6 Views of other parties

Contents

Page

Introduction 101
The Radio Authority 101
British Broadcasting Corporation 102
Mr H Cohen MP 102
ILR and INR stations 102
  Choice FM 102
  Chrysalis Radio Ltd 103
  EMAP Radio Limited 105
  Essex Radio plc 105
  GWR Group plc 105
  London Jazz Radio plc 107
  Melody FM 107
  Scottish Radio Holdings plc 108
  Talk Radio UK Limited 108
  Thames FM Limited 109
  UKRD Group Ltd 109
  Xfm Ltd 110
Programme and news suppliers 112
  Chairman of Independent Radio News Ltd 112
  Metro Networks (UK) Limited 112
  Unique Broadcasting Company Ltd 113
The Radio Advertising Bureau Ltd 113
The Advertising Association 117
The Incorporated Society of British Advertisers Ltd 117
The Institute of Practitioners in Advertising 118
Advertising agencies 118
  Ammirati Puris Lintas Ltd 118
  ARC Advertising 119
  BBJ Media Services 119
  C D Sales & William Read Publishing 119
  CIA Medianetwork UK Limited 119
  Curtis Hoy 120
  Drum PHD Limited 120
  Expert Media Ltd 120
  Griffin Bacal Advertising 121
  Initiative Media London Limited 121
  John Ayling & Associates Limited 121
  J Walter Thompson Company Ltd 121
  Manning Gottlieb Media Limited 122
  Matters Media Ltd 122
  MBS Media 123
  MDV Media Limited 123
  MediaVest Limited 123
  New PHD Limited, AMV BBDO Ltd and AMV plc 123

Ogilvy & Mather Ltd 124
Optimedia UK 124
Pure Media 125
Saatchi & Saatchi Group Ltd 125
TDI Advertising Limited 126
TMD Carat Advertising Limited 126
Warman & Bannister 127
Zenith Media Services Ltd 127
Others 128
Advertisers 131
Allders Department Stores Limited 131
British Sky Broadcasting Ltd 131
The Carphone Warehouse Limited 132
Chessington World of Adventures Ltd 132
Eurostar (UK) Ltd 133
Express Newspapers plc 133
Fort Sterling Limited 133
Guardian Newspapers Limited 133
H P Bulmer Limited 134
Kingsway Scotland Ltd 134
Kraft Jacobs Suchard Ltd 134
Leopard Sport Ltd 134
The Media Slice 135
Perry Publications Ltd 135
Polygram Record Operations Ltd 135
Procter & Gamble UK 136
SJM Ltd 136
Solo 137
Uno plc 137
Weatherglaze PLC 137
Weetabix Limited 137
Westbay Distributors Limited 137
Yellow Pages 138

Introduction

6.1. This chapter summarizes the written and oral evidence submitted to us by the RA and other radio industry bodies, ILR and INR stations, programme and news suppliers to radio stations, advertising organizations, advertising agencies and advertisers.

The Radio Authority

6.2. The RA made a written submission and attended a hearing. It told us about the regulatory framework within which it worked; independent radio in the UK and Greater London; and the growth in commercial radio advertising revenues. In addition, referring to the intersection between its functions and those of the UK competition authorities, the RA explained its approach in considering the public interest under paragraph 12 of Part III of Schedule 2 of the 1996 Act. It took the view that such consideration formed part of its licensing functions and that it therefore had, under section 85(3)(b) of the 1990 Act, an overarching duty to ensure fair and objective competition in the provision of independent radio services and services connected with them. However, in cases involving one or more of the UK competition authorities the RA would normally see no reason to undertake its own competition investigation, indeed this might well prove counter-productive. In the event of an MMC reference the RA would not normally reach a final determination on competition before the publication of the MMC's report and announcement by the Secretary of State of her decision on the case. The RA would then normally expect to make the same decision on competition.

6.3. The RA said that this was the approach that it had adopted in the case of Capital's proposed acquisition of Virgin. In making public its preliminary assessment on 17 July 1997, the RA had stated

that it had no material concerns in respect of the ‘plurality and diversity’ matters set out in the 1996 Act, although it had expressly reserved its position on the effects of the proposed acquisition on competition. The RA would need to consider the competition implications of the proposed acquisition before reaching a final public interest determination. However, the RA did not contemplate that it would reach a different determination from that of the MMC or the Secretary of State on this issue.

Growth in commercial advertising revenue

6.4. Independent radio had witnessed a dramatic increase in its share of advertising revenue over the past five years, almost doubling its share of total display advertising revenue in the UK to 4.7 per cent. It was currently the fastest growing display advertising medium, with revenue expected to continue to increase, albeit at a slower rate, over the next few years. This increase was largely attributed to the establishment of the RAB, the launch of new services (particularly the national radio stations), a general upturn in the economy and the consolidation of buying points for radio sales.

DAB

6.5. The 1996 Act had placed new responsibilities on the RA to regulate digital terrestrial sound broadcasting (or digital radio services). These services consisted of radio multiplex services (the transmission operator), digital sound programme services (audio radio services) and digital additional services (text and other data). Digital radio, with its offer of CD-quality sound, new innovative services, the ruggedness of its reception and its ability to enhance the radio experience through added text and other data, presented an attractive and challenging option for existing and new commercial radio players. Despite these obvious advantages and consumer selling points, the future of digital radio was unpredictable, with significant start-up costs and the dilemma of providing services without the early availability of affordable receivers and thus listeners.

British Broadcasting Corporation

6.6. The BBC did not wish to make any representations on the proposed acquisition.

Mr H Cohen MP

6.7. Mr H Cohen, MP for Leyton and Wanstead, said that the proposed merger should be allowed. There were already many independently-owned radio stations in London, and restricting them by size would not encourage investment or quality. Growth potential accompanied by proper technological investment should be allowed for such stations. Although London based, Capital had the potential and aspiration to have a national output in some form. It was better that that was done via the Virgin network than by a competing project. The merger would effectively create an extra radio station because Virgin FM and Virgin AM would be programmed differently from each other. Significantly, Capital had expressed its intention, should the merger go ahead, to rise to the digital challenge by investing in the multiplexes and necessary systems. This would be a huge boost to pushing forward digital radio.

ILR and INR stations

Choice FM

6.8. Choice runs two radio stations, in London and Birmingham. It told us that the radio spectrum was a scarce resource. The RA had a complicated task and carried out its duties conscientiously, but tended to ‘play safe’. Recently Choice had applied for the last London-wide FM licence, awarded to Xfm. Choice felt that the RA’s decision had failed to meet its requirement to promote diversity in radio services. It also meant that smaller stations like itself, which played urban contemporary music and relied on advertising revenue generated by companies which wanted to reach its listeners, were

passed over in favour of larger and perhaps more influential companies. This situation would be exacerbated by the merger—it would result in even less diversity of output and further market distortion. Choice was being squeezed between the 'big boys' and the pirate stations.

6.9. Choice was particularly concerned about the impact of the merger on advertising revenue. It said that the merged entity would have particularly strong bargaining 'clout' in the radio advertising market. There were already signs of imperfections in the market. Choice said that media buyers on behalf of the Government had used Capital for an advertising campaign which would have been better directed at potential users of a pilot scheme operating in Wandsworth, which was in Choice's broadcasting area. This problem was likely to be exacerbated by the proposed merger.

6.10. As an advertising medium, Choice was a key element in the growth of ethnic minority and small and medium enterprises. It was very good at attracting young adults, not just from ethnic minorities, and was an effective way of communicating with a social group which was particularly difficult to reach. If its advertising revenue fell it would not be able to continue with its community activities, for example on behalf of local charities.

6.11. A further important aspect was the development of DAB and its impact on competition. It was difficult to forecast with any precision how matters would develop, Choice told us, but there was a risk that the bigger stations with London-wide licences would be able to stand the cost of introducing DAB at the expense of smaller companies. Again, the proposed merger was likely to exacerbate this problem.

Chrysalis Radio Ltd

6.12. Chrysalis believed the proposed merger would result in an undesirable and unacceptable reduction in competition, particularly in the London radio market, and be against the public interest as defined by section 84 of the Fair Trading Act. It would lead to further distortions in the operation of the relevant markets and produce greater disbenefits than benefits for advertisers, competitors and listeners.

6.13. Chrysalis believed the main consequence of the proposed merger would be a rise in future in the market share of the combined group and that this would be detrimental to the markets concerned, but particularly so in London where Capital's already dominant position would be greatly enhanced. Capital's net weekly adult reach in London would increase from 36 to 40 per cent.

6.14. Capital's enlarged share of London-wide local commercial listening would rise from about 49 to 55 per cent. More crucially, however, Capital's share of commercial revenues in the market would rise immediately from 70 to 75 per cent, with an expectation that this would continue to rise towards 80 per cent. The consistently high CPTs commanded by Capital could be noted as an explanation for the fact that its share of revenue had persistently remained ahead of its share of listening.

6.15. Chrysalis told us that it was not the number of competing stations which was the key determinant, but the number of stations which offered meaningful competition to Capital FM. Most London commercial stations could therefore be ignored in this respect. Virgin FM was one of five 'second division' stations, another of which (Capital Gold) was already owned by Capital. The proposed merger would fragment the other 'second division' competitors—Heart, Melody and Kiss 100 FM—and put them under greater pressure.

6.16. Capital planned to increase coverage and hours after the merger. Its share of audiences and revenue could be expected to rise further and would diminish the capacity of other stations to compete. Chrysalis was concerned that, whereas advertisers could see that Virgin FM and Heart were beginning to build cover against Capital FM, switching Virgin FM to Capital's sales organization would squeeze competing stations.

6.17. Chrysalis believed the competitive situation would change for the worse because Capital's aggregate listenership and weekly hours would be greatest in the same 25- to 44-year-old target audience as Heart. From a situation where Heart and Virgin FM competed with Capital and were offering an alternative for advertisers, Capital would suddenly be much stronger in Heart's core demographic.

6.18. As a consequence of spectrum congestion and regulatory requirements relating to licensing, entry barriers were high for potential new players. There was therefore little likelihood of any short- or medium-term dilution effects to mitigate the anti-competitive impact of the proposed merger in London where the FM band was effectively full. Chrysalis told us that there was a small degree to which radio advertising and other forms of display advertising media could be regarded as substitutes for each other and therefore part of a single market. Radio advertising had a number of unique benefits which could not be replicated by other media. Chrysalis therefore argued that radio advertising was a discrete market. Chrysalis therefore perceived Heart's major competitors to be other London-wide radio stations, not commercial television, local newspapers, consumer magazines or other media.

6.19. Chrysalis was concerned about Capital's proposal to separate fully Virgin's AM and FM services. If Virgin FM was marketed and sold as a stand-alone entity it would cause a significant increase in the supply of commercial minutage in the London market. The addition of a third London station to Capital's sales organization and an increase in the supply of airtime minutage at its disposal would allow Capital to manipulate its sales policies in the advertising market to the detriment of its competitors and could precipitate fierce competition for revenues. Capital's sales organization would be able to act more forcefully and perhaps anti-competitively. At one extreme, Capital might choose to price Virgin FM very competitively against other stations to try to force down their prices, while keeping its own rates high. This could prove damaging to Heart. At the other extreme, Capital might choose to use Virgin FM as a 'price regulator' to help it to maintain artificially high rates.

6.20. In addition, the amalgamation of sales points for Capital and Virgin could potentially encourage conditional selling, a practice which was difficult to prove. Overall, Chrysalis expected that Capital would increase the yield from Virgin FM's commercial minutage by substituting higher value London-only minutage for the lower-value add-on packages which currently occupied most of the station's airtime. This process would increase its profits.

6.21. Chrysalis believed Capital would seek to minimize the extent of competition between its three stations. Capital would also focus its programming and marketing efforts on attacking competing stations. This, Chrysalis believed, could damage Heart's competitiveness and adversely impact on its revenues and profitability. Given the high operational gearing traditionally associated with radio businesses, profits tended to increase quickly once fixed overhead costs were covered, but could fall quickly if revenues shrank beyond the same critical point. Very few London stations were profitable at present, and the resources available to withstand a further competitive onslaught from Capital were severely limited. Heart had committed significant sums to marketing since its launch, and might have no choice but to commit additional funds to defend its existing market share. The combined effects of losses in revenue consequent upon a more adverse competitive environment and the need for increased marketing spend to defend its audience market share could prolong Heart's loss-making position, leaving it less able to achieve the requisite rate of return on Chrysalis's substantial investment.

6.22. In 1996 Virgin FM had engaged in an aggressive marketing campaign in London directed principally at Capital FM. This campaign had been reinforced by below-the-line activities and on-air promotions, particularly in the form of large on-air cash prizes. Spending on this scale was not possible for Chrysalis or other London competitors. Chrysalis believed that Capital, having acquired Virgin, would focus its promotional spend on attacking its remaining competitors.

6.23. Chrysalis said that Capital's proposal to withdraw from national sales representation for non-Capital stations did not adequately mitigate the adverse impact on competition of the proposed merger. Capital's share of 'direct' national advertising would increase as a consequence of the reorganization of its sales operation and the absorption of sales for Virgin's two stations. Capital Advertising would, for the first time, sell national airtime for Capital group stations outside London, achieving a degree of horizontal integration which would increase its power in local markets. It would also inherit the sales representation for Newslink, which offered premium airtime to advertisers on a large number of commercial stations with no connection to Capital, including Heart and all other Chrysalis radio stations, all of which currently used the Newslink service.

6.24. Any alleged benefits for advertisers from the dismantling of MSM were illusory. Capital's control of the key programming, marketing and sales levers, particularly in the London market, would negate any suggested gains for advertisers. The proposed merger would reduce the number of London

sales points by one and increase Capital's share of the market. The impact of this would be made greater by an increase in Virgin FM's London airtime, giving Capital greater supply-side pricing power and revenue-earning capability. Chrysalis said that it was not the number of competitors which was relevant, but the number of sales points capable of giving advertisers the cover they wanted at a price they were prepared to pay. Having to buy advertising on several stations from different sales points would not be as attractive to advertisers as buying Capital FM, Capital Gold and/or Virgin FM from one sales point.

6.25. Chrysalis noted that the OFT had recognized the desirability of setting a ceiling on the share of revenue accounted for by a single sales organization. Although it might not be feasible to unravel Capital's businesses to reduce its share of national revenue to the 25 per cent level set for the sale of television advertising, Chrysalis could see no reason why it should be allowed to increase further. Chrysalis therefore urged that the proposed merger be refused.

6.26. Chrysalis told us that any arguments advanced by Capital and Virgin in respect of national DAB, and the resources required for investment in this new technology, did not require the addition of a second licence in the London market. The issues of the launch of DAB and the acquisition of Virgin should be considered separately. The acquisition of Virgin would guarantee Capital a digital frequency allocation, but Chrysalis believed that as part of the price of achieving this, Capital should not be allowed to acquire a major competitor in London. Chrysalis thought this would be a significant threat to Heart and other stations in the market place.

EMAP Radio Limited

6.27. EMAP Radio said that the combination of Capital and Virgin would enjoy a dominant position in radio advertising which could not be matched by any other radio group because of current radio ownership regulations. EMAP Radio did not oppose Capital's acquisition, but urged a change in the ownership rules whereby a company could control no more than 15 per cent of points in the points system, or 112 points. The acquisition of Virgin would make Capital the largest radio company by far in terms of turnover, profit and number of listeners, but not in terms of ownership points, where it would be the third largest, and well short of the limit. GWR and EMAP Radio were close to the ownership points limit.

6.28. If turnover, profit and listening share were divided by ownership points, Capital had about 50 per cent or more of turnover, profit and listening share for its points, compared with EMAP Radio, GWR and SRH. This was because the ownership points system for radio did not adequately account for share of audience or advertising, as the ownership rules for other media did. This showed the dominance of the Capital/Virgin combination and the inequity of the current system. Capital's strength would affect EMAP Radio in the national advertising market place, where most of Capital's and all of Virgin's turnovers were national revenue. The ownership points system prevented any other company from matching Capital's position, and thereby distorted competition in the radio market.

Essex Radio plc

6.29. Essex Radio plc (an associate company of Capital) told us that it saw no difficulty in the proposed acquisition and that it would not endanger competition or the quality of the stations concerned. The total competitive market was rather more than radio itself and Capital's segment was only a part within the broader sector of media and information processing generally. The issue was not so much about radio groups bidding within the commercial radio sector, but the enormous strengths required to compete with the BBC. Thus, strong radio groupings were valid and necessary.

GWR Group plc

6.30. GWR has 34 local licences in the Midlands, East Anglia and central and southern England, and the only national commercial FM station, Classic FM. It also has a significant minority holding in London News Radio. It told us that it had been closely involved with the development of commercial

radio since 1983. Capital held 13 per cent of GWR's equity.[1] However, GWR said that Capital was a competitor and that the holding had in no way influenced its views. GWR believed the proposed acquisition was in the interests of listeners, advertisers, the commercial radio industry and the overall UK media market.

6.31. GWR said that in the 24 years since Capital went on air there had been substantial growth in the industry. However, commercial radio's share of advertisers' budgets was still only 4.7 per cent on a national basis. Given the strict regulatory regime governing the radio industry in the UK this was a considerable achievement, indicative of the enthusiasm which listeners and advertisers had for the medium. In addition, commercial radio's audience share had recently overtaken that of BBC Radio. However, commercial radio in the UK was a late developer and its full potential lay considerably beyond 4.7 per cent.

6.32. Other media (television, national and local press, magazines, outdoor and cinema) had developed over a much longer period than commercial radio. They had developed through new entrants, mergers, acquisitions, disposals and failures. Commercial radio in the UK was a tiny medium and if it was to realize its potential, and in so doing make the all-media market more competitive, it must be expected to seek similar development routes to those of other media.

6.33. GWR believed the future of the UK commercial radio industry depended upon its ability to compete with other media. This required investment in the development of broader and deeper choice for listeners and advertisers on a local and national scale. The proposed acquisition would contribute to this.

6.34. In GWR's view, commercial radio was not a discrete media market. It was one of a growing number of options available to advertisers and was in competition with other media for advertising budgets. If the media proposition offered was unattractive, an advertiser would evaluate competitive media to find a suitable alternative. The London media market place, in particular, was very competitive.

6.35. GWR said that the development of commercial radio in the UK had brought many benefits to listeners and advertisers. There was a greater range and choice of programming, and minority audiences were being catered for. These developments enabled advertisers to reach the audiences they wanted more cost-effectively. This had made the UK media market more competitive.

6.36. The RA's policy on operator selection for new licences fulfilled a valuable role in encouraging diversity and originality. The stronger, more successful, established operators in the industry had much to offer listeners and advertisers in this regard. The development of the radio industry could only be continued if these operators were able to extend their broadcasting and marketing skills over a broader canvass. Sometimes this was only realistically possible through mergers and acquisitions.

6.37. Capital had successfully implemented an effective marketing strategy. Its advertising airtime was as price-elastic as the time and space of all other London media; if the price was too high, advertisers would move elsewhere within radio or to other media. Radio, or a particular station, was not indispensable to any advertiser. The London media market was too efficient. GWR stressed that it had no reason to believe that Capital, or indeed any other radio station, had ever taken part in anti-competitive or otherwise undesirable sales practices.

6.38. Capital proposed to differentiate Virgin's stations. This would increase advertising airtime on Virgin FM and the competitiveness of the London media market. Capital had also stated that the proposed merger would pave the way for the necessary substantial investment in DAB. GWR said that it was committed to the development of DAB and welcomed the intention of Capital to become similarly committed.

6.39. The proposed acquisition would not be deleterious to competition within the London commercial radio market, GWR told us. It believed Capital's share of the London audience would be no higher, post-acquisition, than it had been over recent years, since the launch of Xfm was likely to have some effect. Overall, a strong, diverse and innovative radio medium had the potential to satisfy many

[1]Capital subsequently disposed of this holding in September 1997 (see paragraph 3.11).

more listeners' needs and tastes than at present, and would create more competitive options for advertisers.

London Jazz Radio plc

6.40. London Jazz Radio plc, which broadcasts as Jazz FM, told us that it did not believe the proposed merger would operate against the public interest.

Melody FM

6.41. Melody, which is owned by Hanson plc, opposed the merger. It said that Capital already had a dominant position in the commercial radio industry. That dominance would increase and become monopolistic if the merger went ahead. This would harm radio enterprise, the service to listeners, and distort the advertising market, just at the time when radio in London was finally beginning to deliver the standards and variety of service the 1990 and 1996 Acts had been designed to achieve.

6.42. The proposed merger would reduce choice for listeners and advertisers. Capital was attempting to regain the powerful position it had once held and which the RA's award of new licences in 1990 had been designed to challenge. In the early 1970s Capital had enjoyed a uniquely privileged position. Its London franchise for general entertainment only, without requirement for costly speech programming unlike other stations, had been designed to produce a 'cash cow' to kickstart and support the development of the commercial radio industry. Now listeners were reaping the benefits of a more mature industry. By acquiring Virgin, Melody believed, Capital could regain control of the London market and marginalize or drive other radio operators out of business.

6.43. Melody also believed the proposed merger would increase the cost of radio advertising. If Capital acquired Virgin AM, which was potentially the most popular national commercial format, it could manipulate advertising rates at the national, as well as the London, level. The proposed merger would also exclude smaller companies from radio advertising. Commercial radio provided a lower-cost advertising medium. It was likely that if Capital had an overwhelming control of advertising airtime in London, radio would become too expensive for smaller companies.

6.44. The proposed merger would also result in unacceptable control of radio advertising. In commercial television the ITC had imposed a global limit of control of advertising sales by any one group, and the same principle should be applied to the radio industry. Capital already controlled some 65 per cent of all London radio advertising on its two frequencies. Melody believed the RA's powers should be clarified, so as to prevent similar monopoly positions from developing in the future.

6.45. The award of the AM licence to Virgin had brought a significant new player and an established major brand to commercial radio. However, poor reception of Virgin AM had prevented it from achieving the audience and thereby advertising revenue essential for it to mount an effective challenge to Capital. Melody said that, having established a strong base, which Virgin had claimed was necessary to combat Capital and survive, the proposed merger, by Virgin's own admission, would contribute to creating a potentially powerful company, capable of riding roughshod over other radio programme services.

6.46. The acquisition of Virgin would give Capital the most popular of the available national formats (in addition to the most popular format in local areas), as well as an automatic right to a DAB frequency for the national service. It would have four services in London with popular formats that it could offer advertisers. This could enable it to manipulate rates to the detriment of other operators. Other commercial radio operators could lose advertising revenue and this could in turn reduce investment in their services. Consumers would then suffer with poorer services and less choice.

6.47. Melody told us that there were a finite number of radio frequencies in any one area, so choices for listeners and opportunities for providers were inevitably restricted. If Capital acquired Virgin, consumer choice would be further affected in London.

6.48. Radio frequencies varied in quality. Consumer selection was curtailed by poor reception. Radio providers were unable to get fair or equitable distribution. Control of two of the best London frequencies would be in the hands of one operator if the merger went ahead, reducing access for competitors.

6.49. Commercial radio services were awarded licences for eight years at a time and had fixed promises of performance. Stations had a limited time in which to establish themselves and might be unable to adjust to changed market conditions so that they could offer listeners a better service. New services required substantial investment at start up and needed to make their mark quickly in order to attract advertising revenue, upon which their continued existence and development depended. In Melody's view, if the acquisition went ahead it would make it more difficult for new services to establish themselves and would undermine a market which was still in its infancy, to the detriment of listeners. Also, Capital would be building on its dominance of the London market.

6.50. New services were the most vulnerable, and if Capital acquired Virgin it would make emerging market choice difficult to sustain. In adapting to a developing industry, existing operators had evident advantage. The experience of long-serving broadcasters gave them the natural upper hand over the influx of the new, which had to find their feet rapidly in order to survive. In London most of the new licensees had found the going tough, especially as additional frequencies had been released at the start of the recession. Many had been reduced to relinquishing their services to new owners.

6.51. With the end of the requirement for simulcasting the same service on FM and AM allocated waveband frequencies in 1988, commercial radio broadcasters were given the opportunity, without competition, to offer two distinct services. Naturally they had chosen those formats that would be most cost-effective and the most popular. If the acquisition went ahead, Capital would be able to operate four services across London, further reducing competition.

6.52. Melody said that the 1990 Act had permitted commercial radio broadcasters to propose services which would appeal to specific sectors of an area's population. In awarding such licences, the RA had to take into consideration the services already available in an area and licensed those that would add to diversity. With the broad service formats already provided by extant operators, new providers had to offer services of less mainstream appeal. With Virgin therefore, Capital would control a dominant part of listeners' available choices.

Scottish Radio Holdings plc

6.53. SRH wholly owns or has interests in ILR stations, Scottish Radio and weekly newspapers in Scotland and Northern Ireland. It considered the proposed merger to be in the interests of the whole radio industry. Commercial radio had grown substantially over the years across the UK and within closely defined geographical areas. Although radio's revenue had grown, it was still dwarfed by other media, particularly television and press, with which it competed. For commercial radio to continue its growth and support of institutions such as the RAB and IRN, the sector had to have a number of strong groups with sufficient scope for growth. Unless this was allowed, the forward momentum radio had experienced over the last few years would cease, the industry would fragment, necessary support systems would be lost and radio would become a fringe medium.

6.54. SRH said that it was important that companies had sufficient freedom to grow within the sector for the benefit of listeners and shareholders. The BBC's services were distinctive because it was not in the interests of the BBC to cannibalize its own audience. This benefited listeners. Equally, diversity of output in commercial radio was achieved by more concentrated ownership within reasonable parameters. The less audiences were duplicated across stations, the better it was for advertisers. In any event, there were countless advertising alternatives to Capital and Virgin.

Talk Radio UK Limited

6.55. Talk told us that if the proposed acquisition went ahead it would adversely alter the structure of the radio advertising market, to the detriment of Talk AM. There were robust commercial arguments against the proposed acquisition in order to guarantee the financial health and wellbeing of the rest of the radio industry.

6.56. Together, Capital and Virgin would account for around 70 per cent of total London radio advertising revenue. This would represent a significant increase in concentration of market power which they would not fail to take advantage of. Although they would probably give assurances that conditional selling would not take place, it was likely that bonuses, or other incentives, would be used (this already happened with Capital FM and Capital Gold). The consequent reduction in buying points would restrict choice for advertisers, raise barriers for new entrants and distort pricing structures. Capital and Virgin would effectively become the industry price-setters.

6.57. Talk believed Capital and Virgin would control the London, and effectively the UK, market place. It would become almost impossible to buy around Capital and Virgin in London. As a result, Capital would dominate the London market place and effectively force the decision to buy UK coverage by adding its local stations outside London to advertising schedules. Capital would therefore control national advertising revenue to the detriment of Talk AM and other national stations.

6.58. The development of DAB was at a critical stage and required significant investment, particularly from the national stations, Talk AM, Classic FM and Virgin AM. In Talk's view, if the advertising revenue market was damaged, distorted or controlled by a single operator, the implementation of DAB could be severely hampered.

Thames FM Limited

6.59. Thames FM told us that, as a new ILR station in London, it believed the major conglomerates within the independent radio sector had gone against the spirit of ILR in the UK. It felt that each station should have a separate identity, working within its own promise of performance.

6.60. Thames FM said that group ownership did little to broaden listener choice. Also, in the highly competitive London market, to have one group dominating the potential advertising revenue was possibly against fair trading. Such a group could use marketing tactics to force smaller stations within the same market into serious financial difficulties. Finally, if two large stations were owned by one company it would create a mini-monopoly situation which would do little to enhance advertisers' choice and offer fair advertising rates.

UKRD Group Ltd

6.61. UKRD Group Ltd (UKRD) owns the County Sound Radio Network, which includes Wey Valley Radio, 96.4 The Eagle and County Sound Radio 1476 AM. UKRD supported the proposed merger. Capital had actively promoted initiatives which had been good for the growth of the radio industry, such as the Network Chart Show, the RAB and MSM. Capital had also been positively involved in matters such as resolving industry copyright issues. UKRD believed Capital had never unfairly wielded its power against the general interests of the UK radio industry. Although Capital was an aggressive commercial competitor, it had entered into partnerships with competitors. For example, Capital had joined the original County Sound company to establish a successful radio station in Oxford, Fox FM.

6.62. UKRD said that the common ownership of Capital and Virgin would have no effect on product differentiation. Their promises of performance would ensure this and, indeed, it was in Capital's interests to maintain, not destroy, that differentiation. Listeners in London would not suffer in any way.

6.63. UKRD said that Virgin FM was already being marketed aggressively. If anything, the potential for rate-cutting to ensure competitiveness had been far more likely before the proposed merger. Elsewhere in the UK there were far more anomalous ownership and overlap issues than this one. This merger was within the points system and within the intention and spirit of the 1990 Act and there was no justification for preventing it. Capital should not be unfairly penalized just because it had achieved a high profile in London.

Xfm Ltd

6.64. Xfm told us that the proposed merger would be between two companies which were significant competitors and in markets where Capital already had a powerful position. The merger would significantly reduce competition in the market for radio advertising in London and reduce the probability of new competition emerging in the future. It would not be in the interests of advertisers, listeners or competitors.

6.65. Although advertisers used different media at different times, there was only a limited degree of substitutability between media for most advertising spend. In Xfm's view, the degree of substitutability of non-radio advertising for radio advertising would be small. Thus, for those advertisers which used radio advertising the price of other media would have only a limited impact on the demand for that (radio) advertising. For advertisers which required 'immediate' coverage, radio had very few substitutes because of the shorter lead times for advertisements.

6.66. Other London regional media and national media that covered London were potentially in the same market as London radio stations. Whether another medium competed with radio depended on the type of products or services being advertised. At a general level, an advertiser which wished to advertise only in London was unlikely to find national media a substitute (because it would have to pay for more advertising than it wanted). Xfm believed that about half of the advertising on Capital was tailored specifically for a London audience.

6.67. Capital FM, Virgin AM and Virgin FM had target audiences biased towards younger adults broadly interested in contemporary pop and rock music. There was a very limited range of alternative ways of addressing this audience in a short time period. The music press could target the same group, but was not London-focused. London press, particularly *Time Out* and the *Evening Standard*, probably represented the closest match to Capital and Virgin. Niche youth-targeted magazines tended to have a similar demographic profile and a London (and South-East) bias, but very low circulations. Cinema could address the same market, but would take longer to achieve the same coverage.

6.68. Xfm believed that many of the advertisers which used Capital and Virgin would find it difficult to change to other media. Capital and Virgin had a significant share of the total outlets for advertising for these advertisers. Even if all commercial radio advertising in the UK was seen as the relevant market, the proposed merger would have a significant impact.

6.69. Capital's charges to advertisers were higher than the industry average, Xfm told us, which implied that its share of revenue was also high. There was also some indication that Capital's share of sponsorship revenue was proportionately high. Xfm believed the proposed merger would result in a critical increase in concentration of market power in the radio advertising market.

6.70. Xfm believed non-radio advertising would not provide any significant competitive restraint on the supply of radio advertising. However, even if non-radio advertising was considered to be a sufficiently close substitute, Capital and Virgin would still have a substantial share of a market targeted by demographics and/or location.

6.71. Only other youth-targeted London-based radio stations could compete with Capital and Virgin. New supply of such stations was controlled by the Government's licensing policy for radio, and was essentially limited and, under the existing policy, would not respond to price pressure on advertising. Xfm said that its own launch would introduce additional competition, but this might be put at risk by the proposed merger during its vulnerable start-up period.

6.72. It could be argued, said Xfm, that existing London stations could change the focus of their output so as to provide a more significant competitive threat to Capital and Virgin stations in the future. But relying on increased market pressure from these stations in the future assumed that they represented less pressure now, and Capital's and Virgin's market power had been underestimated. In practice, increased competitive pressure was limited by the RA's requirements to differentiate stations. This had the effect of limiting the freedom stations had to make changes that were within the descriptions in their promises of performance. Many London stations had promises of performance which precluded them from competing with Capital and Virgin for the same target audience. This, in turn, limited the degree to which such stations could become more effective competitors for Capital's and Virgin's advertising market. In addition, Capital and Virgin had promises of performance that were more widely drawn than those of the newer stations. This gave them, especially in combination, the advantage of directly targeting other stations' customers without exposing their own customer bases to a reciprocal competitive threat. Thus, apart from the arrival of Xfm, there was extremely limited opportunity for supply-side substitution for the market within which Capital and Virgin sold their advertising time.

6.73. Capital had held a strong market position in the radio advertising market for a number of years. In recognition of this, the licensing of Virgin AM (and later Virgin FM) had introduced more competition into the London radio market.

6.74. In 1992 the OFT had conducted an informal investigation into Capital's advertising-related activities, and in 1993 Capital had undertaken to the OFT that it would discontinue various activities. In 1994 the IPA had raised concerns relating to Capital's advertising activities. In 1996 further assurances had been required by the RA in relation to Capital's advertising activities. The proposed acquisition would create scope for anti-competitive practices in relation to radio advertising, in particular conditional selling of advertising across Capital and Virgin in the form of aggregated or exclusivity discounts.

6.75. Capital's earlier acquisitions of Southern Radio and BRMB/Extra had resulted in higher prices and lower availability. This suggested that Capital was willing to exploit its market power. Xfm said that over the past two years Virgin FM and Heart had made significant inroads into Capital's advertising base, resulting in a reduction of rates and of Capital's ability to raise rates further. The proposed merger would significantly reduce competitive pressure for Capital and rates would rise as a result.

6.76. Ownership of two FM radio stations with overlapping promises of performance would make it possible for Capital FM's advertising rates to stay relatively high and for Virgin FM's to stay relatively low. Xfm's target audience would overlap significantly with those of Capital FM and Virgin FM and Xfm would therefore compete with them for their share of the advertising market. However, the proposed acquisition put Capital and Virgin in a strong position to fight this competition. In addition to the straightforward ability to withstand competitive pressure as a result of increased size, and thus selectively to discount fees (including, possibly, predatory pricing), in the face of competition the operation of Capital and Virgin together would introduce an additional dimension to the combined group's strategy. Xfm was concerned that Capital would position Virgin FM so as to represent a substitute for that part of the market shared between Xfm and Capital FM, and that it would put Xfm under pressure without putting Capital's advertising rates at risk. Without the acquisition, more overlap could be expected between Capital FM's and Virgin FM's target audiences, putting more of Capital's business at risk. With the merger, Virgin FM could concentrate on Xfm's target audience without the need for Capital FM to respond.

6.77. Xfm was concerned that Capital might attempt to reposition Virgin FM so as to move it into the target audience of Xfm, Heart or Kiss 100 FM, taking it further away from Capital. This would maximize the combined total audience of Virgin and Capital without maximizing the audience of Virgin FM within its own promise of performance. To the extent that Virgin FM's output was targeted at Xfm's target audience, this would make it more difficult for Xfm, especially in its start-up phase. Virgin FM had a relatively wide promise of performance which made this strategy possible and the operation of Capital FM and Virgin FM together made it economic, notwithstanding that Virgin FM's audience was not itself maximized. Under these circumstances, other stations with narrower promises of performance and/or an economic requirement to maximize their individual audiences (because they were not part of a group of commonly-owned stations) would find it difficult to mount an effective

competitive response. The output over which Capital and Virgin would have an effective monopoly would thus increase.

Programme and news suppliers

Chairman of Independent Radio News Ltd

6.78. The Chairman of IRN (46 per cent owned by Capital) told us that radio represented a small percentage of the total London advertising market. It was likely that all London radio advertisers used several other media and they were in a strong position to resist unreasonable pricing by any section of the media.

6.79. The Chairman of IRN commented that Capital had made a magnificent contribution to the development of independent radio since its launch in 1973. Since then Capital had done its best to create and maintain high standards of conduct and accountability for the whole industry. In particular, it had contributed on a disproportionate basis to substantial radio industry costs, including copyright tribunals, network programmes, copy clearance, the RAB, audience research and the CRCA. As a result, many smaller stations received these services at little or no cost. In the Chairman of IRN's view, Capital's record over the past 24 years supported its claim that if the merger went ahead it would continue to operate its business in a fair, open and accountable manner. In any case, the conditions attached to the merger by the RA appeared to provide sufficient assurance for all concerned.

Metro Networks (UK) Limited

6.80. Metro Networks supplies news, traffic and travel bulletins to the UK's independent radio industry, including Virgin AM and Virgin FM. It told us that on 24 September 1997 it had signed a contract with Virgin for the provision of these services. Metro Networks anticipated that, as it was arguably a competitor to Capital and IRN, the Virgin contract would not be extended beyond the minimum period should the merger proceed and that Virgin would then receive its news from IRN.

6.81. Capital had a 46 per cent stake in IRN. IRN supplied news to contracted radio stations in return for airtime. This airtime had been packaged and marketed by Capital through MSM in return for a commission on sales. Approximately 97 per cent of commercial radio stations were contracted with IRN for their news requirements, notable exceptions being Virgin AM, Virgin FM and Melody.

6.82. In its press release of 17 July 1997 the RA had announced that Capital had given undertakings that it would ensure that the news broadcast on Virgin's services would be separately produced and presented from news broadcast on Capital's services, and that there would be separate newsrooms for Capital's and Virgin's London services. In Metro Networks' view, the undertakings would not preserve the existing diversity of sources of news information in London. Metro Networks was concerned that the undertakings would not prevent Capital using IRN as the news source for Virgin's and Capital's services. In London, 22 of 25 independent radio stations sourced their news from IRN. Many of these stations rebroadcast the single IRN network bulletin at certain times of day or had their own newscasters read the IRN scripts. There was little, if any, diversity in the range of news stories, audio cuts and opinion expressed.

6.83. In Metro Networks' view, if the merger went ahead consideration should be given as to whether Capital should be required to dispose of its shareholding in IRN.

6.84. Metro Networks had been represented by MSM until February 1997 when it had terminated the agreement because it was not satisfied with MSM's efforts on its behalf. Radio stations gave news suppliers airtime in return for their services, which news suppliers then sold on to advertisers, usually via agencies. Metro Networks told us that it sold its whole package of advertising airtime to national advertisers only. This was a condition set by local stations because they did not want Metro Networks to compete for advertisers in the local market. Metro Networks was therefore only in competition with national sellers of advertising, but it provided services to three national stations and they provided

Metro Networks with airtime in return. This was a difficult balance, but Metro Networks said that it had not experienced many problems.

6.85. Metro Networks was concerned that Capital intended to continue its representation of Newslink once MSM had been disbanded. The only other daily national network advertising opportunity, and arguably competitor to Newslink, was Metro Networks' traffic-related product, TrafficLink. Metro Networks said that the representation role held by Capital for Newslink and its major stake in IRN would increase Capital's desire to divert all possible business away from Metro Networks. It also felt that the representation by Capital of Newslink, the Pepsi Chart Show and Virgin on a national scale, supplemented by strong local coverage in the Midlands, London and the South, put Capital in a very strong position with national advertisers, possibly to the detriment of those seeking to sell national products alongside them.

6.86. Metro Networks believed that as more smaller stations started up throughout the UK, the market would become more competitive. Advertisers would benefit because they would be able to reach specific audiences more effectively, but they would have to deal with an increased number of stations to meet their target audience requirements. However, it was likely that after a short period there would be some consolidation of the smaller stations.

6.87. When compared with other media, radio advertising was relatively cheaply priced. Metro Networks therefore believed that there was some prospect for an ongoing increase in the level of fees charged. Also stations were moving to reduce their commercial minutage, particularly at peak listening times.

Unique Broadcasting Company Ltd

6.88. The Unique Broadcasting Company Ltd (Unique) is a supplier of independently-produced radio programmes in the UK. Unique told us that, on balance, the proposed merger would not create a monopoly or act against the public interest. There were, after all, four other companies operating FM music radio stations in London and a large number in the rest of the UK. However, the current regulatory environment within the industry did not necessarily operate to allow free and proper competition between services. This created a false market within which the proposed merger could cause further restrictions.

6.89. The promises of performance of Capital and Virgin allowed for some of the most popular formats to be carried on their services. A disproportionate share of advertising revenue would go to those stations with promises of performance which allowed them to appeal to the largest audiences. Unique believed the promise of performance system created a false competitive position which was against the public interest. It was concerned that in some circumstances the allocation of promises of performance with the highest earnings potential to Capital could distort the market. Unique believed the radio market place would benefit substantially from increased competition if promises of performance were no longer used.

The Radio Advertising Bureau Ltd

6.90. The RAB said that, overall, it supported the proposed merger. It believed it would be good for listeners, because Virgin AM, which was perceived always to have under-delivered, would be stewarded by highly-experienced professional programmers who should build a more appealing product for the audience. Capital's proposals to launch a new service on the FM licence would extend listeners' choice.

6.91. The RAB told us that the most notable characteristic of the UK radio market place was the significant increase in the number of stations competing for listeners' time since 1993. The audiences for commercial radio in London would increase over the next three years because of the launch of Xfm and a further decline in BBC Radio 1's audiences. This would also increase supply to the advertising industry.

DAB

6.92. The RAB told us that DAB technology undoubtedly had benefits for broadcasters. However, two factors combined to make DAB a technology of the long-term future; it was likely that, at a minimum, DAB receivers would cost about £100, and, as there was an average of four radio sets per UK household, it was highly unlikely that these would be simultaneously upgraded to digital radio receivers. The second factor the RAB noted was that although the technology to broadcast and receive FM transmissions had been developed in the late 1940s, it was not until the late 1980s that listening on the FM waveband had overtaken that on AM. While the RAB believed take-up of digital radio would probably be quicker than 40 years, the majority of listening would continue to take place on FM and AM for some years to come. The effect of DAB would therefore be negligible in the next three years and the RAB did not foresee it changing the competitive situation within radio.

Local advertising

6.93. Competition for advertising revenues had become more pronounced in recent years with the advent of new stations. Stations had had to develop more sophisticated sales policies because of increased demand for radio airtime. In the RAB's view, commercial radio competed with other media for local and national advertising revenue. This was particularly true for national revenue because advertisers had more options. Local advertisers had a choice between radio, local press and outdoor media. A few used television and this number might increase with the growing number of local cable channels.

National advertising

6.94. National sales houses for commercial radio advertising had been formed because many stations which were based around the UK could not afford to employ their own sales representatives based in London. The terms of the proposed merger had been announced alongside the closure of MSM. EMAP and GWR, two major clients of MSM, had therefore decided to establish their own sales operations. Smaller clients of MSM had, in the main, decided to move their contracts to Katz. The net effect of this was that the vast majority of national revenue would now be serviced by in-house sales operations. In the RAB's view, this realignment of sales was going to happen regardless of whether the merger went ahead, because EMAP and GWR were too far down the line of setting up their own sales operations, and the media planning and buying industry had shown its preference for such sovereign sales operations.

6.95. The RAB told us that solus advertising was rare in the national advertising industry. National advertisers wished to maximize coverage and frequency against their target audience and the size of an individual station's audience meant it was unlikely that advertisers could achieve this using only one station.

6.96. Capital had given assurances to the RA that it would not involve itself in conditional selling and the RAB said that it had no reason or evidence to believe this promise had been breached. In any case, the RAB believed the major media buying points would not accept conditional selling in any form.

6.97. The recent surge in demand for radio advertising had led to stations responding to requests from the national advertising industry for greater transparency in their pricing policies. All sales points now had 'daypart' pricing policies, though how this worked varied from one sales point to another. Media planners had welcomed this because it allowed them to identify where they could get discounts to offset the premiums paid for more heavily demanded dayparts. The RAB said that it was not aware whether stations had promoted their prices comparative to other stations.

6.98. Radio competed extensively with other media for national advertising expenditure. It was only in the recent past that radio had competed successfully and that there was now a more widespread understanding of commercial radio's role in the advertising mix. Commercial radio accounted for just under 5 per cent of all display advertising, although the RAB accepted that there was probably a

ceiling of about 8 per cent that radio could achieve. Radio sat alongside outdoor and cinema as a traditional secondary medium.

Accountability

6.99. A key request from the media planning and buying industry in recent times had been for commercial radio to become more accountable to advertisers. Before 1996 there had been had no standardized means of telling advertisers that the airtime they had booked had been transmitted as agreed. At the beginning of 1996 commercial radio had collectively agreed to provide more standardized information by the middle of the summer. Certain key sales points had failed to deliver to schedule and this had resulted in an antagonistic relationship between the radio sales industry and the media buying industry. The RAB believed this had caused a rapid slow down in radio's growth rate. At the same time, the outdoor industry had started to see rapid growth in revenues.

Changes in the radio industry

6.100. The major changes within the radio industry over the last three years had been:

(a) the size of MSM's client portfolio, which had led to a downgrading of customer service;

(b) the arrival of Chrysalis, which was now seen as an ambitious player that could build audiences for advertisers; and

(c) having experienced rapid growth up until mid-1995 the total commercial radio audience had been relatively static since. This had forced sales chiefs to consider how they could maximize revenue through managing advertiser demand.

6.101. There had been a substantive change in advertisers' attitudes over the last five years. The key factors in commercial radio becoming more competitive had been increased audiences (the sector now led BBC Radio), more national buying opportunities, improved marketing and better audience research (ie the launch of RAJAR in 1992). These factors had given commercial radio more gravitas in the eyes of the national advertising industry and had resulted in commercial radio achieving the title of fastest-growing advertising medium for four years in a row.

The competitive situation

6.102. The launch of Xfm would have a major impact on the competitive situation in London. The RAB believed Xfm's approach would deliver a substantial 15- to 34-year-old audience to the advertising industry. Xfm was also well positioned to gain a disproportionate share of its audience from BBC Radio 1 and GLR. This would be welcomed by advertisers as it would deliver a greater audience supply.

6.103. In the RAB's view, commercial radio would have to work hard to maintain the growth it had achieved in the past for a number of reasons:

(a) agencies believed commercial radio audiences had stopped growing and were encouraging stations to invest in programming to take more audience away from BBC Radio;

(b) if information technology systems used in the trading of radio airtime were not improved then the administrative burden would go against commercial radio being recommended by media planners;

(c) satellite and cable television were starting to achieve significant market shares and now accounted for a greater share of viewing than Channel 4, and Channel 5 was investing heavily to increase its audience;

(d) advertisers would continue to see the benefits of diverting marketing money to new channels, such as the Internet and computer games;

(e) the outdoor industry was investing heavily to improve the service it offered to advertisers and had recently overtaken commercial radio to become the fastest-growing advertising medium; and

(f) continued investment in cinema multiplexes and an increase in cinema admissions of 10 to 15 per cent a year, with a youthful profile, made cinema a competitive option to commercial radio.

Advertising rates

6.104. The RAB said that its position allowed it to offer only an informed guess on what would happen to advertising rates and shares in the light of the proposed acquisition.

6.105. The fluid nature of the broadcast advertising market place and the position of commercial radio as a secondary medium made it difficult for Capital to impose unreasonable price increases on the national advertising industry without harming its business base. It was possible to buy around Capital and this would still be the case if it added Virgin to its portfolio. It was fair to say that there were certain key advertisers that commercial radio was particularly keen not to lose, for example Carphone Warehouse. The RAB believed Capital's current share of national advertising revenue would decrease as a result of the merger and because of its disposal of MSM.

6.106. The proposed repositioning of Virgin FM would, the RAB believed, be well received by the media planning industry. Capital's plans to sell airtime separately for Virgin's two stations should result in greater supply of advertising to the London market place.

6.107. The launch of Xfm, which regarded its core target audience to be 15- to 34-year-olds, would make it a strong competitor to Capital FM for advertising revenue. This should ensure that Capital continued to offer competitive rates. Indeed, given the attractiveness of younger adults to the national advertising industry, Xfm had a good chance of achieving a disproportionately high share of revenue.

6.108. In the RAB's view, media-buying companies had more buying power than advertisers. The top ten buying points accounted for 40 per cent of radio's revenue, while the top ten advertisers accounted for only 20 per cent.

Impact on advertisers and advertising agencies

6.109. Capital had previously given assurances to the RA that it would not undertake conditional selling. The RAB believed therefore that there should not be any significant threat to the advertising community through Capital having larger sales muscle in London. In fact, with the closure of MSM and the addition of Virgin, the Capital group would be selling a substantially lower percentage of radio's national airtime than before. The RAB believed Capital did not intend to restart a third party sales company like MSM after the merger. The media-buying customer would not allow this, because the MSM experiment of a very large sales house managing advertising for many stations had not been a success for stations or advertisers.

6.110. Advertisers had the ultimate sanction, in so far as they could go to other, substitutable, media. This was a course of action open to much of radio's national revenue. Even within the radio market, satisfactory campaigns could usually be planned by using stations in London other than Capital FM, Capital Gold and Virgin FM. Although a small increase in London revenue share would be generated by the proposed merger, the share of sales handled by the Capital group outside London would fall quite dramatically. This small increase in revenue share was unlikely to strengthen significantly the 'negotiating hand' of the merged company's sales efforts.

6.111. Advertising agencies had sophisticated planning systems, a choice of stations and the RAB's planning service to help them build the best schedule from audience data. Although media buyers with experience of buying radio pre-1992 feared the proposed merger because they did not really understand that the power was in the buyers' hands, 'new radio' people were optimistic about it.

Substitution of media

6.112. The RAB said that much of radio revenue was substitutable. The high churn of large advertisers demonstrated that there were alternatives to radio. Expenditure between minor media brands was quite substitutable. In fact, radio had grown by increasing the amount of substitution from other media in the last five years. The RAB believed that if Capital and Virgin tried dramatically to increase pricing without reasonable justification, advertisers in London would turn to the outdoor market, the *Evening Standard* or ITV.

Impact on other radio stations

6.113. The audience share for Capital's two stations had progressively declined with the arrival of new stations. The RAB saw no reason why the proposed merger should stop recently-launched stations growing in London.

If the merger was not allowed

6.114. The success of radio had been its internal collaboration to offer a more co-ordinated and customer-friendly face to advertising agencies and advertisers. If the proposed merger was not allowed, the RAB said that there could be two worrying consequences for radio. First, the momentum of radio advertising was quite fragile and could decline. It had had a very good run, but there were still few advertisers that saw radio as a key part of their mixed-media schedule. If Virgin tried to walk away from radio if the merger failed, it could have a detrimental effect on the perception of radio as a valuable advertising medium. If the merger went ahead, Virgin Media would become the largest shareholder in the Capital group and would recommit its interest to commercial radio.

6.115. Secondly, the RAB was concerned that the City would conclude that Capital could not grow if the proposed merger was prohibited. A consequence of this could easily be that another major media group would decide to make a bid for Capital. Such a move could undermine the RAB. No other media had managed to set up an equivalent of the RAB because the major participants did not agree on the merits of collaboration. If a media owner which did not believe in collaboration entered the radio market by purchasing the main player, the collaborative approach of radio would cease. The RAB would be finished and advertisers would be disadvantaged through not having a professional service to help them judge the value of radio as an addition to the media mix.

The Advertising Association

6.116. The Advertising Association (AA) is the trade association which represents the advertising business in the UK. In its view, radio competed for advertising revenue in a market far larger than that bounded by radio. Advertising business decisions relating to radio had an overwhelmingly trans-media context. It was a particularly competitive environment partly for this reason, and the AA doubted whether any attempts at monopolistic activity in the radio sector, were they ever to be contemplated, would or could be successful.

The Incorporated Society of British Advertisers Ltd

6.117. The ISBA represents the interests of major UK advertisers across all media. It told us that radio had had a good run over the last few years, because it had learned how to market itself to advertisers so that they would see it as an effective medium. Radio had also benefited from the advent

of fairly successful national commercial stations which were useful to national advertisers. The ISBA believed this trend was likely to continue. However, with the advent of DAB the radio market would probably fragment further, because the spectrum would be able to carry more stations. Although it would encourage competition, it could cause more stations to fail.

6.118. The ISBA believed in unimpeded and free competition in broadcasting. Thus, it could foresee certain advantages resulting from the proposed acquisition in the form of enhanced complementarity between the two stations' programming and scheduling. However, the ISBA had been concerned about the concentration of sales power into Capital and MSM when the latter had won the contracts for EMAP's and GWR's stations in April 1996, leading to some two-thirds of all UK radio commercial revenue being handled by one airtime sales organization. Advertisers had feared that this could result in conditional selling. At that time, the RA had told Capital that it should not act in a restrictive manner, and the evidence suggested that this requirement had been honoured since then.

6.119. Capital had indicated that, as part of its plans for acquiring Virgin, it would divest itself of MSM and instead establish a new company which would sell airtime on all Capital-owned stations. Such a move would reduce Capital's share of total UK commercial radio airtime sales revenue from about 65 to 55 per cent.

6.120. Despite this slight erosion of Capital's current dominant position, the proposed acquisition also threatened a new and different concentration of media ownership. The ISBA said that it would be concerned if that position was exploited. Capital and Virgin were the number one and number three stations in London, particularly among the 25 to 44 age group, which was typically the most sought after by advertisers. London had the greatest concentration of population and wealth in the UK, and thus enjoyed the highest advertiser demand for most media, including radio. So whilst Capital's share of national commercial radio representation would fall as a result of the proposed changes, its share of adult commercial listening hours (the principal determinant of a station's ability to attract advertising revenue) in the key London market would rise from 47.8 to 55.5 per cent. This resultant control by Capital of more than half of the London and national radio airtime markets raised similar concerns among advertisers to those voiced in April 1996 (see paragraph 6.118). It was possible to buy around Capital by taking airtime on most other London stations, but if Virgin joined forces with Capital it would become more difficult to do so.

6.121. The ISBA said that it would therefore need to be confident that undertakings similar to those currently in place regarding MSM would continue to bind the merged entity, and would be enforceable by the appropriate regulatory bodies. In particular, Capital should be prevented from practising conditional selling.

The Institute of Practitioners in Advertising

6.122. The IPA represents advertising agencies. It said that, bearing in mind the undertakings that Capital had already made to the industry, regarding its airtime trading policies, and Capital's championing of moves to make the radio advertising market even more accountable to buyers in terms of information technology and trading systems, the IPA had no objections to the proposed acquisition.

Advertising agencies

6.123. This part of the chapter summarizes the evidence of those advertising agencies which wrote to us, those which responded to our questionnaire (see Appendix 6.1), and those which did both. Saatchi & Saatchi and Zenith also gave oral evidence. A list of the advertising agencies which gave evidence and responded to our questionnaire is given in the annex to Appendix 1.1.

Ammirati Puris Lintas Ltd

6.124. Ammirati Puris Lintas Ltd (APL) stressed that radio was a small part of the advertising market place, and it was not confined to trading with one station against another. Each medium had a

case for its use and a price which were negotiable. This was a relatively small merger in the greater scheme of media consolidation. The key to providing cost-effectiveness for advertisers depended on the number of consumers across all media.

6.125. APL believed a stronger commercial radio sector would result in larger commercial audiences for radio. In turn, advertisers would benefit from more listeners in the commercial sector, prices would improve and coverage would be enhanced. The proposed merger would assist in this process. It would also create more minutage in the London market and help to improve cost-effectiveness. For these reasons, APL supported the merger. Capital was a small player in a massive communications market and was not able to create restrictive practices or demand unfair prices. It should be allowed to grow, which would benefit the advertising industry. Commercial radio should be encouraged to continue to invest in its future.

ARC Advertising

6.126. ARC Advertising was concerned that Capital and Virgin might engage in conditional selling following the merger. However, if they did not, the price of advertising on Virgin FM should fall, as it would offer more minutage in London.

BBJ Media Services

6.127. BBJ Media Services (BBJ) said that further increases in commercial radio audiences were needed, at the expense of BBC Radio, so that advertisers could reach audiences currently not available. Further proof was needed that advertising on radio had a discernible effect on listeners. Radio would also have to remain a cost-effective medium on which to advertise. Demand for radio airtime had increased dramatically in recent years and media inflation was now a feature affecting all the major stations. If the new company increased its rates either without justification or significantly out of line with the medium as a whole (London media generally charged a significant premium against the national average), then BBJ would advise its clients not to advertise on the stations involved, and even to pull off radio altogether. Radio was, and always would be, a secondary and support medium. Few national advertisers used commercial radio alone.

6.128. BBJ said that Capital FM would always be able to charge more than other London stations because of the size of its audience. Virgin's rates had been fair, realistic and justifiable up to now. BBJ hoped that the new sales operation would have a clear and coherent policy which would justify all rates charged. In BBJ's view, it was Capital's programming team that had made Capital FM so successful and it could improve Virgin FM's output. This would increase Virgin FM's audience and make it more attractive to advertisers. When MSM had held a virtual monopoly of the ILR market, Capital had not abused its position. BBJ believed it would not do this if it controlled Virgin as well. If it did, not only would it lose money, but so would radio as a whole. Whilst BBJ supported the proposed merger, it had some reservations because various members of the sales team had recently left Capital.

C D Sales & William Read Publishing

6.129. C D Sales & William Read Publishing told us that the proposed merger would have no effect on the radio market, nor on the price of advertising in other media.

CIA Medianetwork UK Limited

6.130. CIA Medianetwork UK Limited (CIA) told us that in a minority medium such as radio, any threat of monopolistic attitudes could quickly be negated by moving to other media. The proliferation of stations in London in recent years had increased opportunities to reach target audiences, with or without Capital. It was important that radio advertising was successful and attracted significant and worthwhile audiences. CIA said that if this meant ownership by larger groups it would be preferable to

the alternative of much competition among failing stations. Capital had an excellent track record of success in listening figures, as well as in innovative and original sales initiatives, and this had benefited advertisers. CIA said that it would be pleased to see this continued on a larger scale.

Curtis Hoy

6.131. Curtis Hoy stated that it was unlikely that Capital would increase its rates following the proposed merger. However, it expressed concern that in the long term the merged group, which would have a London monopoly in terms of target audience, could increase rates above the general market.

Drum PHD Limited

6.132. Drum PHD Limited (Drum PHD) told us that sponsorship and promotional activity on radio would increase in relation to other conventional media because of the flexibility of radio companies to take on board advertisers' commercial requirements. Also the increasing number of stations made it possible to reach discrete target markets in a cost-efficient way. For some campaigns radio was the ideal environment, for others it was substitutable. Drum PHD chose stations depending upon target audience, regionality and programming environment. It believed the proposed merger would provide a central point for nationwide sponsorship and promotional activity.

6.133. If the merger went ahead, Drum PHD believed the ratecards for Capital and Virgin would become similar for comparable audience deliveries and impacts. It was likely that other stations would set similar rates. However, in Drum PHD's view, market forces would dictate the actual price paid. Capital and Virgin required larger budgets for advertising because of their total audience delivery, but their CPTs were usually very competitive.

Expert Media Ltd

6.134. Expert Media Ltd (Expert Media) believed radio was an underused medium, particularly given its low entry cost, discrete regional delivery and track record in developing brand identity. With television costs increasing above the RPI over the last few years, Expert Media had moved an increasing proportion of clients' budgets into radio. Whilst radio was a distinct medium with its own features and strengths and was therefore not directly substitutable, media planning had to strike a balance with a number of factors, including relevance to the advertising task and price.

6.135. Expert Media said that it did not believe the proposed merger would directly affect advertising rates, as the radio market was self-settling. Price was subject to comparison and was one of the factors in deciding to include or exclude a station from a media campaign. Expert Media could envisage continuing to recommend stations even in the event of significant price increases if the stations still satisfied other criteria and were still competitively priced compared with other stations or media. For example, Expert Media currently used Capital despite its premium price compared with other stations as this was justified by its audience level and coverage in London. Expert Media said that it was currently possible to 'buy around' Capital using a mix of other stations which cost less and together delivered similar audiences. However, Virgin FM was part of that mix and if Virgin FM's prices increased it might mean that that alternative was no longer open. Expert Media believed Capital had a sophisticated sales team, and if the proposed merger encouraged its competitors to follow Capital's lead, then Expert Media could see a situation where advertising spend on radio would increase, and that would create natural price inflation.

6.136. Expert Media said that it would be concerned if the merger resulted in Capital offering incentives to advertisers to advertise on more than one of its stations, as this would effectively penalize clients which wished not to use a portfolio of its stations. Expert Media would like to see a period of stability in the radio industry and, if the merger went ahead, the professional conduct shown by Capital's staff spread throughout all stations, as this would benefit clients and agencies.

Griffin Bacal Advertising

6.137. Griffin Bacal Advertising (GBA) was unsure about the effect of the proposed merger on the radio industry. It told us that Capital could increase Virgin's advertising rates following the merger, which could result in other stations doing the same or keeping their rates low to be more competitive. GBA told us that where Capital was considered appropriate for a campaign, it would still use it despite any price increases.

Initiative Media London Limited

6.138. Initiative Media London Limited (Initiative) told us that Capital's voluntary withdrawal from MSM showed its concern to satisfy the market that there would be sufficient competition after its acquisition of Virgin. In Initiative's view, the common target of all commercial stations should be BBC Radio. The creation of a new London station would help to increase the audience share of commercial radio. Although Capital was a strong player, there was now strong competition nationally and locally, and radio was still a minority player compared with television, for example. Initiative believed the proposed merger would not adversely affect its advertising requirements.

John Ayling & Associates Limited

6.139. John Ayling & Associates Limited (JAA) told us that radio would continue to increase its share of the advertising market (albeit more slowly) because of increasing availability and opportunities, provided it continued to deliver satisfactory audience and cost efficiency for advertisers. The proposed merger was unlikely significantly to affect advertisers' decisions on which stations to use, although audience or value improvements would (marginally) alter the share of radio budgets within the London market.

6.140. JAA believed Virgin FM could attempt to increase rates after the merger, but it was up to the advertising industry to handle that situation. Any rate changes by a station which did not reflect the demand for it or the RPI would be seen as an attempt to artificially harden the market (or possibly restrict minutage). In any case, radio could be substituted by other media if any attempt was made to harden the market or sell conditionally. JAA therefore approved of the proposed merger, but with the following constraints: quality of management should be maintained, there should be complementary programming; no conditional selling should be allowed; and there should be no increase in prices unrelated to demand or increases in the RPI, especially for the Virgin stations.

J Walter Thompson Company Ltd

6.141. J Walter Thompson considered that radio was an important part of its campaigns, but radio was not in a position to coerce advertisers to use a particular station. The media market place was very competitive, particularly in London. It was therefore unlikely that Capital would be able to force up the price of radio advertising ahead of the natural ebb and flow of market demand. If it did, J Walter Thompson would move its expenditure elsewhere. Rarely, if ever, was radio such an important element of the marketing mix that it could not easily be substituted with other media. Capital knew this and it was a serious deterrent. In any case, Capital had made a public commitment to unconditional selling. J Walter Thompson believed new advertisers would continue to come to radio and expenditure should continue to increase, though not as rapidly as in recent years. Radio had a close relationship with listeners, it was inexpensive relative to other media, with a low capital cost, and it broadcast by locality and selected target group.

6.142. The acquisition of Virgin would increase Capital's market share in London, which had been falling for a number of years. J Walter Thompson supported Capital's proposals to create a new radio station for London and increase advertising minutage.

6.143. J Walter Thompson said that, generally, its experience of Capital and its management team was wholly positive. Capital and Virgin were very customer-focused and it was evident that both placed great importance on customer satisfaction. Also Capital had a conspicuously proactive track

record in modernizing trading standards to the benefit of advertisers and advertising agencies. Capital was also a leader in introducing electronic verification of airtime spot transmissions and post-campaign analysis, in effect a free auditing service for agencies, which had made buying radio more transparent. J Walter Thompson had every confidence that the proposed acquisition would result in growth in the radio market, rather than in the narrow pursuit of Capital's own self-interest, and that Capital would conduct its trading affairs in a way which would be hallmarked by collaboration rather than imposition.

Manning Gottlieb Media Limited

6.144. Manning Gottlieb Media Limited (MGM) told us that radio's ability to deliver effective advertising often revolved around its creativeness and its limitations, as well as its cost-effectiveness. MGM expected the proportion of advertising revenue taken by radio to increase over the next few years, but at a much slower pace.

6.145. MGM welcomed the proposed merger. It believed consolidation in the radio industry was required so that the medium would become more competitive in future. The merger would produce a stronger, healthier media group that would improve radio and hence increase audiences and bring more revenue into radio. A strong radio medium would be good for the advertising market as a whole. There was robust competition within the radio industry and although the acquisition of Virgin would strengthen Capital's hand, other London stations offered advertisers real alternatives.

6.146. In MGM's view, there were two factors which would prevent Capital from increasing its rates. First, radio competed against all other media, including television, outdoor, press and cinema, and there were more media options available in London than elsewhere. If radio's rates increased unrealistically or falsely, advertisers would move to other media. Secondly, trade bodies and agencies would not tolerate an abuse of power by Capital. With the concentration of media buying power into fewer companies, considerable negotiating power could be brought to bear on any media company which attempted to exploit a strong market position. If Capital's rates increased, it would be because of market pressures. An automatic increase in advertising rates after the merger would not be welcome, MGM said, but an increase in the longer term would be expected as the stronger media brand attracted more business. MGM said that it often advised clients to advertise on Capital and Virgin even when rates were lower elsewhere. Capital, in particular, provided a volume audience, whereas stations which had lower rates usually had a much lower reach. The choice of a medium was rarely down to rates. The main considerations were effectiveness of communication and delivery of advertising objectives, particularly with regard to creative development.

Matters Media Ltd

6.147. Matters Media Ltd (MM) predicted that radio advertising revenue would increase slightly ahead of inflation and be under pressure from other new media such as digital television. Radio tended to attract a younger, more upmarket audience than other broadcast media and had now managed to break away from its 'wallpaper' image. Radio in London commanded a large differential versus the national average, but its CPTs were still about one-third of those for television. The production costs for radio advertising were significantly less than for television or cinema. Radio was one of the most cost-effective lead generators for advertisers. Radio was not regarded as a separate market, even at the local level, and it was one of the most substitutable media.

6.148. MM believed the law of supply and demand would prevail and therefore, unless there was conditional selling between Capital and Virgin, rates after the merger should continue to find their own level. MM anticipated that Capital might introduce a more successful programming strategy to the Virgin stations, thereby achieving more audience, which might make it necessary to increase rates. If radio costs in London increased dramatically it might necessitate the use of other media, such as television, posters or local press. MM said that it had not experienced large cost differences between Capital FM and other FM stations in London. However, it was impossible to make comparisons between radio and other media in London, because of the differing creative input.

MBS Media

6.149. MBS Media told us that it was concerned about the potential effect on rates if the proposed merger were to proceed, particularly an increase in Virgin FM's rates in London. An increase in rates by the merged entity could cause other stations to increase theirs.

MDV Media Limited

6.150. MDV Media Limited (MDV) said that creative excellence was important, because a bad radio commercial could do more damage than good for an advertiser. Radio advertising was expected to increase over the next few years, but it still had only about 5 per cent of the market. MDV believed radio was a separate medium. Most London stations sold at a lower CPT than those outside London because of competition.

MediaVest Limited

6.151. MediaVest Limited (MediaVest) told us that the great unknown in the radio industry was what might happen if BBC Radio 1 were to commercialize. This would act as a catalyst for significant expansion in the medium. DAB was another unknown, which could also be a stimulant for further commercial growth. The driving factor for growth in the radio industry was likely to be broadcast quality coupled with choice, ie the possible increase in stations would provide more tailored listening choice.

6.152. If the proposed merger provided greater investment to stimulate increased listening penetration and share, it could increase advertising expenditure. The plan to increase the supply of advertising airtime on Virgin FM from two to nine minutes an hour would, MediaVest hoped, act as a cost regulator and encourage increased spend on Virgin FM. If Virgin AM was able to increase its audience then it should also see an increase in advertising, sponsorship and promotion, at the expense of other stations or media. The long-term opportunity that Virgin AM would give Capital in terms of access to a DAB licence was also a potential stimulant to increase advertising revenues.

6.153. However, MediaVest said that it would closely monitor Capital's pricing policies if the merger went ahead. Most advertisers still enjoyed a choice of media and, within radio, a choice of stations. Commercial radio had successfully increased its share of advertising revenue at the marginal expense of other media. But major advertisers would take money away from Capital and Virgin (and radio generally) if their approach was aggressive and price increases were unrealistic. Radio was not a 'must use' media. Radio was the one medium that agencies had to push hard to recommend to advertisers. Therefore, radio would be recommended less by media buyers if the radio companies' sales approach became too aggressive. Radio was still relatively small as a medium and therefore relatively easy to substitute. MediaVest said that the proposed merger could bring higher pricing by Capital as it strengthened its position in the London market place, but hopefully lower pricing by Virgin FM as it increased its minutage, and no CPT increases on Virgin AM because its airtime had often gone unsold. For other media, it was unlikely that the merger would have much effect on a national basis, but if Capital was successful in driving up prices it was possible that other strong London media (for example, *Evening Standard* and transport advertising) would also raise their prices.

New PHD Limited, AMV BBDO Ltd and AMV plc

6.154. New PHD Limited (New PHD) responded to our questionnaire on behalf of AMV BBDO Ltd and AMV plc. New PHD told us that radio was very often a support for activity on television and press. Whilst more radio franchises would be awarded which would widen the offering of formats and target audiences, it was New PHD's belief that any growth in radio's share of advertising expenditure would be at a much slower rate than over the last few years. National launches had been the stimulus for huge growth surges in the past, but no new national commercial stations were planned so there might not be the catalyst required to move forward at the same rate.

6.155. With the current market place and the current management at Capital, New PHD believed advertising rates would not be adversely affected by the merger, other than because of natural supply and demand. Strong stations (ie those with good reach and high audience in major conurbations) were naturally more expensive and advertisers were prepared to pay a higher price. Capital was probably one of the most expensive stations in the UK in terms of CPTs, whereas Virgin's CPTs were much lower and in line with the majority of other stations that offered lower volumes of audience and a less well-defined advertiser offering. If prices increased significantly and did not offer appropriate value, New PHD would not use the stations or in some cases the medium. Any abuse on pricing would cost Capital money and the wrath of the media industry.

6.156. Radio advertising was not a separate economic market, rather it was a very small part of the total media mix. It was relevant, but easily expendable in most media decisions. Even with commercial radio's recent success, it was still used by few large sectors of advertisers (for example, retail, telecommunications, newspapers and motoring) and there were huge areas where it had failed to make significant inroads. For some advertisers radio was a significant part of their activity and was their first choice medium, but this did not mean that it was not substitutable, only that it was the proven best current solution.

6.157. New PHD believed the merger should go ahead. The major change in the commercial radio industry in the last 20 years had been an invigorated Capital that had managed to unite the industry and get radio as a medium talked about and used. It believed Capital recognized that goodwill and support could evaporate much more quickly than the time it had taken to build. New PHD said that its only concern would be if the management of Capital and Virgin were not part of this process and a predator with no track record was placed in charge. There might then be a need for safeguards against abuse. It was not in Capital's interests to abuse its position if the merger went ahead.

Ogilvy & Mather Ltd

6.158. Ogilvy & Mather Ltd (O&M) told us that the niche audiences which radio offered suggested that investment would increase over the next few years. Radio provided good value for money, particularly in the 15- to 34-year-old age group. Radio had historically played a support role to television and this had limited the investment clients and agencies had made. However, over the past few years, radio had established itself as having a stand-alone branding role to play on many advertising schedules and this approach would help investment in radio to continue its growth over the next few years. Capital and Virgin offered different audiences and coverage, so the proposed merger would change the media landscape very little and make little difference to advertising rates. Clients and agencies still had substantial choice and this would ensure that advertising rates remained competitive. Overall, in CPT terms, radio was competitive against other media. However, each medium had a specific role to play and should not be judged purely on cost.

6.159. The media market place was very competitive and any rate increase was resisted in the strongest way by most advertisers and agencies. Any rate increases should be justified by similar or greater increases in audience. The radio market place was not a separate economic market and was substitutable by or for other media. National and regional press, posters, cinema and, in some cases, television provided suitable alternatives. Even within radio it was possible to decide between national, regional or local stations. O&M welcomed the proposed merger because Capital was a knowledgeable, progressive and professional company, with a proven track record in radio. It would guarantee continued investment in the Virgin brand and a strong media landscape in the future.

Optimedia UK

6.160. Optimedia UK (Optimedia) told us that advertising expenditure on radio would continue to increase as more advertisers tried it. The marketing of radio as a medium to advertisers and agencies by the RAB had been critical in growing radio's share of advertising in the past five years. Additionally, commercial radio audiences should continue to increase with the continued expansion of commercial radio stations. Concerns that had previously existed about radio's accountability would be assuaged by the computerized development of a standard reporting protocol for all stations. Radio was not generally easily substitutable for other media. It was still small in advertising terms and Capital

was just one of many players. The long-term picture for commercial radio was important; if more audience was taken from BBC Radio, commercial reach or coverage would increase.

6.161. Virgin FM and Virgin AM were weak in their respective market places. Virgin AM was not performing as strongly across its broadcast area as its competitor local FM stations and there were still problems with the quality of AM transmission. Demand for Virgin AM was therefore lower than for FM stations generally. If the merger went ahead both Virgin stations could become harder in negotiations, since they would have the financial back-up of Capital. So even if any attempt by Virgin to raise CPTs failed in the short term and advertisers stopped using its stations for a while, in the long term advertisers would know that the price would be higher. Capital could effectively subsidize Virgin through the possibly turbulent first year of trading.

6.162. In Optimedia's experience, Capital was one of the few radio companies whose main sales pitch was aimed against other media rather than other stations. As market leader it needed to do this in order to grow. Accordingly, all commercial radio benefited from its endeavours. Optimedia welcomed the consolidation of the radio market that the merger would bring. With Capital's sales, marketing and production expertise, the Virgin stations should improve in quality and also in their effectiveness at bringing in more commercial listeners.

Pure Media

6.163. Pure Media expected that radio's share of advertising revenue would continue to grow. Supply would also continue to grow as new franchises and DAB opened up more commercial minutage. Radio as a medium was now far more widely accepted as part of the marketing mix, and advertisers and agencies were more aware of its potential. For a number of advertisers radio operated as a separate market. However, Pure Media believed there were few brands or services that could not operate effective advertising strategies using a combination of other media if necessary.

6.164. After the merger Capital's sales team would also be responsible for selling advertising the Capital and Virgin branded stations and other Capital group ILR stations, plus Newslink and the Network Chart Show. This would make Capital's sales operation the strongest player by a considerable margin. Furthermore, in London at present, it was possible to remove Capital from a schedule (if suitable terms of business could not be reached), and to use a combination of other stations to reach a target audience. This potential check on pricing would be a less viable negotiating stance after the merger. Also Pure Media said that the merged company might use its strength to inflate prices and incentivize advertisers to invest conditionally across the group's stations. If successful, this would attract a disproportionately high percentage of radio advertising revenue, and the rates commanded by other stations would then suffer. It was unlikely, though, that the merger would significantly affect rates for media other than radio. Overall, radio was still a cost-effective option. Pure Media said that it would be concerned if the merged company proposed any blanket changes to rates across its stations.

Saatchi & Saatchi Group Ltd

6.165. Saatchi & Saatchi gave written and oral evidence and responded to our questionnaire. It told us that radio was a strong independent medium. The ability of radio to increase its share of advertising revenue in the next few years relative to other media would depend on its ability to offer segmented consumer choice. The price of radio advertising was attractive to many advertisers. The increasing effectiveness of radio had largely been achieved by the efforts of the RAB.

6.166. Saatchi & Saatchi said that the likelihood of there being a level playing field in the London market after the proposed merger was not clear. Capital had maintained a fair trading policy for Capital FM, but had always attempted to subsidize Capital Gold and had never sought to control MSM when it had driven up prices relative to the rest of the market. The radio industry was a closed market where audience numbers were reported but revenue was not. There was therefore no precedent to show that, with increased control in London, Capital would not trade in a discriminatory fashion, affecting advertisers' and listeners' choice. It was virtually impossible to construct a sensible radio advertising schedule for London which excluded Capital. Saatchi & Saatchi was concerned about the

effect of the proposed merger on other stations, because Capital would have a higher percentage of listenership and advertising revenue and would therefore be able to manipulate rates between its stations, to the disadvantage of its competitors.

6.167. If the merger went ahead those advertisers which had to use radio in London would be most vulnerable, where the merged group would control as much as 75 per cent of revenue. In Saatchi & Saatchi's view, this would prevent competition and be detrimental to the growth of commercial radio and the diversity and choice that should be on offer. It would be far too easy to 'package for exclusion' when airtime was being sold. The rates charged in a market where there was no competition would be discriminatory.

6.168. Convergence in radio grouping was fine, as long as format was not sacrificed for audience numbers. Even between Capital and Virgin there were clear distinctions in listener profiles and attitudes. Saatchi & Saatchi said that Virgin FM had underperformed so far. It was concerned that any improvements in Virgin FM's performance, which would enhance Virgin FM's share of advertising revenue, could result in a predatory pricing policy. This would disadvantage advertisers and make it difficult for smaller stations to survive. Saatchi & Saatchi said that it would be concerned if stations, through their inability to market and sell advertising space, fell by the wayside. Grouping stations to offset the likelihood of this happening was not the right thing to do. Future development of the radio industry was the digital era and that could be destroyed if the commercial lifeblood of the industry (ie advertising revenue) was artificially controlled.

6.169. Listeners in London had benefited from increased choice. Saatchi & Saatchi was concerned that the proposed merger could affect listener choice, because London had a strong radio market which offered a good alternative for some advertisers which could not afford to use more expensive media.

6.170. In summary, radio in London was a market within a market. The proposed merger would destroy balance and weaken the opportunity for choice for advertisers and listeners. A monopoly situation would put that choice in jeopardy. Saatchi & Saatchi believed that the best interests of advertisers which wished to use the London market would not be served by this merger.

TDI Advertising Limited

6.171. TDI Advertising Limited was in favour of the proposed merger, which it believed would increase competition. Concentration within secondary media such as radio and outdoor strengthened their position versus primary media such as television and press, giving media buyers stronger negotiating opportunities. If Capital used its new strength in an aggressive manner, say by substantially increasing its prices, media buyers would choose other media.

TMD Carat Advertising Limited

6.172. TMD Carat Advertising Limited (TMD) said that, on balance, it supported the proposed merger. Capital was a well-resourced company and had clearly stated its intentions to introduce commercial minutage into the London radio market and create a stand-alone FM rock station, ie abandon the present simulcast format. This would be good for advertisers because an increase in advertising time would help to stabilize prices. Also Virgin AM, with its revised focus, should gain audience from BBC Radio. This too would increase audience and help to control inflation in the charges for radio advertising.

6.173. However, TMD was concerned that Capital's share of audience and revenue in London would increase following the merger, giving it greater negotiating leverage. But TMD believed Capital could not abuse its position in the market place. Radio competed with all other media and if prices were unjustified advertisers would use other media or buy around Capital, using other commercial London stations.

Warman & Bannister

6.174. Warman & Bannister was concerned that the proposed merger could result in advertising on Capital FM and Virgin FM being sold together. Also the merger would result in Capital and Virgin increasing their advertising rates, and other stations would follow.

Zenith Media Services Ltd

6.175. Zenith gave written and oral evidence and responded to our questionnaire. It considered that even though the proposed merger would increase Capital's market share in London, this was not of particular concern. Capital's market share had been falling for a number of years, whilst the level of competition in London radio had grown considerably. Radio's share of advertising revenues had also grown considerably over the last five years, partly because of the enhanced choice for audiences and the resulting improved commercial access to listeners.

6.176. In Zenith's view, advertising on radio would increase in the future because of the development of user-friendly planning systems, higher standards of industry accountability and co-ordinated industry marketing. Zenith believed growth would mainly be generated by national advertisers using radio as part of a mixed schedule. Expenditure that had moved into radio from other media could just as easily move out if Capital or any other radio company was overly aggressive on pricing or failed to give good customer service. Zenith said that the removal of radio from the advertising mix would rarely be a serious issue.

6.177. Radio had a strong personal relationship with listeners and good creative advertising could tap into that. Stations had different characteristics, which made radio quite a flexible medium. Radio commercials were cheap to produce. Although radio was still a fairly cheap medium, it was getting to a point where it would have to account for rate increases. In most instances, however, while the value of radio's contribution to a campaign was recognized, it existed as a support medium to the main campaign. No advertiser used radio only. Few campaigns relied solely on radio and in many instances it offered a relatively cheap and efficient way to extend a campaign that was predominantly using television and/or press. In London, in particular, there were many media opportunities. If its cost-effectiveness was threatened, radio would be removed from the advertising mix. Radio's weaknesses were creative restrictions and standards, its restricted communication potential compared with mass media such as television, clutter and variable standards of accountability.

6.178. Even within radio, particularly in London, there were alternatives to Capital and Virgin. Although Capital FM had a dominant position in London, a combination of other stations could be used by advertisers, even to reach a younger target audience. Zenith pointed out that the combined audience share in London for Capital FM and Virgin FM was significantly below those enjoyed by EMAP in Newcastle, Leeds, Manchester and Liverpool and by SRH in Glasgow and Edinburgh. On some occasions Zenith had failed to agree terms with Capital and had subsequently constructed schedules with other stations. Capital FM had been easily substituted, but Virgin FM had only been a minor beneficiary because of its low London penetration. In Zenith's view, Virgin FM's prices were high for the audience it delivered. The launch of Xfm added another player to the market, so Zenith was not concerned that the merger would reduce its negotiating leverage.

6.179. Zenith approved of Capital's proposals to create a new station for London and increase advertising minutage in the London market. Repositioning Virgin FM would produce a better, more distinct product. Under the guidance of Capital, Virgin AM should also increase its audience, making commercial radio more attractive to national advertisers. Zenith was confident that the merger would take radio forward because of increased investment.

6.180. In Zenith's view, the proposed merger would have no effect on rates in other media. It was possible that rates for Virgin FM would decrease, as the splitting of the AM and FM services would result in increased minutage for the FM service. Rates had been artificially hardened by this restricted supply. It was therefore unlikely that other London stations would be able to increase their rates, given this increase in supply. Stations outside London were unlikely to be affected by any rate changes for the AM service because ILR was significantly stronger than national services in most areas.

6.181. Capital and Virgin were very customer-focused and Zenith regarded them as sensible partners which recognized the value of happy customers. Capital's voluntary withdrawal from MSM showed its understanding of the sensitivities in this area. Zenith believed the proposed acquisition would enhance radio's overall product offering for listeners and advertisers, and that Capital was aware of the vulnerability of its potential revenue base, which would ensure an appropriate sales and marketing approach.

Others

6.182. One agency was concerned about the potential for the merged entity to increase its advertising rates, following which other stations' rates could also rise. If Capital's and Virgin's rates were to increase beyond an acceptable level it might avoid using their stations, provided that a sufficiently effective alternative was available to its clients.

6.183. A second agency told us that radio advertising was complicated to plan and buy because of the plethora of stations, and a large number of stations, segments and spots were needed to achieve high coverage. Radio was unaccountable relative to other media. Many audiences could be reached by other media more easily than by radio. Also radio could be subject to sales abuses. Figures for supply and demand were made available by stations, but they were not independently audited, monitored, or as readily available as they were for other media. Some of the recent inflation in radio airtime prices was believed by some to be caused by manipulation. It was acceptable for prices to rise when demand increased for radio, but this agency was concerned that MSM and Capital might have adjusted prices to what the market could take. Advertisers would require reassurance in the future that Capital's new sales company would act fairly and decently.

6.184. This agency believed radio's future success depended on the quality of the sales organization and the people selling the medium, as well as the quality and quantity of audience. The proposed merger would create a bigger, stronger radio sales operation, because a single sales point would represent all Capital-owned stations. It would become a portfolio sell and could result in conditional selling. In any case, the new sales point would lead to all Capital stations taking more money, probably by increasing their CPT. Some radio advertisers might increase their budgets to allow for this, but it was more likely that weaker stations would be dropped from schedules. If the price of radio advertising rose substantially some clients would not use it.

6.185. Advertising was the main source of revenue for most radio companies, so they would have to increase prices unless audiences improved. Radio had been successful in recent years and audiences had increased with the number of stations. Recent RAJAR figures suggested that despite a weak BBC, commercial radio had not managed to increase audience. Even if audiences increased because of better programming or new stations there would be a time lag before radio increased its advertising revenue. If commercial radio did not increase audience it would have to rely on upswings in advertiser demand or raise CPT prices. The Capital group, with or without Virgin, would be in a stronger position to do this than its competitors. These factors would adversely affect advertisers and other stations, but were unlikely to affect other media. If Capital raised its CPTs it might help stronger stations to increase their CPTs and thus their revenue. An unknown variable was how much larger advertisers valued radio and were prepared to substitute radio advertising and the extent of price increases needed to keep the owners of the stations happy. Generally, Capital FM was the most expensive station in terms of CPTs, but this followed other London media which charged premiums for their London audience (such as LWT, Carlton, the *Evening Standard*). Virgin FM had only a limited reach and share of audience and could not charge the same premiums as Capital FM. London was the most important marketing area in the UK and Capital and Virgin had major roles within that market. Capital FM could provide most types of audience easily and successfully, whereas Virgin FM provided a younger, slightly more upmarket audience, especially younger men.

6.186. Radio was not a separate market because other media reflected the effect of the domestic economy and effects on consumers and advertisers. Most big radio advertisers spent more in other media. These advertisers could stop using radio and increase investment elsewhere. Where radio was a separate market, this agency believed, was at the local level for smaller advertisers. They had few alternatives. Whether advertisers moved away from radio depended on how much they relied on or believed in the medium. High price increases would raise entry costs, discourage new advertisers and

turn away some existing advertisers. The higher the increases the more advertisers would cut down the number of stations they used.

6.187. This agency favoured the proposed merger if it increased audiences through better segmentation of service, improved programming, and gave consumers and therefore advertisers more choice. At the same time, Capital should lead the way forward by improving its accountability. There should be an improved system for ensuring that advertisements were transmitted as contracted. Independently-monitored, published data should be available by station for advertising revenue and minutage sold. This would prevent abuse by any sales operation in the radio market.

6.188. This agency was concerned, however, that the proposed merger could result in abuses by Capital and Virgin. If Capital and Virgin took disproportionately more money, advertising agencies would, at best, spend less elsewhere, or they might move away from radio as a whole. In either case it would be bad for radio as a medium. Capital could itself be subject to a takeover and any assurances, guarantees of fair play, etc given by Capital's current management to the MMC and others might not be honoured by new owners.

6.189. A third agency said that radio was becoming more fragmented as the number of stations increased. This gave advertisers more choice and it helped to define audiences by age group and, in some cases, class. It was often difficult to replicate these niche markets on a national basis. This agency believed radio advertising costs would increase as Capital increased its share and domination of the London market. Capital was able to charge a premium price for its airtime because it had much greater coverage of the London market than any of its weaker competitors. Capital's rates had increased disproportionately over the past three years by more than 50 per cent. This was higher than for any other medium.

6.190. Local radio was difficult to substitute only when the requirement was purely local and the alternative was local press. For required regional coverage there were limited alternatives at the same financial entry level. Radio offered retailers an ideal vehicle to reach consumers on prime shopping days, with regional flexibility. London needed two strong ILR stations of equal standing. Currently, there was one strong station, Capital FM, and many weaker ones. In this agency's view, the proposed merger would not be in the best interests of advertisers or consumers.

6.191. A fourth agency said that each station had a unique audience profile and choice of different programming styles was essential. Radio advertising and promotions would increase only if there was a competitive market place. When stations consolidated they offered choice of programming, but there was no room for negotiation on rates. Everything would be controlled by one owning body. If this happened in London, with Capital already in an extremely strong position, Virgin would become a non-negotiable alternative as far as rates were concerned. Capital had had many years without competition to build its programming, image, reputation, financial strength, etc. Virgin, despite this, had become a real thorn in its side. This was healthy and good for the future of radio programming and competitive rates. If Capital became the controlling factor in the proposed merger it would nip the Virgin venture in the bud. Capital needed healthy competition. If it bought every group that threatened it there was a danger that choice would be lost and advertising rates would rise. Agencies would have no leverage because Capital's attitude would be 'take it or leave it'. There was already not enough choice in the radio market, so if two high-profile stations merged it would not be good for the future of radio advertising. This agency believed the two companies should be left to flourish separately or fight it out in the market place.

6.192. Radio was interactive and could get closer to audiences more effectively than any other medium. Over the past year the number of individual radio groups had decreased, with larger groups such as GWR, EMAP and Chrysalis taking over. This had increased rates and removed competition. These groups provided programming choice, but only to suit their own needs, and did not provide competition within their groups. At the moment, Capital and Virgin provided some competition, but the proposed merger would water down any competition within Virgin's programming (especially in the London area). This would be bad for advertisers.

6.193. The proposed merger could not be good for the industry and the future of radio, in this agency's view. It was concerned about how the new service would be priced and sold. Virgin had more attractive, cost-effective rates and was easier to bargain with, whereas Capital's rates were expensive and it was harder to bargain with than most other stations. It was choice and the ability to

negotiate with two separate companies that kept prices fair and competitive. Radio was a separate economic market and not easily substitutable for any other media. It penetrated where other forms of media could not (for example, you could not read a newspaper while having a shower or driving a car).

6.194. A fifth agency said that radio was part of the overall media market place, not a separate market. The share of radio advertising was expected to grow over the next few years as more people listened to commercial radio as new stations were launched and existing stations improved their programming. Capital planned to split Virgin into two distinctive stations which would offer different target markets. As the commercial radio audience grew, additional money would come from other media. The rates for Virgin AM and Virgin FM would rise as the stations developed their own identities. This agency hoped that Capital's rates would not rise excessively, rather that it would try to bring new money to radio by providing a more knowledgeable and creative sales force and showing a greater understanding of advertisers' requirements. Compared with other media, radio still offered extremely competitive CPTs.

6.195. A sixth agency told us that radio was usually used as part of multimedia campaigns to extend overall coverage, but it was often used as the only medium for campaigns for video or record releases. Although radio had a unique relationship with its audience, so did other types of media. This agency believed expenditure on radio would increase over the next few years with the advent of DAB and this would have an effect on radio's role in advertising strategies.

6.196. The proposed merger would affect the negotiating of advertising costs. Capital's sales house would have a stronger, almost monopolistic, negotiating position. Rates would inevitably increase and the effects on other stations and other forms of media were impossible to predict. If a station increased its rates, this agency said that it would make a considered judgment as to whether it was essential to the media schedule.

6.197. A seventh agency said that it did not oppose the proposed merger. If the sales houses merged there could be a joint sales initiative, which would benefit Virgin more than Capital. It could make Virgin more cost-effective. However, the merger would have no real impact on other media. Generally, this agency expected that the proposed merger would increase rates for all radio advertising. Capital's airtime was already sold at a premium, but it was doubtful that Virgin would be sold as a loss-leader. The rest of the industry would try to artificially raise its rates. London was probably the only area where other media would try and follow this increase. Television was already sold at a high premium and radio was not perceived as a major threat to its revenue. Any increase in rates because of a monopoly and without merit would obviously be unacceptable. Radio was a unique market in some ways (for example, it was direct, had tactical opportunities for promotional links and a young audience). But it was not an easy medium to substitute in a campaign because it offered cost-effective frequency for an advertisement which press or television could not.

6.198. An eighth agency said that the proposed acquisition would benefit radio in the long term and help to increase the commercial sector's share of the audience. This assumed that Capital would segment the London audience more efficiently between the stations and deliver higher-quality programming than was currently offered by Virgin. However, this agency was concerned about the effect of the proposed merger on advertising sales. Radio was still a minority medium in national terms and the real competition for commercial radio was with other media. Most advertisers and agencies could plan around radio if a station attempted to act unreasonably or abuse its market position. Indeed, this agency had done this for some of its clients in the past with Capital. However, advertisers should not have to take such evasive action and no media supplier should be in a position to make this necessary. Advertisers should have free and open access to any medium and be able to agree fair prices in a truly competitive market. The acquisition of Virgin would increase Capital's revenue share in London to around 70 per cent and increase its ability to demand higher prices than competing stations. Virgin had brought extra competition into the market and that had forced Capital to temper its aggressive and arrogant sales policies. There was a risk that the removal of competition from Virgin would allow Capital to slip back into complacency.

6.199. This agency wished to see safeguards in place to limit potential abuse by Capital before the merger was allowed. Examples of such safeguards were:

(a) a statement of principles by which future sales policies would be developed;

(b) a guarantee on future audience share and absolute levels;

(c) capping of future increases in CPTs;

(d) capping of Capital's relative prices in relation to those of other commercial stations;

(e) a guarantee that conditional selling would not be allowed across stations and that advertisers would be free to use competing stations without penalty;

(f) a guarantee that Virgin's innovative and user-friendly approach to customers would be maintained and applied to the selling of advertising by Capital; and

(g) strong sanctions on Capital if it did not adhere to its promises.

6.200. A ninth agency told us that a merged sales operation between Capital and Virgin would be in a position of strength to dictate market rates across the radio industry. The outcome of this would probably be an increase in prices, but could also be an increase in the share of advertising revenue for the radio sector. In London, however, a merged entity would be in a position to offer incentives to select only its stations. This would make it more difficult for the other smaller London stations to survive because their share of the London market would be eroded. The ultimate result could be the closing of stations and a reduction in choice for listeners.

Advertisers

6.201. This part of the chapter summarizes the evidence of those advertisers which wrote to us, those which responded to our questionnaire (see Appendix 6.1) and those which did both. Carphone Warehouse and Procter & Gamble also gave oral evidence. A list of the advertisers which gave evidence is given in the annex to Appendix 1.1.

Allders Department Stores Limited

6.202. Allders Department Stores Limited said that radio advertising was a cost-effective way, in terms of airtime and production costs, to reach a target audience. It often used radio to increase the frequency and coverage of the younger target market. Stations were selected according to their reach and audience coverage and availability of airtime. For certain messages radio was key to the success of the promotion. In other instances radio could easily be substituted for other media, but changes depended on budget and creative considerations.

British Sky Broadcasting Ltd

6.203. British Sky Broadcasting Ltd (BSkyB) told us that it was a committed radio advertiser and recognized the strengths of this short-term medium in relation to its own fast-moving business. Radio added a third dimension to press and poster advertising, it conveyed the urgency of the message, it reached a variety of audiences cost-effectively, it was flexible enough to reach people at a particular time and it had lower production costs than other media. BSkyB's target audience was, simply put, everyone, so in a typical year it could use every commercial station. BSkyB said that it treated no medium as a unique market and no medium was totally indispensable. But, if any station did not offer value for money, BSkyB said that it could just as easily supply copy for press instead.

6.204. Any concentration of power into the hands of one media owner reduced the flexibility of negotiation available to advertisers. For example, BSkyB had recently had the option to use Capital FM or Virgin FM to reach an audience of 15- to 44-year-olds in London. This had maintained fair pricing by the stations as well as a keenness to win revenue from each other. If the proposed merger undermined this situation or caused either station to be complacent it would be detrimental to BSkyB's business.

6.205. BSkyB believed advertisers would welcome the proposed merger if it increased commercial radio audiences at the expense of BBC Radio. However, if the merger resulted in more conditional trading, advertisers would resist and use other media. If that happened, consolidation would damage radio.

The Carphone Warehouse Limited

6.206. Carphone Warehouse gave written and oral evidence and responded to our questionnaire to advertisers. It told us that it was one of the top four advertisers on commercial radio in the UK and it supported the proposed acquisition. Radio advertising was an important part of its advertising mix. It was cost-effective, commercials were relatively quick to produce, and it could communicate with people while they were doing something else.

6.207. Carphone Warehouse said that it bought an audience, not a programme format, when it placed an advertisement on radio, and there would still be a wide range of alternatives to Capital's stations. Radio competed with press, television and outdoor media, so there was therefore a wide choice of options and this amount of consolidation would have no real effect on advertisers' choice. In London radio was often not the best solution for small advertisers because the target markets of most London stations were usually larger than those of the advertisers. Mid-size advertisers, for which radio was more suitable, had plenty of alternatives in the London media market.

6.208. The proposed acquisition would increase Capital's market share in London which had been falling for a number of years. The level of competition in London radio, however, had grown considerably in the last seven years.

6.209. Radio's share of advertising revenue had grown considerably over the last five years, partly because of the enhanced choice for audiences and improvements to access for commercial radio listeners. Expenditure that had moved into radio from other media could just as easily move out if Capital or any other radio company took an overly aggressive view on pricing. Carphone Warehouse said that it would take its business elsewhere if there were unreasonable price increases following the merger. Carphone Warehouse believed, however, that Capital would not abuse its position by increasing prices. To attract new local advertisers Capital would need to maintain moderately low prices.

6.210. Carphone Warehouse welcomed Capital's proposal to create a new FM station for London and the resulting increase in supply of advertising minutage in the London market. It was not practical to buy advertising time on Virgin FM because it sold such a small amount of inventory—it was not, therefore, a real competitor for radio advertising revenue in London. Carphone Warehouse also welcomed the professionalism that Capital would bring to Virgin FM, which would make it a real alternative for advertisers in the London market. At present, Virgin FM's poor programming was reflected by low audience figures. Under the guidance of Capital, the national Virgin AM service should increase its number of listeners, making commercial radio more attractive to national advertisers. Carphone Warehouse said that it had built a strong relationship with Capital over the years. The track records of Capital and Virgin were very customer-focused and they recognized the value of happy customers. Capital's voluntary withdrawal from MSM was evidence of this.

Chessington World of Adventures Ltd

6.211. Chessington World of Adventures Ltd (Chessington) told us that radio was used as a secondary medium to television because it was cost-effective and reached people when they were most likely to take the message in. Radio competed alongside television, press, posters and cinema. Many radio advertisements were poor, so excellence stood out. There were low production costs for advertisements and short lead-times. Chessington said that it generally supported the proposed merger as it would lead to a more professional and proactive radio company which could compete more effectively with television on a national and local basis. The merger would be generally positive if it resulted in a more cost-effective company that would bring rates down.

Eurostar (UK) Ltd

6.212. Eurostar told us that the proposed merger was unlikely to affect its advertising strategy or use of radio. If Capital invested and strengthened Virgin's audience profile and volume, it could only be beneficial for Eurostar and radio generally. Capital was already in a commanding position in the London market and was unlikely to increase rates beyond a position justified by inflation, audience growth or advertiser demand.

6.213. There was sufficient competition in the London market between radio and other media to maintain a steady market place and check any attempts to impose unjustifiable rates. If Capital was to abuse its position, Eurostar said that it would move its money to other media. If Capital raised its prices after the merger other media and stations would seek to exploit this situation by undercutting the market. The market would then restabilize. If radio continued to fit Eurostar's strategies and achieved its objectives the issue of premium would be of less concern. However, if prices became too demanding, Eurostar would find alternative solutions. To substitute radio as a medium purely on price would be unlikely but feasible, particularly in a market as competitive as that in London.

Express Newspapers plc

6.214. Express said that the proposed merger would create a powerful London grouping which would leave Express no obvious viable alternative for reaching its target audience. Express was concerned that the proposed merger could lead to anti-competitive rises in the cost of radio airtime in the London area. Capital was sold more aggressively than other London stations and the merger would allow it further to exploit its dominant position in London. If rates were increased, Express said that it would review its level of advertising in London and explore alternative media. However, there was no equivalent medium in terms of impact, coverage and audience. As the closest competitors were smaller and less powerful, the merged group would be in a position to exploit the London market, either by pricing in a predatory fashion to force out competitors or by pricing monopolistically to exploit the absence of strong competition. Any price increases or decreases relative to the rest of the market would indicate the new group's approach. However, any positive price changes in the early years could quickly be reversed. Express doubted that any meaningful constraints could be placed on rates to prevent such increases, or that this would be advisable. Any increase in rates would be strongly lobbied against since London rates were already relatively high. Although it might be possible to boycott the stations for a period, ultimately there would be little alternative other than to return to them because of the lack of strong competition.

6.215. Radio was a unique medium because it allowed advertisers to achieve a high coverage over a short period of time, with relatively high impact and for low cost. It was far more cost-effective than television. Radio also had a unique audience. It operated as a support vehicle (behind other media) in many instances and had no substitute in this role. In Express's view, there was, at present, no directly (or closely) substitutable medium available in London or elsewhere.

Fort Sterling Limited

6.216. Fort Sterling Limited said that radio was a support medium, alongside cinema, posters and press, rather than the main means of communication. The proposed merger was not a major issue, given the size and reach of alternative media such as television and women's magazines. The main casualties would be tightly-defined geographical audiences for small regional supply companies. Any acquisition should, in theory, result in a reduction of costs as a duplicate resource was removed. However, costs were driven by audience size, so if, as a result of any acquisition, audience levels increased, then total costs would increase, but CPTs should remain the same or reduce slightly; the reverse would be the case if audiences fell.

Guardian Newspapers Limited

6.217. Guardian said that Capital had successfully maintained its status as leader in the London radio market, and it had not used that position to behave unfairly. Guardian therefore had no

objections to the proposed acquisition. Radio was an integral part of its promotional mix. Subject to airtime availability, it often used radio at the last minute to advertise a particular article or feature. Guardian believed the proposed merger would not have a significant effect on its radio advertising strategy. It said that the market was already competitive, with a number of distinct and strong players. For advertisers, the key requirement was that new audiences were attracted into the commercial radio sector by effective targeting and resourcing. Capital had a proven record in maintaining and growing the commercial audience, whereas Virgin, in London and nationally, had been somewhat pedestrian.

6.218. Radio advertising was a market in its own right, with stations competing for advertising revenue. The rates charged by Capital after the proposed merger should reflect the success or otherwise of the individual stations in delivering their target audiences. The market was already characterized by vigorous negotiation.

H P Bulmer Limited

6.219. H P Bulmer Limited (Bulmer) told us that the proposed merger would not affect its radio advertising strategy. Capital FM was a chief consideration when advertising in London and Virgin FM offered little competition for London-only advertisers. However, competition in the London radio market meant that there were alternatives. Bulmer said that any increase in rates following the merger would be resisted and radio would suffer. Radio was not a separate economic market. There were many alternatives, such as local or national press, that could be used. There were instances where radio was preferred, but other methods of communication could always be found. The proposed merger was only another stage in the evolution and consolidation of the market. There were other competitors to Capital and Virgin, which would help to maintain a competitive environment.

Kingsway Scotland Ltd

6.220. Kingsway Scotland Ltd, which trades as The Suite Centre, said that it advertised in all major media in London, including Carlton, Capital, the *Evening Standard* and other local press. It believed the proposed merger would help it to develop its business more effectively and allow better use of its advertising budget. In September 1997 it had invested in a joint promotion with Capital, because advertising with Capital had proved in the past to increase its sales and raise customer awareness. It said that Capital and Virgin would work together as an effective force in the London market.

Kraft Jacobs Suchard Ltd

6.221. Kraft Jacobs Suchard told us that the proposed merger could lead to improved marketing of radio. However, Kraft Jacobs Suchard would be concerned if Capital's market size in any way distorted its competitiveness. Capital already had a dominant position in the London airtime market. The addition of Virgin FM would further build on this strength. It was a short step to use this strength to distort the market either through rates or, more likely, sales policy practices. As Capital was the largest supplier of radio airtime by a substantial margin, the temptation to do so would be considerable. London was a market within a market, and with no other volume supplier available, there should be adequate safeguards in place to protect advertisers.

6.222. Kraft Jacobs Suchard believed radio was not a separate market if looked at nationally. But in London, radio could be a viable alternative to television, which was expensive and could not always deliver a particular audience at an affordable price. The merger would produce efficiencies and cost savings for the stations involved, Kraft Jacobs Suchard said, so there should be a reduction in rates to reflect such savings.

Leopard Sport Ltd

6.223. Leopard Sport Ltd (Leopard), owner of the London Leopards basketball team, was concerned that the proposed acquisition would increase Capital's monopolistic approach to the London market. Capital had turned down Leopard's approach for a promotional arrangement for London Leopards' games because it already had such an arrangement with the only other London basketball team, the London Towers. Capital had subsequently turned down Leopard's advertising. Leopard said that it had continually complained to Capital, but to no avail. It had instead used Virgin FM to promote its games, but because of Virgin FM's limited share of the market this was very much a second option. If the merger went ahead, even this option might be closed.

6.224. During the MMC's inquiry, Leopard told us that it had received an offer of co-promotion from Capital, which it had considered unreasonable. The price of this kind of promotion would be expected to be about one-third of the takings, but Capital's offer had equated to more than 100 per cent of the estimated gross takings. When Leopard had queried Capital's proposal, Capital had said that there was no flexibility and that Leopard could take it or leave it. Leopard believed this was further evidence of Capital's abuse of its position in the market place. Any further concentration of Capital's power with the acquisition of Virgin would only add to this unreasonable position.

The Media Slice

6.225. The Media Slice, a local advertiser, felt that the proposed merger would be advantageous to the radio industry. A united and professional approach could only be good for business.

Perry Publications Ltd

6.226. Perry Publications Ltd favoured the proposed merger. It said that it had to be seen in the wider context of the overall media market place in London, which included two strong television contractors, the *Evening Standard*, the southern editions of national newspapers and a plethora of local magazines and newspapers, as well as other London stations. The strongest possible commercial radio presence was needed to help that medium compete in the overall London media market place and to provide competition to keep media inflation at a minimum.

Polygram Record Operations Ltd

6.227. Polygram told us that radio provided a unique opportunity for it to reach a young, regionally-specific audience via an intrusive yet affordable medium. It often used radio to extend or supplement its television campaigns or when television proved expensive, as in London. Polygram believed the proposed merger would have a profound effect in the London area. Capital already had a relative monopoly in London. For most demographic groups, it was extremely difficult to reproduce significant levels of coverage without using Capital FM. For those audiences where a combination of stations would yield similar levels of coverage, Virgin FM would be an integral part of that mix, and therefore its loss of independence would severely restrict competition in London.

6.228. Polygram said that the opportunities to reach a youth audience, especially in London, were relatively limited and that radio took a relatively high share of its total media expenditure for the London region. Polygram said that it therefore had serious misgivings regarding the future structure of the commercial radio industry in London. Any further concentration of selling points would have a significant and negative effect on competition, and this lack of competition in London might provide Capital with the opportunity to raise rates even further. This would not be in advertisers' interests and might force Polygram to forgo radio advertising in London altogether. However, Polygram said that Capital's involvement with Virgin AM could have some positive benefits. Investment by Capital might turn around a declining audience and ensure a strong involvement in the adoption of DAB which would improve sound quality for Virgin AM.

6.229. In the London media market there were already few alternatives to Capital FM. Other stations were either too small (in audience terms) or musically inappropriate, and other media failed to communicate the specific nature of an individual CD release. Polygram said that it would therefore have to use Capital's stations at inflated rates or switch its advertising to other regions, missing out on a crucial sales area because of Capital's monopoly in London. Any increase in advertising costs across all stations would force Polygram to reconsider the viability of this medium.

Procter & Gamble UK

6.230. Procter & Gamble provided written and oral evidence and responded to our questionnaire to advertisers. It told us that it used radio to provide additional support to its brand advertising, typically to extend television campaigns. Procter & Gamble regarded radio as a separate economic market, and for some campaigns it was preferable to any other medium. Over the last five years the radio industry, particularly through the RAB, had improved the attraction of the medium for advertisers. Procter & Gamble welcomed the increasing choice of stations which enabled it to reach the consumers of its products more effectively.

6.231. It was debatable how radio worked in terms of its ability to communicate with consumers as much as whether it was a separate market or how interchangeable individual media were. Procter & Gamble was predominantly a television advertiser and would not exchange television for other media. However, there were advertisers which would take an equal and opposite view about radio; Procter & Gamble believed media were not generally interchangeable.

6.232. The proposed merger could have a significant effect on Procter & Gamble's use of radio and negotiations in general. It was concerned that the merger could affect its ability to put schedules together which were effective in the London area. Capital FM was the dominant station in the London region, although there was nothing in the way it had conducted its business in the past that suggested it would in any way misuse that position. But Virgin FM was an important part of Procter & Gamble's schedule and an alternative to Capital FM.

6.233. If the merger proceeded, the audience share in the London region represented by Capital FM and Virgin FM could be used to force prices upwards to a point where Procter & Gamble would have to review the viability of the medium in London and the UK. The cost of television advertising in London was about twice the national average, so it was important that radio should remain cost-effective and competitive with other media and within itself. Generally, radio had improved in its efficiency versus television over the last few years. But price was not the only issue when deciding which medium to use. Creative opportunity was also an important factor.

6.234. If increases in prices for radio advertising were led by natural demand rather than market place manipulation, advertisers might be concerned but they would understand the reason for it. The relative prices between individual media were in some cases a reflection on their likely effectiveness. If all media were equal they would all cost the same.

6.235. Following the merger there would be opportunities, in principle, for Capital to offer advertisers and agencies packages of airtime across its stations, but to a certain extent Capital already had that opportunity because of its significant share of the market place. From the point of view of advertisers, the merger would change the degree of flexibility in the London market place. This would not greatly affect national advertisers, but could cause difficulties for regional advertisers.

6.236. The merger could be positive if Capital distinguished the stations more significantly by programming changes which would enhance the delivery of commercial radio as a whole. But there was no guarantee that any benefit accruing from this would offset the enhanced strength of the group.

SJM Ltd

6.237. SJM Ltd supported the proposed acquisition. It said that it had worked with Capital on various concert co-promotions for about eight years and had always been satisfied with Capital's excellent service.

Solo

6.238. Solo said that it had successfully co-promoted concerts with Capital for a number of years and was pleased with the service Capital provided. In Solo's view, the proposed merger would mean that advertisements would reach a much wider audience, and this could only be considered an advantage.

Uno plc

6.239. Uno plc (Uno) told us that the proposed merger was a positive step for commercial radio. London was a vital area for the growth of Uno's companies and its advertisements on Capital's stations had been very successful. Radio was still a relatively small medium, so Capital's ownership of Virgin FM was a chance to increase audiences for commercial radio for winning listeners from BBC Radio. In addition, stronger audiences for Virgin FM could mean more successful advertising. Uno had every confidence that Capital would take forward and develop the market.

Weatherglaze PLC

6.240. Weatherglaze supported the proposed acquisition, even though it said that it would increase Capital's market share in London which had been falling for a number of years, because the level of competition in London radio had grown considerably in the last seven years. Weatherglaze welcomed Capital's proposals to create a new radio station for London and increase advertising minutage in the London market. Under the guidance of Capital, Virgin AM should increase its number of listeners, making commercial radio more attractive for national advertisers.

6.241. Radio's share of advertising revenue had grown considerably over the last five years, partly because of increased choice and improvements for listeners. Expenditure that had moved into radio from other media could easily move out if Capital or any other radio company took an overly aggressive view on pricing. Capital and Virgin were customer-focused companies which recognized the value of happy customers.

6.242. Weatherglaze said that it used radio in conjunction with other media, mainly national and local press. Radio was used primarily to create brand awareness, but it was the weakest medium in terms of return on advertising expenditure. To some extent radio was a separate market, although if forced to, Weatherglaze said that it would find alternatives to radio advertising. Radio was not easily substitutable, because television did not give the same defined target audiences and was more expensive.

Weetabix Limited

6.243. Weetabix Limited (Weetabix) favoured the proposed merger. It used Capital FM for London advertising and Virgin AM for national advertising. Therefore it believed the companies were not really in competition. Weetabix believed if radio was to succeed and compete with television it needed to reduce the number of small stations and develop a number of large serious players which were prepared to invest in the medium in terms of programme quality and research (both consumer and advertiser) and would develop a much keener understanding of how radio advertising actually worked and promote such findings to agencies and advertisers.

Westbay Distributors Limited

6.244. Westbay Distributors Limited told us that it had had good results with radio advertising and expected to use it more in the future. However, if the proposed merger affected its choice it would look at other media to fulfil its requirements. In its view, everything was substitutable.

Yellow Pages

6.245. In Yellow Pages' view, radio and other media did not form separate economic markets. Substitution, even with different creative techniques, was nearly always possible. There were alternative media to radio, particularly direct mail and local press. However, radio was more effective than other media in communicating the cut-off dates for publishing advertisements in *Yellow Pages* directories. Yellow Pages believed the proposed merger would not affect its use of radio. But it said that its interests might be affected if the merger led to rate increases that undermined the cost-effectiveness of its sales support programmes. Yellow Pages would probably try to negotiate a pre-merger parity or it would seek to use another medium or station.

G ODGERS *(Chairman)*

A FORSTER

G F OWEN

G H STACY

P A BOYS *(Secretary)*

2 December 1997