

BAUER/4 LOCAL RADIO ACQUISITIONS – PHASE 2 MERGER INQUIRY

SUMMARY OF HEARING WITH OFCOM HELD ON 11 SEPTEMBER 2019

1. The CMA asked Ofcom to set out how it reviews the change of control of analogue radio licences. Ofcom explained that under the Communications Act, each radio licence is governed by a Format document which sets out required programme commitments. However, Format documents currently tend to be broadly written and are no longer as prescriptive as they once were.
2. In the event of a change of control, Ofcom reviews a sampling of programming prior to the acquisition and sends questionnaires to the incumbent on its programming, and to the acquirer on its intentions. If Ofcom identifies that there is an aspect of current programming, of value to listeners, which might be lost as a result of the change of control, and which is not already specified in the Format document, then Ofcom can add this aspect of output to the required programme commitments in the Format of the relevant radio licence.
3. Ofcom explained that in practice this measure is rarely used. In part this is because it can only apply to aspects of previous programming over and above what their Format required, but as Formats are very broadly defined it can be rare to find such additional aspects. Ofcom explained that its powers relate only to protecting this content if there is reason to believe the new owners will not carry it forward. It has no power under this legislation to block the change of ownership.
4. While Ofcom has largely completed its assessment of the referred Bauer acquisitions, these are not expected to be published for another month or two. Ofcom noted that Bauer could not currently submit any change of Format requests, if it wanted to, until the CMA's process was complete.
5. Ofcom considered that the CMA's proposed approach of focussing its merger assessment on the impacts on advertising, rather than on listeners, was appropriate.
6. It said it did not have a regulatory locus in relation to competition between advertising sales houses. Past rules on the plurality of ownership were removed around 8 years ago. Therefore, it did not have a view on consolidation of commercial radio in the UK. But it commented there were two conflicting aspects: concentration of the sector can raise valid concerns; but there could also be economies of scale in local radio operation which could help the viability of the sector.
7. Ofcom explained that it deregulated some aspects of the localness regulations last year. It undertook research of listeners to inform this decision. It found that listeners particularly value local news, travel and weather. Ofcom considered

that the need for tight regulation of local content, eg specifying that presenters have to be based within the broadcast area, was no longer necessary as this was of lesser significance to listeners, and because of increasing competition within radio and from other formats. It was 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. There had been some political and industry objection to this deregulation.

8. A joint government and industry study was launched some 2-3 months ago, looking at the state of radio in the UK, where the industry was going and at the competitive challenges it faces, eg from audio streaming services and from unregulated internet services. The proportion of audio listening over the internet is currently small, but it is growing, especially among younger demographics. This might become a significant disruptor in the next decade.
9. Ofcom noted that online radio stations do not need an Ofcom licence, but no such local radio stations had managed to get traction to date. Community radio stations are required to be operated as 'not for profit' enterprises. They have statutory funding restrictions on their ability to take local advertising. Each station has an allowance of up to £15,000pa from advertising and sponsorship, thereafter a maximum of 50% of any additional income can come from advertising and sponsorship (as opposed to eg grant funding). This implies community radio is likely to be a very limited competitor to commercial radio other than in exceptional cases.
10. In respect of advertising, Ofcom explained its regulatory role was restricted to advertising content. It does collect some advertising revenue figures, as this is used in calculating licence fees for analogue stations. DAB stations have a fixed rate licence. It does not get involved with other parties in the advertising chain, for example media buying agencies.
11. Ofcom confirmed that no new analogue commercial radio licences are being issued. Existing licences do periodically come up for renewal. If the licensee is providing a DAB service, then its analogue licence can be renewed. If not, then the licence is re-advertised.
12. Ofcom intends to roll out small-scale local multiplexes (for small scale DAB) once the necessary legislation has been approved. It is currently consulting on how to implement this programme, and its consultation documents include maps of potential new multiplex areas. The area for each of these multiplexes is expected to be under 40% of existing local multiplexes. These local multiplexes could take up to 20 channels, of local and/or national stations. This massive increase in capacity allows opportunities for stations to widen their coverage and also for new entry, particularly as these small-scale multiplexes are expected to be significantly cheaper than the existing DAB local multiplexes charges.