

# Proposed merger of Capital Radio plc and GWR Group plc: Ofcom's statutory assessments

# Contents

Section		Page
1	Introduction	3
2	Summary of Conclusions	4
3	Change of Control Reviews	5
4	Ownership Rules	6
5	Control Determinations	8
5	Public Interest Test	9

## Section 1

# Introduction

- 1.1 Ofcom is today announcing the conclusions of its statutory assessments in relation to the proposed merger of Capital Radio plc and GWR Group plc.
- 1.2 Under the Communications Act and other legislation Ofcom has a number of specific functions in relation to radio mergers. These are:
  - to determine whether or not any local analogue licences would be subject to a change of control as a result of the merger and to carry out a review of any such licences that would change control;
  - to apply the radio ownership rules<sup>1</sup>; and
  - to carry out a public interest test if required to do so by the Secretary of State for Trade and Industry in an intervention notice<sup>2</sup>.
- 1.3 The Office of Fair Trading (OFT) is responsible for competition assessment of the proposed merger under the Enterprise Act 2002. The OFT will announce its conclusions on the matter today.

---

<sup>1</sup> Schedule 2 to the Broadcasting Act 1990, as amended by the Communications Act, lists types of person disqualified from holding a Broadcasting Act licence. Specific rules set out in Schedule 14 to the Communications Act and the Media Ownership (Local Radio and Appointed News Provider) Order 2003 are designed to ensure a sufficient plurality of providers of different radio and cross-media services.

<sup>2</sup> Section 44A and 61A, Enterprise Act 2002

## Section 2

# Summary of conclusions

- Ofcom has determined that changes are required to two of GWR's local analogue licences in order to protect the provision of separate local breakfast services following the merger.
- Ofcom has concluded that if the merger went ahead as currently envisaged none of the applicable ownership rules would be breached as a result of the merger.

Details of these conclusions are set out below.

## Section 3

# Change of control reviews

- 3.1 Whenever a local radio licence undergoes a change of control (for example, when it is sold), Ofcom is required under section 355 of the Communications Act 2003 to undertake a review of its programme output. Specifically, Ofcom must review the likely effect of the change of control on:
- the quality and range of programmes included in the service;
  - the character of the service; and
  - the extent to which local material and locally-made programmes are included in the service.
- 3.2 Ofcom must determine whether the change of control would prejudice any of the three matters listed above. To the extent that Ofcom concludes that the change of control appears to be prejudicial to any of these areas, Ofcom must impose licence variations to remedy this. However, these variations may only reflect what the previous licence-holder was actually delivering.
- 3.3 If the merger were to go ahead as currently envisaged, Ofcom has determined that the 30 local analogue radio licences owned by GWR would undergo a change of control, from GWR to Capital. Following statutory change of control reviews of these 30 licences, Ofcom is proposing licence amendments to safeguard the provision of separate breakfast services on two GWR licences, covering Bristol and Bath (GWR), and Wrexham and Chester (MFM/Buzz);
- AL087-3, Wrexham & Chester and The Wirral (MFM and The Buzz). We propose to vary this licence to make the provision of a breakfast show for The Wirral a minimum requirement, and retain the option for 14 hours' further 'splits' if desired.
  - AL016-2, Bristol & Bath (GWR FM). We propose that the Bath weekday breakfast show should be enshrined within the Format. This would not preclude any further 'splitting' if desired.
- 3.4 Ofcom has conducted 32 change of control reviews because GWR operates 32 separate formats from its 30 local analogue licences (Trent/Ram and the two Chiltern stations have separate Formats). The details of these change of control reviews are available on the Ofcom website at: [http://www.ofcom.org.uk/licensing\\_numbering/radio\\_sound\\_broadcasting/licences/ccr/](http://www.ofcom.org.uk/licensing_numbering/radio_sound_broadcasting/licences/ccr/)

## Section 4

# Ownership rules

- 4.1 Ofcom has a duty to apply specific ownership rules that either prohibit certain categories of persons from holding broadcasting licences, or are designed to protect plurality of ownership of the media. These rules are set out in Part 2 of Schedule 2 of the Broadcasting Act 1990, Schedule 14 to the Communications Act 2003 and the Media Ownership (Local Radio and Appointed News Provider) Order 2003.
- 4.2 Of particular relevance to this merger are the specific rules designed to protect plurality in the ownership of:
- local analogue radio services;
  - local radio multiplex services; and
  - local digital sound programme services .
- 4.3 An explanation of these rules, and Ofcom’s conclusions on the application of these rules, are set out below.

## Local analogue licences

- 4.4 The local analogue licence ownership rules are as follows.

- 4.4.1 The “points test”: Where a person holds three or more licences that overlap with each other by 50% or more (a “cluster” of licences), a points test is applied. He may hold those three licences only if the points attributed to each of the licences are not more than 55% of the total points available in the licence area.

Ofcom has concluded that following the merger no clusters would be formed, and that therefore there would be no breach of this rule.

- 4.4.2 (a) In any area where there are three overlapping local licences, a person who is the dominant local newspaper provider, or the holder of the local Channel 3 television licence, may hold one of those radio licences (or any additional overlapping licences) only if the points attributed to that licence are not more than 45% of the total points available in the area; and

(b) No person may hold a local radio licence and the local Channel 3 television licence and be the dominant local newspaper provider in the same area.

The proposed merged group would not be a dominant newspaper provider and would not hold a regional Channel 3 television licence. Accordingly, neither rule (2)(a) nor (b) above would be breached by the merger.

### **Local radio multiplex licences**

- 4.5 No one person may hold licences for two local radio multiplexes for which the potential audience of one service includes at least half the potential audience of the other.
- 4.6 Ofcom has concluded that the proposed merger would not result in the merged group holding licences for any such overlapping local radio multiplex services, and accordingly the merger would not result in a breach of this rule.

### **Local Digital Sound Programme Services**

- 4.7 A person may provide up to four local digital sound programme services in a local multiplex area. If a person wishes to provide a further service a points test is applied, and the further service may not be provided if all of the local digital sound programme services provided by that person would account for more than 55% of the points available in the area covered by the multiplex in question.
- 4.8 Ofcom has concluded that the proposed merger would not result in a breach of these rules.

## Section 5

# Control Determinations

- 5.1 The conclusions on the application of the ownership rules rely on several determinations that Ofcom has made relating to the control of individual licensees as defined in paragraph 1(3), Part 1 of Schedule 2 to the Broadcasting Act 1990, on the basis of information supplied by the parties.
- 5.2 A summary of these control determinations is set out below.

### CE Digital Ltd

- 5.3 CE Digital Ltd holds three local digital radio multiplex licences. Capital and Emap both have a 50% shareholding in CE Digital Ltd. CE Digital Ltd is a deadlocked company, with no agreement existing between the shareholders of the nature referred to in paragraph 1(3)(c), Part 1 of Schedule 2 to the Broadcasting Act 1990. Ofcom has concluded that Capital does not have 'de facto' control of CE Digital Ltd as defined in paragraph 1(3)(b), Part 1 of Schedule 2 to the Broadcasting Act 1990. Accordingly, we have determined that Capital does not control CE Digital Ltd.

### Classic Gold Digital Ltd ('CGDL')

- 5.4 CGDL holds 18 local analogue radio licences. GWR holds a 20% stake in CGDL, with the remaining 80% held by UBC Media Group plc.
- 5.5 The Radio Authority determined in October 2000 that GWR did not control CGDL. Ofcom has considered this determination in the light of the amendments made by the Communications Act 2003 to the statutory definition of control (in paragraph 1(3), Part 1 of Schedule 2 to the Broadcasting Act 1990), and in the light of information provided to us by the parties. Ofcom has concluded that there have been no changes to GWR's involvement in CGDL since October 2000 that should lead us to determine that GWR now controls CGDL. Accordingly, we have determined that GWR does not currently control CGDL.

### MXR Ltd

- 5.6 In addition to the determinations in relation to CE Digital Ltd and CGDL, Ofcom has also determined that Capital does not control MXR Ltd, which holds 5 local digital radio multiplex licences.

## Section 6

# Public interest test

- 6.1 If the Secretary of State for Trade and Industry issues an Intervention Notice, Ofcom is required under Section 61A of the Enterprise Act 2002 to carry out an investigation into the public interest considerations specified in the notice. Ofcom cannot carry out a public interest assessment on its own initiative; it must do so only if requested to do so by the Secretary of State for Trade and Industry.
- 6.2 The Secretary of State has not issued an Intervention Notice with regard to this proposed merger. She has the power to issue an Intervention Notice only until the Office of Fair Trading makes a decision on whether or not to refer the merger to the Competition Commission. There will, therefore, be no assessment of any public interest considerations as part of the regulatory scrutiny of this merger.