

Acquisition by Emap plc of Scottish
Radio Holdings plc: Ofcom's statutory
assessments

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Section 1

Introduction

- 1.1 Ofcom is today announcing the conclusions of its statutory assessments in relation to the acquisition by Emap plc of SRH plc.
- 1.2 Under the Communications Act and other legislation Ofcom has a number of specific functions in relation to radio acquisitions. These are:
- to determine whether or not any local analogue licences would be subject to a change of control as a result of the acquisition and to carry out a review of any such licences that would change control;
 - to apply the radio ownership rules¹; 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 notice².
- 1.3 The Office of Fair Trading (OFT) is responsible for competition assessment of the acquisition under the Enterprise Act 2002. The OFT will announce its conclusions on the matter today.

¹ 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.

² Section 44A and 61A, Enterprise Act 2002

Section 2

Summary of conclusions

- Ofcom has determined that no changes are required to any of SRH's 21 local analogue licences in order to protect the provision of services following the acquisition.
- Ofcom has concluded that if the acquisition went ahead as currently envisaged the ownership rules would be breached in respect of local digital multiplexes and local digital sound programme services.
- The rules on ownership of local digital multiplexes would be breached in respect of the Ayr and Glasgow local multiplex licences, requiring divestment of control of one of these two multiplexes; and
- The rules on the provision of local digital sound programme services (DSPS) would be breached on the Aberdeen, Ayr and Dundee & Perth multiplexes.

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 acquisition were to go ahead as currently envisaged, Ofcom has determined that the 21 local analogue radio licences owned by SRH would undergo a change of control. Following statutory change of control reviews of these 21 licences, Ofcom is not proposing licence amendments to any SRH licence.
- 3.4 The details of these change of control reviews are available on the Ofcom website at: <http://www.ofcom.org.uk/radio/ifi/rl/commer/ar/cct/overview/>

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 acquisition are the specific rules designed to protect plurality in the ownership of:
- local analogue radio services;
 - cross media;
 - 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 or more 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 acquisition no clusters would be formed, and that therefore there would be no breach of this rule.

Cross Media

- 4.5 The cross media rules are as follows.
- 4.5.1 (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.
- Neither Emap nor SRH is a Channel 3 licence holder so the rule in respect of Channel 3 licences set out above does not apply to this transaction.

SRH owns a regional press business, Score Press. Emap has agreed to on-sell Score Press to Johnston Press once its acquisition of SRH is completed. If this sale to Johnston Press proceeds as currently envisaged, the cross media test in respect of newspapers will not apply. However, in any event, Ofcom has concluded that the cross-media ownership rules would not be breached should such sale not complete.

The cross media rules would therefore not be breached by the acquisition.

Local radio multiplex licences

- 4.6 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.
- 4.7 Ofcom has concluded that the acquisition would result in the post-acquisition Emap breaching this rule in respect of the Ayr and Glasgow local multiplexes.
- 4.8 Ofcom has issued a direction to Emap requiring it to come back into compliance with the ownership rules on the Ayr and Glasgow multiplexes. Emap will be able to achieve this by divesting control of either multiplex and it is for Emap to decide how to proceed. Ofcom's conclusion does not prevent Emap from proceeding with the takeover but requires it to take actions following the completion of the takeover.

Local Digital Sound Programme Services

- 4.9 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 local multiplex area in question.
- 4.10 Ofcom has concluded that the acquisition would result in a breach of these rules on the Aberdeen, Ayr and Dundee & Perth multiplexes.
- 4.11 Ofcom has issued a direction to Emap requiring it to comply with these digital sound programme service rules. Ofcom's conclusion does not prevent Emap from proceeding with the takeover but requires it to take actions following the completion of the takeover.

Section 5

Public interest test

- 5.1 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.
- 5.2 The Secretary of State has not issued an Intervention Notice with regard to this acquisition. He 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 acquisition to the Competition Commission.