APPENDIX 6.2
(referred to in paragraphs 6.63 and 6.204)

GWR's comments on further aspects of analysis

1. GWR provided us with some detailed comments on further aspects of analysis. It said that at the heart of this issue was whether there was clear and compelling evidence that a substantial lessening of competition was to be expected with regard to 'other business' advertisers—if the totality of the evidence was at worst ambiguous or pointed on balance to no such substantial loss of competition, then this standard had not been met. GWR submitted that complaints from competing local radio stations must be taken with a large 'pinch of salt', and the CC had agreed that it had not received even 50 complaints from the many hundreds of local advertisers in the Severn Estuary area despite its active advertising in several media.

Overlap of advertisers

2. First, on overlap of advertisers, GWR commented that, according to independent MMS data, only 13 of Galaxy 101's top 30 local advertisers advertised at all on GWR Bristol and Bath over the last three years. Of these 13, only four were among GWR Bristol and Bath's top 30 customers in one or more of the three years, and of the remaining nine all of them spent less than £13,314 with GWR Bristol and Bath in any year as estimated by MMS, which took them well outside GWR Bristol and Bath's top 30 customers in any year. Indeed, only four of Galaxy 101's top 30 advertisers were among the top 30 of GWR Bristol and Bath's top advertisers in any year over the last three years (according to MMS data).

3. This fact should also not be considered in a vacuum, since the identity of these overlapping advertisers was highly relevant. Of the four customers also among GWR Bristol and Bath's top 30 customers, GWR noted that two were essentially national customers who chose to buy their advertising locally and two were large regional motor dealers. Moreover, of the nine other customers, these included customers located in Hertfordshire, London (two), and a regional customer also covering Wales (Cardiff and Newport)—none of which were therefore 'local'.

4. As regards the overlapping customers between Galaxy 101 and Orchard over the last three years, of the eight of Galaxy 101's top 30 advertisers that also advertised on Orchard only two were among Orchard's top 30 customers in one or more years. Furthermore, the expenditures of the other six advertisers estimated by MMS ranged from only £1,723 to £5,831 (with the single exception of one advertiser which spent £12,707).

5. In this regard, GWR also referred the CC to the DGFT's advice in this matter where he stated that 'only a very small proportion' of Galaxy 101's local advertising revenues 'could be attributed to Taunton and Yeovil'. GWR also agreed with his conclusion that: 'it seems unlikely that Galaxy currently represents a significant competitive constraint on Orchard's pricing for local airtime. In this respect, the merger is therefore unlikely to lead to a substantial lessening of competition.' In particular, considering Galaxy 101's actual revenue figures from January to October 2002 it had only one advertiser based in Yeovil (a nightclub spending £1,700 which was clearly seeking wider non-local coverage aimed at a youth audience), one advertiser based in Glastonbury (spending £4,500) and one advertiser based in Taunton (spending £300).

Effectiveness of a non-bundling remedy

6. GWR was invited to comment on the suggestion that a possible remedy that GWR not 'bundle' advertising rates may not address the possible adverse effect that the competitive position of the other stations may be weakened as a result of Opus being able to sell advertising on a greater range of stations in the Bristol and Bath, and Taunton and Yeovil areas.

7. GWR said that it had not been provided with any evidence on which to comment which supported this conclusion, and the CC's letter did not indicate what the anti-competitive disadvantage local radio

stations would face, if Opus sold another station's airtime on an unbundled basis. This point was even more perplexing with regard to Taunton and Yeovil given that this station's airtime was not sold in Bristol by Opus.

8. The only aspect of this point which might have been mentioned by one or more third parties was the so-called 'one telephone call advantage'. The fact of the matter was that local advertisers did not use multiple local radio stations at all, far less in the same year. Even over a three-year period, as set out above, only a small minority of local advertisers were in the top 30 advertisers of both Galaxy 101 and GWR Bristol and Bath or Galaxy 101 and Orchard in any year over the last three years. In addition, these advertisers were actually not local advertisers in most instances (see above). In short, GWR did not understand the point that was being made.

Effectiveness of Classic Gold 1260 AM remedy

9. GWR was invited to comment on the suggestion that the possible remedy that Opus no longer sell advertising airtime on Classic Gold could have the following possible disadvantages to Classic Gold:

(a) First, Classic Gold would need to set up a separate sales operation in Bristol and Bath, without the economies of scale of Opus and having to establish a high fixed-cost base for sales and marketing: in effect to operate as an independent small station in that area, which is unlikely to be profitable. There could be difficulties in attracting suitable staff; but advertisers may also prefer to retain their links with Opus staff, and switch to the other local GWR stations.

(b) Second, it would have to find an alternative national sales house for national advertising. This may be difficult given that its particular content and audience differ from those of the stations for which most other sales houses operate, as well as its being unattractive to advertisers and sales houses as a result of being a single local station broadcasting on AM. Alternatively, it may have to use a competitor for the purpose, which may also have disadvantages.

(c) Third, it would still deal with Opus for all its other stations, and if approached to sell in Bristol and Bath as well as other stations, Opus could offer advertising on GWR and Vibe 101, rather than redirecting potential advertisers to any alternative Classic Gold sales house for the area.

(d) The financial effect on Classic Gold could be mitigated if sufficient compensation were negotiated with GWR: but even if that were to be case, its prospects in the Bristol and Bath area would be weakened suggesting it would not represent a sufficiently effective source of competition to remedy the adverse effects of the merger.

Such disadvantages to Classic Gold would therefore much reduce its ability to offer effective competition to GWR.

10. GWR said that, as regards the first point, Classic Gold, the owner of Classic Gold 1260 AM, would incur almost no fixed costs for a sales and marketing operation in Bristol and Bath. All that would be required would be an office, some basic office equipment and a small number of sales staff (Opus/GWR only had approximately six staff selling the local airtime of GWR Bristol and Bath in Bristol, Classic Gold 1260 AM and now Vibe 101). Indeed, Classic Gold already handled its own sponsorship and promotions sales for Classic Gold 1260 AM, and did its own marketing. GWR had not seen any evidence which might indicate that Classic Gold would have difficulties in attracting the limited number of necessary staff.

11. Moreover, GWR and Ashursts were unaware of any competition case or decision in which the availability of a few sales staff and an office had amounted to a barrier to entry.

12. Also, the CC's hypothesis that advertisers might prefer to 'retain their links with Opus staff, and therefore switch to other local GWR stations' was, in GWR's view, entirely without foundation, and fundamentally ignored advertisers' priorities. Advertisers were interested in reaching a specific target audience which they could achieve by using a particular radio station. The identity of sales staff was of no relevance to that objective.

13. [

Details omitted. See note on page iv.]

[
Details omitted. See note on page iv.]

14. As regards the second point, GWR did not intend that the Classic Gold 1260 AM remedy would extend to national advertising, as should be clear from its submission which referred to local advertising sales being divested. Opus in London would retain this national advertising contract, and GWR's submission had dealt with the operational questions of local/national advertising, slot allocation and the absence of any local slot constraints.

15. GWR also considered that it was wholly viable for national and local airtime sales to be sold separately. As the CC was aware, this was exactly what UKRD's Star stations did, and so did other stations. In addition, a significant proportion of other sales houses sold advertising time for stations with similar content and audience to Classic Gold 1260 AM, and had separate sales forces for national and local sales, Capital Radio Sales sold the airtime on the Capital Gold radio stations, Chrysalis Radio Sales sold the airtime for the Heart radio stations, Emap Advertising sold the airtime for the Magic radio stations and SAGA Radio sold the airtime for the Saga radio stations—all of which were relatively similar in audience to Classic Gold 1260 AM. Although Classic Gold 1260 AM broadcast on AM, it had a substantial, stable and well-targeted listener base and also broadcast on the Bristol and Bath digital multiplex.

16. The CC's reference to Classic Gold using a competitor was not clear. The main independent local competing radio stations for Classic Gold 1260 AM were Bath FM and Star 107.3 (Bristol). Both of these radio stations' national airtime was sold by First Radio Sales Limited. This was only one sales house among many.

17. As regards the third point, GWR did not understand why independently-sold local airtime could not be sold effectively by a new seller of this airtime. No divestment proposal should involve the company in question directing customers to a new rival business—surely this would be market sharing?

18. As regards the CC's final conclusion, as the CC had been made aware by GWR, GWR's view was that the similar size of Classic Gold 1260 AM's local revenues in the Bristol and Bath area to those of Vibe 101 and the fact that it covered the same TSA as GWR Bristol and Bath, and therefore did not involve the same wastage issues as using a regional radio station such as Vibe 101, would definitely outweigh any hypothetical anti-competitive effects caused by the transaction. GWR was unaware of any evidence to the contrary.

Effectiveness of a temporary reduction in GWR's rights in VRSL

19. GWR was invited to comment on the suggestion of a temporary suspension of GWR's shareholders' rights in VRSL, and possible disadvantages of such an approach, namely:

(a) Amending the rights in the shareholders' agreement might be thought unlikely to be sufficient to remove material influence over day-to-day operations at GWR's current level of shareholding, particularly given Galaxy's co-location with GWR. Policing the operation of the agreement in a new format might be unlikely to be feasible for an external agency and board membership also gives rights such access to information. It might be unrealistic to expect GWR to have no influence over a company in which it retained a shareholding on its current scale and with the prospect that at some point in future its rights would be restored. GWR might be expected to continue to have an informal but nonetheless substantial influence on Vibe 101.

(b) Any provision for restoration of GWR's interest or influence over Vibe 101 might reduce the prospect for competition between GWR and Vibe 101 since other radio groups might be less interested in developing Vibe 101, or competing with GWR, if GWR had an option subsequently to regain its original interest or influence over Vibe 101; and management of Vibe 101 would also be less likely to compete with GWR if it was likely that its influence would soon be restored.

20. GWR said that this was a difficult issue to comment on since this hypothetical remedy would entirely remove the commercial rationale for the transaction from GWR's perspective. However, in order to be of assistance, GWR commented as follows.

21. The CC considered two separate issues under this paragraph. First, the CC questioned whether it might be realistic to expect that a temporary reduction in GWR's rights (equivalent to a reduction in GWR's shareholding) in VRSL would still not remove substantial influence given Vibe 101's co-location with GWR Bristol and Bath. Clearly board members could agree to absent themselves from certain board discussions. Also, the CC had given GWR no reason why it might not be possible for such an agreement to be policed. Being in the same building was only of relevance, even hypothetically, to the advertising sales people, who could be located elsewhere. A compliance officer could be appointed to ensure compliance with the undertakings and he or she could report directly to the OFT.

22. Second, the CC stated that the very existence of a triggering event reduced competition between GWR Bristol and Bath and Vibe 101. The issue here was where the profit-maximizing interests of VRSL would lie in the interim period—SRH had no interest in ceding revenues to GWR. Furthermore, there was always the prospect that any triggering event to end the suspension of rights might not happen. Accordingly, the CC's conclusion that 'GWR may be expected to continue to have an informal but nonetheless substantial influence on Vibe 101' was unfounded in GWR's view.

Vibe 101's strategy

23. GWR was also asked to comment on the suggestion that Opus no longer sell local advertising on Vibe 101, and possible arguments that:

(a) GWR could still influence the position and strategy of Vibe 101, including the extent to which it overlapped with the GWR stations, and the competition between them.

(b) Moreover, the current revenue sharing agreement would continue to reduce competition between the two stations: were some advertisers to switch from the GWR stations to Vibe 101, in response to higher prices, GWR would merely take a larger share of the profits generated by Vibe 101.

24. GWR commented that this first issue—that GWR could still influence the strategy of Vibe 101 even if it no longer sold the local advertising—clearly needed to be addressed with reference to the concern identified and a number of points should be made:

(a) What was hypothetically being lost was the ability of, at most, a small minority of advertisers to play off Galaxy 101 against GWR's stations to secure lower prices which they could not achieve by other means and who would be discriminated against post-merger. This hypothesis was being expressed notwithstanding the fact that Galaxy 101/Vibe 101 was a regional radio station, and one with a youth focus (albeit one that would increase).

(b) The local seller of advertising appointed could be expected to focus on the highest-margin customers which GWR might hypothetically be seeking to discriminate against.

(c) It was true that Vibe 101 would become more differentiated, but this was the only sensible position and strategy which might be adopted by any radio operator operating this licence, and this was determined by SRH as the majority shareholder of VRSL. SRH would be expected to block any strategy which did not serve the best interests of the station. GWR had no ability to force through any changes in the format or geographical coverage of Vibe 101 contrary to SRH's wishes, and any such changes would also potentially raise regulatory issues.

25. The second point made under this paragraph of the CC's letter was not clear to GWR. The CC referred to 'the current revenue sharing agreement' and then stated that 'were some advertisers to switch from the GWR stations to Vibe 101, in response to higher prices, GWR would merely take a larger share of the profits generated by Vibe 101'. The CC had not provided GWR with the assumptions it had made to make this calculation, and accordingly GWR was unable to comment in detail. However, GWR would have little interest in sacrificing 100 per cent of some of its revenues on GWR Bristol and Bath in the hope that some of the revenues might transfer to VRSL. This is because it would receive only 49 per cent of any hypothetical incremental revenues which possibly might transfer, with the more likely outcome being that such advertisers would instead spend less, switch budgets to other media, or use other local radio stations.

Additional survey interpretation

26. GWR was asked to comment further on aspects of the survey relating to switching and whether there may be further reasons to suggest local radio advertising constitutes a separate market (the Group having taken into consideration GWR's comprehensive comments on the survey), namely:

(a) Evidence of switching in the survey appeared to confirm that advertisers did switch between radio stations in response to pricing, suggesting that local radio advertising can be regarded as a separate market. For example, as shown in Chart 12, a substantial proportion of advertisers contacted other radio stations to ask about their advertising rates, varying from 35 per cent in Taunton, Yeovil and Glastonbury to 53 per cent in Cardiff and Newport. As a result of the merger, the choice of competing stations from which to seek alternative rates, and use them in negotiating with GWR, could be regarded as reduced.

(b) The variations in the percentage doing so may also suggest that, where there was less choice, fewer efforts were made to establish other stations' prices.

(c) We also noted from Chart 26 a substantial proportion of advertisers switching advertising expenditure to and from Galaxy/Vibe 101: 17 per cent of Galaxy/Vibe 101 users had switched, and a further 10 per cent threatened to switch; of the former (Chart 29), some three-quarters had switched to and from other radio stations (although the sample size is small). The main reason for such switching—in a half of the cases—was price (Chart 30). It may be thought there was now less opportunity to switch from Vibe 101 to a competing station. The proportion of advertisers switching or threatening to switch expenditure to or from Galaxy 101 was significantly lower weighted by value; possibly implying that it was smaller, local advertisers who were the most vulnerable.

The above may also be further evidence that the overlap between advertisers and categories of advertisers is a reason not to regard Galaxy 101 and the two stations as serving different markets, and of competition or potential competition between them.

27. Before specifically commenting on the points made, GWR said that it was perhaps helpful to reiterate the exact issue which was being explored, namely the extent to which local advertisers had a choice between using GWR Bristol and Bath and Galaxy 101/Vibe 101 (and Orchard and Galaxy 101/Vibe 101) and whose choice between these stations was price sensitive. Such advertisers whose choices between these stations were price sensitive might in theory have the ability to play one station off against another in order to secure competitive terms. This observation was self-evidently insufficient to justify any conclusion that there would be a substantial lessening of competition, since this would depend on the ability of these advertisers to use other media, other local radio stations, use a local agency/media buyer, and whether they were poor negotiators which indicated their hypothetical vulnerability (despite paradoxically hypothetically having the skills to play off a regional station against a local one to secure more competitive terms).

28. It did not seem meaningful to consider this issue without referring to the question which directly explored whether advertisers had a choice of radio station. Rather than directly considering the question (Question 10) which covered this issue, the CC referred to a number of other indirect questions. GWR was puzzled as to why the CC made no reference whatsoever to this question in its letter on this issue. GWR's confusion as to this omission was increased by the fact that the CC indicated it believed that the survey confirmed 'that advertisers did switch between radio stations in response to pricing', and the substantive issue in GWR's view was whether they could readily switch between Galaxy 101 and GWR's stations and Classic Gold 1260 AM and not all radio stations in general.

29. Question 10 of the survey asked respondents to consider a situation where they had a choice between stations and had chosen to reject at least one of the stations. The respondents were then asked 'what percentage rise in prices in the one you chose would have been enough to make you switch your commercials to one you had rejected'. As the CC's analysis and table indicated, there was little difference in the responses given by the various categories of advertiser to this question, but a somewhat higher proportion of 'other businesses' (50 per cent) indicated that they had 'no choice' of station.

30. If those indicating 'don't know' were excluded from the sample on the basis that they did not give a meaningful response, then the percentage of 'other businesses' indicating that they had no choice

of station would increase to 58 per cent. It should also be noted that the relative results for the various categories were somewhat sensitive to the exclusion of 'don't know' responses, but even including 'don't know' responses leads to at least 50 per cent of all categories of customer reporting that they had no choice.

Says has no choice of stations when asked what percentage rise in prices would have been enough to switch commercials to a rejected station (Question 10)	*All* %	*Other businesses* %	*National advertising or media buying agencies* %	*Local advertising or media buying agencies* %
Including 'don't know' in the total sample	49 (97/200)	50 (69/138)	43 (16/37)	48 (12/25)
Excluding 'don't know' in the total sample	56 (97/173)	58 (69/119)	53 (16/30)	50 (12/24)

31. Moreover, only modest price sensitivity was reported with only 8 per cent of the entire sample (amounting to 16 respondents) indicating that they would switch to the rejected station if prices were to rise by 0 to 5 per cent, and a further 9 per cent indicating that they would switch if prices were to rise by 6 to 10 per cent. 'Other businesses' advertisers were as price insensitive with only 6 per cent of such advertisers (amounting to eight respondents) indicating that they would switch to the rejected station if prices were to rise by 0 to 5 per cent, and a further 10 per cent indicating that they would switch if prices were to rise by 6 to 10 per cent. GWR was puzzled as to why this was not referred to by the CC in assessing competition between radio stations, particularly because it referred to this point for a different purpose in paragraphs 50 to 52 below.

32. It was therefore considered that the survey provided further supporting evidence that there was very little competition, either overall or for 'other businesses', between GWR Bristol and Bath and Galaxy 101 (and between Orchard and Galaxy 101), reflecting the fact that as a regional station with a youth focus Galaxy 101 was not an effective medium for targeting local advertisers in Bristol and Bath (or Taunton and Yeovil), and that local radio stations could not offer regional coverage nor the regional, youth focus of Galaxy 101. GWR's view was that the survey provided further supporting evidence that there was very little competition between GWR Bristol and Bath and Galaxy 101, and between Orchard and Galaxy 101, reflecting the fact that as a regional station with a youth focus Galaxy 101 was not an effective medium for targeting local advertisers in Bristol and Bath or Taunton and Yeovil, and that local radio stations could not offer regional coverage nor the regional, youth focus of Galaxy 101.

33. The limited station price sensitivity which was reported would reflect, in GWR's view, substitution from GWR Bristol and Bath's customers, in particular to Bath FM and Star 107.3 (Bristol), and as such price substitution from GWR Bristol and Bath to these stations would be understated across the combined (largely non-overlapping) customer bases of Galaxy 101, Orchard and GWR Bristol and Bath.

The alternative 'evidence' from the survey of competition between GWR's stations and Vibe 101/Galaxy 101

34. The CC first stated that 'Evidence of switching in the survey appears to confirm that advertisers did switch between radio stations in response to pricing, suggesting that local radio advertising can be regarded as a separate market'. Before commenting on the only two specific items of evidence referred to by the CC, it was worth pausing for a moment in relation to this statement. GWR submitted that this statement had no logical relationship to the question of whether local radio stations faced competition from other media. In addition, the points referred to in this sub-section of the CC's letter in fact further supported GWR's conclusion that its stations, Classic Gold 1260 AM and Galaxy 101/Vibe 101, were not competing stations from the perspective of local 'other businesses' advertisers.

Usual to seek rates from stations not used

35. The CC referred to only two pieces of 'evidence' of competition between GWR's stations, Classic Gold 1260 AM and Vibe 101. The first of these related to Question 9, which asked whether it was usual or unusual for advertisers which targeted particular areas to contact stations that they did not use and which broadcast in or around the relevant area.

36. GWR found it unremarkable that 53 per cent of those targeting Cardiff and Newport usually contacted other stations broadcasting in and around this area about their rates (52 per cent of non-agency advertisers), and 35 per cent of those targeting Taunton/Yeovil and Glastonbury (37 per cent of non-agency advertisers). This further corroborated GWR's view that other radio stations covered by the survey were not generally a viable and cost-effective choice for local advertisers in these areas, with the majority of advertisers indicating that it was unusual to seek rates in Bristol/Bath and Taunton/Yeovil. Indeed, having answered this question over half of those surveyed (excluding don't know) then went on in the following question (Question 10) to say that they had no choice of station and to indicate that having rejected a station, their choice of station was not price sensitive.

37. In short, there was no evidence from the survey that the fact that some advertisers 'usually' sought knowledge of rates on other stations translated into a high proportion of advertisers indicating that they had any choice between stations or price sensitivity as regards use of station among non-agency 'other businesses' advertisers. Accordingly, GWR did not understand how the CC could use this data to conclude that the merger reduced 'the choice of competing stations from which to seek alternative rates, and use them in negotiating with GWR'.

38. In GWR's view, the second point made under this heading by the CC might well be correct; less effort may well be expended to establish other stations' prices where there were fewer other local stations. However, since Vibe 101 was active across the entire Severn Estuary region, its presence in a locality was not the decisive factor in this regard—it was the existence of local stations which would appear to be relevant. Moreover, this local radio station competition was self-evidently increasing with the entry and expansion of new local stations, as described in GWR's various submissions.

39. In GWR's view, the fact that the CC was able to reach such conclusions (that is, first that local radio advertising was a separate market and second, that the choice of competing stations was reduced) from the above evidence was very surprising.

Switching into/out of Galaxy 101/Vibe 101

40. The CC's second piece of 'evidence' of competition between GWR's stations and Galaxy 101 related to several linked points concerning switching expenditure into or out of Galaxy 101. GWR found the CC's presentation of this material incomprehensible.

41. First, the CC observed the fact that '17 per cent of Galaxy/Vibe 101's users had switched'. In fact, this was not even the question that was posed. Question 19 asked respondents whether they had 'ever switched any advertising expenditure into or out of Galaxy/Vibe 101 when moving from one campaign to the next in the last 2 years'. It was a question not of users of Galaxy 101/Vibe 101, but of the entire survey base of the 200 advertisers using GWR's stations and Galaxy 101/Vibe 101. In response to the question, 82 per cent of respondents indicated that they had not switched into or out of Galaxy 101/Vibe 101 in the last two years. This result was unsurprising, as the vast majority of the customers of GWR's stations, which would presumably make up the majority of those surveyed, did not use Galaxy 101/Vibe 101. 85 per cent of non-agency 'other businesses' indicated that they had not switched any expenditure into or out of Galaxy 101/Vibe 101.

42. Moreover, GWR was very surprised that the CC did not even note in passing that:

(a) 85 per cent of non-agency 'other businesses' indicated that they had not switched any expenditure into or out of Galaxy 101/Vibe 101. Accordingly, it must be the case that virtually none of the local advertiser customers of GWR's stations surveyed had switched any advertising expenditure into or out of Vibe 101.

(b) Given the CC's interest in local competition in Taunton/Yeovil and Bath/Bristol:

(i) in Taunton/Yeovil/Glastonbury, 100 per cent of those targeting only this area had not switched any expenditure into or out of Galaxy 101/Vibe 101; and

(ii) in Bath/Bristol/Weston-super-Mare/Trowbridge, 91 per cent of those targeting only this area had not switched any expenditure into or out of Galaxy 101/Vibe 101; and

(c) of the 34 advertisers which said that they had switched, 12 per cent then responded to the follow-up question (Question 20) by indicating that the number of times that they had switched was ‘not at all’—ie they had incorrectly indicated that they switched when they had not.

43. The unavoidable conclusion from the above analysis was that competition from Galaxy/Vibe 101 had no bearing on the advertising expenditure decisions of the vast majority of GWR’s advertisers by number of advertiser.

44. The CC then went on further to state that the degree of switching was significantly lower by value. The number revealed in Chart 26 was that those advertisers switching represented only 9 per cent of the sample surveyed by value. In other words, the degree of switching was even more trivial in financial terms than by number of advertiser—ie 83 per cent by number and 91 per cent by value of respondents indicated that they had never switched expenditure into or out of Galaxy 101/Vibe 101. The CC then stated that ‘the proportion of advertisers switching or threatening to switch to or from Galaxy is significantly lower by weighted value; possibly implying that it is smaller, local advertisers who are most vulnerable’. In GWR’s view, the difference between 83 and 91 per cent can hardly be regarded as ‘significant’, other than 91 per cent value figure serving to demonstrate that any theoretical financial benefits to GWR of any hypothetical discrimination would be even smaller.

45. The CC’s second point with regard to switching was that ‘a *further* 10 per cent had threatened to switch’ (emphasis added). The ‘further’ was again simply wrong. Question 20a was of the entire sample base of 200, with no caveat being added that such a threat must not have been exercised, and of these 88 per cent said that they had never threatened to switch and 92 per cent of ‘other businesses’ advertisers also gave this response.

46. The CC’s third point was that of those switching some three-quarters had switched to other radio stations. A serious problem with this was that the specific question asked about the last time advertisers switched advertising spend into another radio station or another type of advertising medium (Question 21). This was a leading question since the first option, and that most clearly stated, was ‘another radio station’, and it did not mean that other options were not viable if radio prices were generally to increase unjustifiably. Moreover, as the CC correctly noted, the sample size in relation to Chart 29 and Chart 30 was low—only 21. Nevertheless, not one advertiser targeting only Taunton/Yeovil/Glastonbury gave this response, and only one of those targeting just Bristol/Bath etc. The comments about ‘price’ being a key factor to the switching decision in relation to those few responding to this question was also impossible to interpret since any question which identified this as the first prompted factor read out would emphasize this factor in the response. The question also did not indicate that the price of the other radio station was being referred to (as opposed to other media), and price covered every dimension of value for money (for example, tried Galaxy/Vibe 101 and found it insufficiently targeted to reach desired audience due to youth focus and/or coverage area).

47. GWR was at a loss to see how the CC could realistically place reliance on such a small sample of respondents providing this type of answer, particularly in the light of the fact that over 50 per cent of ‘other businesses’ advertisers across the sample as a whole indicated that they had no choice of station and that their choices were not price sensitive.

48. The CC concluded that the various points made in the letter and discussed above might be ‘further evidence that the overlap between advertisers and categories of advertisers is a reason not to regard Galaxy 101 and the two stations as servicing different markets and of competition or potential competition between them’. The fact of the matter was that, as noted above and in GWR’s various submissions, there was only marginal overlap between the local advertisers using GWR’s stations and Galaxy 101/Vibe 101. Given that there was very little actual advertiser overlap, it was highly implausible to conclude that a significant proportion of any category of advertisers (however defined) had been using the stations to play one station off against another, since the overlaps would as a matter of logic also reflect those using different stations to reach different geographical areas and audiences in a complementary manner (with complementary being used in this context to refer to the economic context).

49. As to overlaps in the ‘category’ of advertiser, GWR failed to see how this could be interpreted as evidence of competition and substitutability. For example, SRH would also serve motor dealers in Scotland in the same way that GWR served motor dealers elsewhere. This revealed nothing about whether the ‘other businesses’ advertisers in question were sensitive to prices of the stations serving different geographic areas. Particularly in the light of the points made above, GWR did not understand

how the CC could conclude that very low levels of switching between GWR Bristol and Bath and Galaxy 101 and between Orchard and Galaxy 101 could possibly indicate that they were close substitutes for local ‘other businesses’ advertisers, particularly given the only marginal overlaps in actual advertisers (see above).

Ceasing to use local radio in response to a 5 per cent price increase

50. GWR was invited to comment on the evidence from the survey that for a rise in price of up to 5 per cent, 8 per cent would switch to another station—less than those who said that they would cease to use radio advertising at all in response to such a price increase. It was suggested that it might be unlikely (given other factors such as the different characteristics of radio and other media) that substitution within radio would be less than substitution between radio and other media, suggesting that the degree of switching to other media was overstated in response to our survey.

51. GWR noted the point previously made that in making the reference the DGFT was willing to conclude that in Bristol and Bath (but not Taunton and Yeovil) two very different radio stations were close substitutes (ie the various qualitative differences identified by GWR and advertisers were irrelevant and rendered these stations complementary rather than competitive), whereas other alleged qualitative differences between media rendered them wholly complementary and non-substitutable for radio advertising. Surely the purpose of the survey was to assist in market testing these propositions?

52. The survey in fact found very substantial price responsiveness between radio and other media and very low substitutability between stations—a 5 per cent increase in the price of a radio station chosen triggered only 6 per cent switching by ‘other businesses’ to another station but 61 per cent of ‘other businesses’ advertisers would respond to a price increase across all radio stations by changing their pattern of advertising (with all of these changes reducing revenue spent on local revenue) (Question 10). Question 10 also suffered from the bias discussed on many occasions that no ‘change in pattern of advertising’ did not mean spend more on radio. GWR freely admitted that there was another bias in that such questions might overstate price responsiveness, but if it was overstated by Question 33 it would also be overstated by Question 10. In short, the only sensible conclusion was that the survey demonstrated that competition from other media was considerably more important than competition between GWR’s stations and Galaxy 101/Vibe 101. GWR was at a loss as to why this obvious conclusion was not even identified as a theoretical possibility.

Supply-side factors

53. GWR was invited to comment on whether supply-side factors, including the different identity of the suppliers, might also suggest that local radio advertising was a separate market—namely, although there were cross-shareholdings between media, there appeared to be little cross-selling or other synergies as a result. SRH, for example, had divested its posters business and SMG, its largest shareholder, was divesting its newspaper business. GWR and DMGT said that there was little day-to-day involvement of the two businesses, and no synergistic benefits between the two—indeed GWR told us that there were no such successful relationships in the world.

54. GWR replied that the CC’s statement that there was ‘little day-to-day involvement’ was a vast understatement—there was no day-to-day involvement between GWR and DMGT and no competitive coordination at any level. GWR’s point was that such coordination was precluded and rendered infeasible due to the effective competition between radio and other media that existed.

55. GWR had not advanced a single argument that there was substantial supply-side substitutability between other media and radio stations, but the CC might wish to note that Emap had both radio station and newspaper interests, as did SRH.

56. However, GWR failed to understand the relevance of this point. For a market to be defined more widely, all that was required was either demand-side or supply-side substitutability, not both. If the CC wished to conclude that lighters competed with matches or whatever as they were close substitutes from the perspective of consumers, there was self-evidently no additional requirement that they were made on the same machines.

Radio stations' competitive advantages

57. Finally, GWR was invited to comment on whether GWR had a competitive advantage as a heritage station. It said that the CC's statement of some sort of inherent 'competitive advantage' held by 'the GWR stations' was, in GWR's view, misleading. As a result of the regulatory regime governing radio, the formats of GWR Bristol and Bath and Orchard were designed to appeal to a relatively wide cross-section of audience. However, they lacked targeting, and it was targeting that advertisers desired in order to advertise cost effectively. For example, Ivel, BCR, Bath FM, Star 107.7 (Weston-super-Mare) and Star 107.3 (Bristol) were all very targeted (and growing rapidly) new local stations with the advantage over the larger local stations that they could appeal to specific local audiences. In addition, none of these observations were consequences of the merger.