham that caused damage to five houses and killed a young child in June 2012; and
- 4.8.3 the death of Winnie Johnson whose son was killed by the so called "Moors Murderer", Ian Brady) in August 2012.
- 4.9 Moreover, even if Global is able to send a journalist to Manchester from elsewhere, it is generally not able to provide a local angle or "flavour" to the story as the journalist is not based there, does not know the local community and does not have a network of local contacts to whom he/she can speak in order to gather additional information.
- 4.10 Global's other station, Heart, does not broadcast any local news other than during its breakfast and drive-time shows (i.e. not more than the minimum needed to satisfy its regulatory obligation). At other times, the Heart stations broadcast a national bulletin which is networked from London. Its bulletins generally last between 90 seconds and two minutes.
- 4.11 In order to illustrate the different approaches taken to news reporting by Global and GMG at present we reviewed the 8 am news bulletins broadcast on GMG's Real Radio North West with that of Capital Manchester on 22 August 2012. We noted the following:

³⁵ Smooth broadcasts a national bulletin out of its Manchester news centre, which we anticipate would likely be switched to London if the Transaction proceeds.

³⁶ Daytime means 06.00 to 19.00 weekdays and weekends.

- 4.11.1 Real led with a local story about a Liverpool school boy who was shot dead in 2007. The story included interviews with the boy's father, with a spokesperson for Merseyside Police, and with a former gun criminal. It also included a discussion regarding rates of gun crime in the Liverpool area since the killing. In total, this story lasted for two minutes and twenty seconds. A further 35 seconds was devoted to a mix of local and national news (death of British girl in Portugal, a Manchester rape case and the Paralympics), while a total of 60 seconds was devoted to local traffic and weather. In total the bulletin lasted for three minutes and twenty five seconds.
- 4.11.2 Capital led with the death of the British girl in Portugal (50 seconds). The only local story related to the death of a motorcyclist in Clayton, which lasted for ten seconds. Other stories covered were national or international (misuse of surveillance powers, Paralympics and a story relating to Lady Gaga's concert tour, each of which lasted for approximately ten seconds. A sports bulletin reported football scores for local and other teams and lasted for ten seconds, and a further ten seconds was devoted to local weather. In total the bulletin lasted for only two minutes.
- 4.12 Please let us know if you would like us to provide you with these recordings.
- 4.13 Taking Scotland as another example, we note the following in relation to Real Radio Scotland:
 - 4.13.1 It employs six reporters based in Glasgow.
 - 4.13.2 It broadcasts local bulletins between 6 am and midnight (although the 11 pm and midnight bulletins are prep-recorded at 10 pm).
 - 4.13.3 Its stations focus on local stories and frequently broadcast "special reports" and extended bulletins. For example, they have previously sent a reporter to Afghanistan to follow and report on Scottish troops.
- 4.14 In contrast, we note the following in relation to Capital Radio in Scotland:
 - 4.14.1 It employs only two reporters in Scotland.
 - 4.14.2 It broadcasts a mix of "longer" bulletins of 90 seconds which are made up of three "one-line" stories (usually a mixture of Scottish and UK stories), and "short" bulletins of 45 seconds.
 - 4.14.3 Its bulletins are very clearly targeted at a young audience (for example, they generally include a "showbiz" element).
 - 4.14.4 Only the breakfast and drive-time bulletins are broadcast live; others are pre-recorded.
- 4.15 It is, therefore, expected that the quantity and quality of news content on the Real stations will be significantly diminished if the Transaction proceeds and the Real Stations are brought into either the Capital or Heart networks. In particular, we would expect local news on Real Radio to be stripped back to the minimum required to satisfy its regulatory obligations.
- 4.16 The likely impact of the Transaction on the plurality of news services must not be underestimated. As described above, the weekly reach of radio was 90.8% of the UK population in 2011 and, on average, radio listeners in the UK listened to 22.5 hours of radio each week in 2011. Together with some of the attributes mentioned at paragraph 2.8 above (portability, intimacy etc.), radio is, therefore, a highly influential force in informing

opinions, encouraging discussion and promoting further thought and ideas among the UK population.

- 4.17 As set out above, radio stands apart from other media for a number of reasons, in particular, its ability to provide instant live access to information. For this reason, Bauer submits that other media such as local press and online news services are not able to replicate radio and, in this case, GMG's stations, as a source of local news, and on this basis urges Ofcom to focus its assessment of the impact of this transaction on radio.

Other regional/local content

- 4.18 GMG's Real Radio (which broadcasts in Scotland, North West and North East England, Yorkshire, and North and South Wales) and Real XS (which broadcasts in Glasgow and Manchester) currently offer a variety of content which is tailored to the regions/localities in which they broadcast. As explained above, local content is highly valued by radio listeners.
- 4.19 The Real Radio stations include 13 hours of locally relevant programming (i.e. locally or regionally relevant, depending on the given station's TSA) each weekday between 6 am and 7 pm.
- 4.20 All Real stations run 13 hours of locally/regionally relevant programming on Saturdays and 10 hours on Sundays.
- 4.21 This means, for example, that Real Radio runs 87 hours of local programming per week in each of its five locations (approximately 50% of its output).
- 4.22 In contrast, Heart and Capital only run 43 hours of local programming per week (26% of their output).³⁷ This is the minimum required to satisfy Global's regulatory obligation. Therefore, across the network we estimate that 220 hours of local programming could be lost as a result of the Transaction.
- 4.23 We attach as **Annex 4** to this submission three charts setting out Real's, Heart's and Capital's current schedules to illustrate which content is (i) regional/local and which is networked.
- 4.24 We set out below details of the specific categories of regional and local content currently provided by Real, and the reasons why Bauer expects some or all of its other distinctive and highly valued content to be stripped back to the minimum permitted under applicable regulation and replaced with networked content if the Transaction is permitted to proceed.

Sport

- 4.25 In July 2012, the decision was taken by Real and Smooth Limited (the post-Transaction name for GMG Radio Holdings) – on virtually no notice – to axe popular football "phone-in" shows, which were local to the regions in which they were broadcast, from the Real Radio stations in Scotland, the North East and Wales.³⁸ Instead, listeners will now hear a networked music show which is broadcast from London and has no local or regional content. This decision was surprising given the popularity of these shows, particularly in

³⁷ In addition, we note that Real Radio XS, which broadcasts in Glasgow and Manchester, carries 7 hours of local programming each weekday. We understand that the remainder of the content on these stations is pre-recorded and shared between the two stations. We do not know what Global intends to do with these two stations.

³⁸ We note that, although this decision was said to have been taken by Real and Smooth Limited, which, under the terms of the "hold separate" obligations imposed by the OFT after completion of the Transaction, is required to be run separately from Global's business, Mark Lee (until recently Global's Managing Director for the Regions) has been seconded to Real and Smooth Limited as acting CEO. We have every reason to believe, therefore, that this was, in effect, a decision taken by Global.

the North East of England, where the *Real Radio Legends* show pulled in a very large audience, only fractionally smaller than the breakfast show, but significantly higher than any other show on the schedule, as demonstrated in the chart attached at **Annex 5** to this submission and by the fact that while Real Radio North East has an overall audience share of 4.8%, the *Real Radio Legends* show had an average audience share of 8.6%. For example, the relevant show achieved Real Radio North East's highest weekday audience figures during the football season, and we note that listeners left comments on the Real Radio Scotland Facebook page saying things such as "*BIG BIG MISTAKE AXING THE FOOTBALL PHONE IN!!!!*", "*whoever thought axing this was way a head was out of theirs!!!!*" was top programme on any radio station watch clydes figures jump" and "*bring it back*". It represents a loss of ten hours of local/regional programming per week across these three stations.

- 4.26 Bauer submits that such a blatant example of the extended reliance on networked content at the expense of popular regional/local content, almost immediately after the completion of the Transaction, constitutes tangible evidence that significant quantities of both sports and other local and/or regional content currently aired on Global's stations are likely to suffer the same fate, which would unquestionably have a negative impact on plurality. This is especially so given that Bauer expects Global to seek to incorporate Real into the Heart network which does not include any sports programming in its schedule.
- 4.27 Real North West has recently (pre-Transaction) demonstrated its commitment to providing high quality sports news and reporting by recruiting a specialist sports journalist. However, given Global's decision to remove the football phone-in shows from the Real Radio stations' schedules, it is anticipated that this role will be made redundant if the Transaction is allowed to proceed, meaning that listeners will no longer be able to hear specialist sports journalism on the Real Radio stations.

Documentary

- 4.28 Real has a well-established reputation for producing documentaries, news "specials" and community programming, much of which is relevant to particular regions/localities. A Radio Today article of 25 June 2012 entitled *GMG Radio Sale: Look back at the group's history*, commented that "*The purchase by Global Radio brings to a close a period of the industry which saw investment in personality led music commercial radio and documentaries aimed at rivalling the BBC*" (emphasis added). Real has won a considerable number of awards for these types of programming and we attach a list of awards received by GMG's stations since 2010, including:
- 4.28.1 *Raol Moat – The final hours* (Real Radio North East); and
- 4.28.2 *Cocaine unwrapped* (Real Radio North West news team for Real Radio).
- 4.29 We also note that news "specials" are broadcast as extensions to the news bulletins in peak times and other "community programming" is featured on Real Radio at various times throughout the year.
- 4.30 While Smooth Radio's content is networked across all of its UK stations (with the exception of Smooth Glasgow's breakfast and drive-time shows), it should also be noted that Smooth is also an award-winning broadcaster of documentary content. For example, GMG Radio North West was awarded a Sony Academy Award in the "Best feature/special/documentary category in 2012 for its show *Walking with the wounded*. Other documentaries broadcast recently on Smooth include *20th Century Battlefields* and *Mark Goodier in conversation with Sting*.
- 4.31 In contrast, we note that Heart does not make any documentary or community programming and if, as anticipated, Global intends to extend its networked content to Real

and Smooth, it can be expected that this content will, at best, be reduced to the minimum amount permitted under relevant regulation and, at worst, be lost completely. This would be especially damaging as much of it is regionally or locally orientated.

Music

- 4.32 During daytime hours, each Real station will typically play just over 500 unique song titles.
- 4.33 In contrast, Global's playlists are limited in their diversity. For example:
- 4.33.1 A comparison of the playlists for Real Radio North West and Heart London for the week 23 July to 6 August 2012 shows that Real played a far broader range of songs (509 unique titles out of 1408 total spins (36%) as opposed to 368 unique titles out of 1711 total spins (22%) for Heart) and that Real played 329 different artists, while Heart played only 240. This comparison is attached as **Annex 7A** to this submission.
- 4.33.2 []
- 4.33.3 A comparison of the playlists of Capital FM Yorkshire and BBC Radio 1 for the week 27 June to 3 July 2011 shows that Radio 1 played a far broader range of songs (which shows a significantly lower degree of repetition) and manifests itself in a contrast between Capital playing 148 unique titles against 578 unique titles for Radio 1. This comparison is attached as **Annex 7C** to this submission.
- 4.34 Taking 21 August 2012 as an example again, we also note that Real Radio Scotland played tracks by a number of Scottish artists (Amy MacDonald, Aztec Camera, Emeli Sandé, Frankie Miller and Paolo Nutini), but that only one of these local artists (Emeli Sandé) was played on Capital Scotland.
- 4.35 It is, then, clear that Global compares unfavourably in terms of diversity of musical content when compared to other radio stations and, in particular, GMG. This problem is amplified, though, by the fact that the content across each of Global's brands is almost identical. For example, the *Music Output Analysis* carried out by Bauer (dated 29 June 2011) shows that only 164 songs were played across the entire Capital network during the period in question, 82 of which were played exactly the same number of times on every station (i.e. 50% of the total) and 152 of which were played on all of the Capital stations (i.e. 93% of the total).³⁹ We note, for example, that artists such as Paloma Faith and Rebecca Ferguson currently enjoy significant airplay on Real and Smooth but none on Capital or Heart.
- 4.36 There is a significant degree of variance between the music playlists of each of the Real Radio stations in different regions/local areas. For example, as illustrated in **Annex 6** to this submission on 21 August 2012:⁴⁰
- 4.36.1 27% of unique tracks played on Real Radio Northwest did not appear on Real Radio Scotland;
- 4.36.2 25% of unique tracks that were played on Real Radio Scotland did not appear on Real Radio North West; and
- 4.36.3 14% of unique tracks played on Real Radio Wales did not appear on Real Radio North West.
- 4.37 Another indicator of the likelihood that Global will seek to reduce the diversity of GMG's playlists if the Transaction is permitted to proceed appears from a comparison carried out by Bauer of the numbers of unique songs played by Capital Scotland at the time of its

³⁹ This comparison is attached as **Annex 8** to this submission.

⁴⁰ Between the hours of 6 am and 7 pm.

format change (164 out of a total of 2111 in week 11 of 2011) and now (144 out of 2164 in week 26 of 2012), which shows a reduction of 12.2% in the number of unique songs played (i.e. that there has been a material shortening of the playlist and in increase in the level of repetition).

- 4.38 There can, therefore, be no doubt that the musical output of a combined Global and GMG would narrow choice in the market.
- 4.39 Not only does this have an impact on consumers, but Global's policy of restricted playlists means that it is very difficult for artists other than the most mainstream (and already successful) "pop" acts to get airtime. Global makes almost no space on its playlists for niche or new artists. This results in:
- 4.39.1 A "freezing" effect on the development of new and niche British musicians;
- 4.39.2 More generally, a negative impact on the development of musical/artistic culture in the UK.
- 4.40 By adding the third largest commercial radio group to its existing networks, Global is removing a significant source of distinctive music content for consumers and a source of airtime for a broad variety of artists, both of which will contribute to an outcome of insufficient plurality.

DJs

- 4.41 By virtue of the fact that a far higher proportion of their content is networked, Capital and Heart have a lower proportion of local DJs on their programming. For example, while each of Real Radio North West, Real Radio Scotland and Real Radio Wales have five local DJs, Heart and Capital generally only have three (two for their breakfast shows and one for drive-time).
- 4.42 The content referred to be above which is currently offered by Real is highly valued by listeners. For example, []:
- 4.42.1 []
- 4.42.2 []

Potential for Global to remove all local content from Real Radio in England

- 4.43 In addition to Global's track record of stripping bespoke local content back to the minimum permitted under applicable regulation, we are concerned that if, as expected, Real Radio is to be re-branded as Heart, the Transaction will allow Global to go further than it has done previously and cancel all regional/local content on the Real stations in England, including the current regional/local breakfast and drive-time shows on the Real (and Global) stations. This is because GMG owns two mono slots on the D1 multiplex (MUX). Further to Ofcom's recommendation, set out in its Localness Statement, that regional analogue stations should be able to request to have their localness obligations removed where those stations provide a version of that programme service nationally on DAB,⁴¹ it appears likely that Global would be able to retain one of the D1 slots for Smooth Radio and allocate the one currently used for Smooth Radio 70s to its Heart network. Heart would then likely qualify as a "national" service on D1 and may no longer be required to provide any local or regional content, allowing it to replace the (currently regional) Real breakfast shows with the Heart network breakfast show which is broadcast from London.⁴²

⁴¹ Paragraphs 3.7-3.42.

⁴² We note that Ofcom's *Revised localness guidelines* state that "because of the importance of nation-specific content in the devolved nations, any regional stations in those nations will still be required to produce

4.44 If, as expected, the Transaction results in Global seeking to further extend its current networking of content to the GMG stations (and, in particular, Real Radio), a significant and distinctive commercial radio voice will be lost at a national, regional and local level, resulting in insufficient plurality which would clearly not be in the public interest.

Global can be expected to seek to continue its historic policy of networking content across its stations as it will make financial sense to do so

4.45 Increased networking of content by Global seems highly likely as it would almost certainly make financial sense for Global. For example, Ofcom noted in its Localness Statement (Annex 4.30) that *"local programming is expensive and it is always likely to be more profitable to network as much as possible, even if that means a drop in audiences"*.

4.46 The replacement of some or all of the content currently aired on GMG would, however, have a profound and irreversible negative impact on the UK radio sector and, in particular, the 91% of the UK population who listen to the radio each week. Global cannot, therefore, be allowed to continue to expand its network strategy any further, purely on the basis of self-interest, in circumstances where to do so will lead to an irreversible reduction in the number of radio voices and, in particular, local radio voices in the UK which, as explained above, are very highly valued by UK consumers; the purpose of commercial radio has historically been to provide local services, and it is because consumers value radio and the important role it has in a healthy local democracy that Government has historically reserved spectrum for commercial radio and adopted a licensing system which, rather than being based on auctions (which would mean licenses would always go to the highest bidders), seeks to ensure that services which are licensed provide content of the highest value to listeners. We also note that the Localness Statement goes on to state that while it may be more profitable for a broadcaster to network its content (as Global does and can be expected to continue to do), provision of that programming is linked to the public purposes of:

4.46.1 sustaining citizenship and civil society;

4.46.2 representing the UK, its nations, regions and communities; and

4.46.3 promoting social gain.

4.47 Moreover, the DCMS Seminar Paper states that *"The Government believes there is an inherent benefit of a strong, vibrant and freely available radio market, and these social benefits exceed the purely economic value of the spectrum"*. And refers to the need to secure a *"social value from the spectrum"*.⁴³

4.48 Bauer therefore urges Ofcom to seek access to Global's internal documents setting out its rationale for acquiring GMG and its plans post-merger, which Bauer expects will address the proposed networking of the GMG stations. Given that Global has no statutory duty to provide all relevant documents to Ofcom, however, we consider it essential that Ofcom recommends to the Secretary of State that the Transaction be referred to the Competition Commission, which does have statutory information gathering powers, for a more in-depth investigation.

nation-specific programming as per the guidelines for those local FM stations" and that Global would not, therefore, be able to remove the localness obligations from the Real Stations in Scotland and Wales. Bauer expects, however, that Global would still reduce the level of local content on those stations to the absolute minimum permitted under applicable regulation, and considers that the removal of popular sports content from Real stations in England and, notably, Scotland referred to above suggests strongly that this would be the case.

⁴³ Paragraph 3.1.

5. **EFFECTS OF THE TRANSACTION ON NATIONAL AND INTERNATIONAL NEWS PROVISION:** []

Commercial radio stations collectively purchase national and international news content from Independent Radio News ("IRN")

5.1 UK commercial radio stations source their national and international news content from IRN. In total, IRN provides news content to 270 subscribing commercial stations which reaches around 26.5 million people every week. It is, therefore, a significant force in informing opinions, encouraging discussion and promoting further thought and ideas across the UK.

5.2 []

6. **ADDITIONAL HARMFUL EFFECTS OF THE TRANSACTION**

The Transaction will strengthen Global's ability to leverage its market strength in order to further its non-radio interests

6.1 We note Professor Barnett's observation in the Barnett Report that *"All media conglomerates will exploit their own media outlets to promote their own products and ignore or disparage those of their rivals, thus entrenching a competitive advantage and potentially further reducing the number of significant voices."*

6.2 []

6.3 However, one very public example of Global's record of seeking to limit exposure to rival artists arose in February 2012 when One Direction mistakenly thanked BBC Radio 1 in their acceptance speech for a Brit award which had, in fact, been sponsored by Capital. Having had their single, *What makes you beautiful*, played 33 times on Capital in the two week period prior to the Brit awards (weeks commencing 12 and 19 February 2012), the track was not played once between 22 February (i.e. the day after the award ceremony at which the band wrongly credited Radio 1) and 27 May 2012, at which point it was reintroduced.

6.4 Bauer submits that the removal of GMG as a significant alternative source of exposure for artists will lead to an insufficient degree of plurality, and that this fact manifests itself clearly in the form of Global's significantly increased audience shares at the national, regional and local levels (see section 3 above for specific audience share data), which will result directly from the Transaction and which limit the options available to musicians for getting sufficient airplay to promote their material, to the extent that Global will become even more critical and, in all likelihood, indispensable. Global's ability to restrict the variety of artists to whom its considerable numbers of listeners are exposed (or to control things such as single release dates by threatening to withhold airplay) will therefore be materially strengthened by the Transaction.

[]

6.5 RadioCentre is the commercial radio industry's trade body and works with government, policy makers and regulators as well as providing a forum for industry-wide discussion and debate.

6.6 RadioCentre members account for 90% of commercial radio listening and 86% of industry revenue, and its membership is made up of 267 radio stations of all types including small local radio groups, independent local stations and digital-only services. RadioCentre is therefore intended to represent the views of a very broad range of radio stations, small and large, and not just the interests of one or two of the largest radio groups. It is funded by levies paid by the commercial radio industry in the UK based on volumes of advertising

revenue. It performs a number of essential roles for commercial radio stations, including those set out below.

- 6.7 RadioCentre plays a critical role in raising the profile of commercial radio with advertisers and their agencies through the Radio Advertising Bureau ("**RAB**") (which it wholly owns), the marketing body for radio. RAB was set up to "sell" the merits of radio to advertisers, to advise radio stations on matters such as how to make their schedules more attractive to those advertisers and agencies, and to act as an advisory service to advertisers.
- 6.8 Along with the BBC, RadioCentre jointly owns RAJAR, the official body in charge of measuring radio audiences in the UK. RAJAR surveys the audience figures of over 300 radio stations. Its data is relied on by the advertising industry for the planning of campaigns and purchasing of airtime. It is, therefore, absolutely critical to the commercial success of commercial radio stations who are largely dependent on advertising revenues.
- 6.9 []

7. OVERLAP BETWEEN PLURALITY AND COMPETITION CONCERNS

- 7.1 One of the matters that the Secretary of State is required to determine before making any reference of this transaction to the Competition Commission is whether media plurality is relevant to the consideration of the merger and whether, (i) on those grounds, (ii) because the transaction leads to a realistic prospect of a substantial lessening of competition, or (iii) on both of these grounds, the transaction operates or may be expected to operate against the public interest.
- 7.2 Bauer considers that this transaction would, if allowed to proceed, lead to a substantial lessening of competition. We will, therefore, be making detailed submissions to the Office of Fair Trading in this regard.

8. FUTURE DEVELOPMENTS

- 8.1 It remains to be seen what impact online radio will have in the UK. Online radio is still relatively insignificant. Notably, the Communications Report shows that only 16% of households use the internet to listen to the radio, 7% used free streaming services such as Spotify and Last.fm, while 2% used subscription-based streaming services such as Spotify Premium.⁴⁴ We also share the cautious tone of the Barnett Report in his regard, which states that *"we must beware assumptions – and the conventional wisdom – that new media opportunities and "convergence" means that the direction of travel is automatically towards greater plurality. This is manifestly untrue and contrary to empirical evidence."*
- 8.2 Although, as noted above, digital listening increased by 11.4 percentage points over the last four years, Bauer also submits that it is not a sufficiently well-established medium to be taken into consideration for the purposes of Ofcom's review of the Transaction. In particular, there remains a degree of uncertainty as to future growth of DAB due to factors such as the limited quantity of available multiplex capacity and the fact that consumers appear to have been somewhat reluctant, to date, to pay the relatively high purchase costs for DAB radio equipment.

9. CONCLUSION

- 9.1 Ofcom referred in its Localness Statement⁴⁵ to a need to achieve an appropriate balance between the pressures on the viability of the commercial radio sector and at the same time securing the continued provision of local radio content. Bauer acknowledges the need to

⁴⁴ Paragraph 3.3.10.

⁴⁵ Paragraph 1.15.

achieve this balance, but for the reasons set out in this submission this transaction will clearly – and permanently – lead to a situation of insufficient plurality of persons with control of media enterprises serving commercial radio audiences at a local, regional and national level in the UK. In particular:

- 9.1.1 It will give the combined Global/GMG very high audience shares in a number of regional and local areas, as well as on a national level, in circumstances where there are very few other major commercial radio voices remaining in the UK.
 - 9.1.2 It will likely lead to the loss of a significant amount of highly valued and distinctive content current broadcast on GMG's stations, including news, documentary, sport and music content.
 - 9.1.3 []
 - 9.1.4 It will strengthen Global's ability to further its non-radio interests at the particular expense of record labels and musicians.
- 9.2 Ofcom must, therefore, recommend to the Secretary of State that he refer the transaction to the Competition Commission on media plurality public interest grounds.

10. OFCOM'S REQUEST FOR INFORMATION

- 10.1 We note that you provided Bauer with a request for information on 20 August 2012. Bauer is working to gather the information you have requested and aims to submit it on or before 31 August 2012 as requested.

Herbert Smith LLP
24 August 2012