

**Completed acquisition of Gorkana Group Limited by GTCR Canyon UK Investments Ltd**

**Proposed undertakings to be given by GTCR Canyon UK Investments Ltd to the Competition and Markets Authority pursuant to section 73 of the Enterprise Act 2002**

**Whereas:**

- (a) GTCR Canyon UK Investments Ltd (“**GTCR**”) completed the acquisition of Gorkana Group Limited (“**Gorkana**”) on 21 October 2014 (the “**Transaction**”) such that GTCR and Gorkana ceased to be distinct for the purposes of the Enterprise Act 2002 (the **Act**);
- (b) Under section 22(1) of the Act the Competition and Markets Authority (“**CMA**”) has a duty to refer a relevant merger situation for a Phase 2 investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (c) Under section 73 of the Act the CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate. In particular, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (d) As set out in the CMA’s decision of 27 March 2015 (the “**Decision**”), the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Transaction for a Phase 2 investigation;
- (e) The CMA considers that the undertakings given below by GTCR are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision; and

- (f) The CMA made an Initial Enforcement Order applying to Canyon Holdings Sàrl<sup>1</sup> and GTCR on 18 December 2014 in respect of the Transaction pursuant to section 72 of the Act for the purposes of preventing pre-emptive action. Pursuant to section 72(6)(b) of the Act, this Initial Enforcement Order ceases to be in force on the acceptance by the CMA of the undertakings given below by GTCR.

NOW THEREFORE GTCR hereby gives to the CMA the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

## **1 EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by GTCR, they are accepted by the CMA.

## **2 DIVESTMENT OF THE DIVESTMENT BUSINESS**

- 2.1 Prior to the acceptance of these undertakings by the CMA, GTCR shall enter into a legally binding agreement (or agreements) to divest, to the satisfaction of the CMA, the Divestment Business as a going concern to the Proposed Purchaser on terms approved by the CMA in advance of acceptance of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, GTCR shall use all reasonable endeavours to ensure the transfer of the Divestment Business Key Staff with the divestment of the Divestment Business.
- 2.3 GTCR shall be deemed to have complied with its obligations at paragraph 2.1 above if, prior to acceptance of these undertakings by the CMA, GTCR entered into a legally binding agreement (or agreements) with the Proposed Purchaser, conditional on:
- (a) formal CMA approval of the Proposed Purchaser; and
  - (b) acceptance by the CMA of these undertakings;

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<sup>1</sup> GTCR is a wholly-owned subsidiary of Canyon Holdings Sàrl.

provided that the completion of the divestment of the Divestment Business to the Proposed Purchaser contemplated by such agreement (or agreements) takes place within a period not exceeding one month from the date these undertakings take effect.

2.4 Without prejudice to the generality of paragraph 2.1 above, GTCR shall take the following measures to the extent they may be necessary in the opinion of the CMA to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:

- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
- (b) the granting of Transitional Support Services relating to the ongoing operation of the Divestment Business; and
- (c) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise.

2.5 GTCR shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 above includes a warranty that the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as part of a viable and active business in competition with GTCR and other competitors in UK media databases sold either on a standalone basis or as part of a bundle together with other media solutions.

2.6 In the event that GTCR fails to complete the divestment of the Divestment Business in accordance with paragraphs 2.1, 2.2 and 2.3 above, the CMA may, whether or not initiating the Trustee Functions as set out in clause 4 below, require GTCR to divest the Divestment Business as a going concern at no minimum price to a purchaser approved by the CMA.

### **3 APPROVAL OF PURCHASER AND TERMS OF DIVESTMENT**

3.1 For the purposes of the CMA approving a Proposed Purchaser and the terms of the divestment of the Divestment Business in accordance with these

undertakings, GTCR shall, save as required or permitted by the CMA, satisfy the CMA that:

- (a) the acquisition by the Proposed Purchaser of the Divestment Business, on the terms set out above, remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) the Proposed Purchaser is independent of and unconnected to GTCR and the Group of Interconnected Bodies Corporate to which GTCR belongs and any Associated Person or Affiliate of GTCR or such Group of Interconnected Bodies Corporate;
- (c) the Proposed Purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the Divestment Business as a viable and active business in competition with GTCR and other competitors in UK media databases sold either on a standalone basis or as part of a bundle together with other media solutions from the date of completion of the Divestment;
- (d) the Proposed Purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority, including (where applicable) landlord's consent to the transfer of any leasehold interest; and
- (e) the acquisition by the Proposed Purchaser of the Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The CMA may require GTCR to provide it with such information and documentation as it may reasonably require to satisfy the CMA that the Proposed Purchaser will fulfil the requirements in paragraph 3.1 above.

#### **4 APPOINTMENT OF A TRUSTEE**

4.1 The provisions of paragraph 4.2 to paragraph 4.7 below shall apply only as long as GTCR has not satisfied, or where the CMA has reasonable grounds for

believing that GTCR will not satisfy, all or any part of the obligation to divest the Divestment Business in accordance with clause 2 above.

4.2 Within 5 Working Days of the CMA notifying GTCR in writing that it must do so, GTCR shall propose to the CMA for approval:

- (a) the names of at least two individuals to exercise the Trustee Functions; and
- (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.

4.3 GTCR and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the CMA that, save as required or permitted by the CMA:

- (a) such nominated individuals have the necessary qualifications to carry out their mandates, and are employees or partners of an investment bank, retail bank, commercial property agent, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;
- (b) such nominated individuals are each independent of GTCR and of the Group of Interconnected Bodies Corporate to which GTCR belongs and of any Associated Person or Affiliate of GTCR or of such Group of Interconnected Bodies Corporate and of any Proposed Purchaser of the Divestment Business to be sold pursuant to these undertakings, and, in the reasonable opinion of GTCR, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are, nor are likely to become, exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 2 Working Days of the CMA approving, at its discretion, one or more of the persons nominated by GTCR and their proposed mandates pursuant to paragraph 4.2 above, and subject to any modifications the CMA deems necessary for the Trustee to carry out the Trustee Functions, GTCR shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the CMA pursuant to paragraph 4.2 above.

4.5 In the event that:

- (a) GTCR fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by GTCR pursuant to paragraph 4.2 is approved by the CMA; or
- (c) GTCR is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 above any such person following approval by the CMA,

GTCR shall use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions on the terms of a mandate approved by the CMA. GTCR shall use its best endeavours to make such appointment within 5 Working Days of receiving the nominations from the CMA.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or paragraph 4.5 above shall be irrevocable unless:

- (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises;
- (b) the Trustee ceases to perform the Trustee Functions; or
- (c) the CMA is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, GTCR shall, if requested to do so in writing by the CMA, use its best endeavours to appoint from persons nominated by the CMA one person to carry out the Trustee Functions in accordance with such mandate as is approved by the CMA. GTCR shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the CMA. Where required by the CMA, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

## **5 THE MANDATE**

5.1 The terms of the mandate proposed by GTCR pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:

- (a) an exclusive, irrevocable mandate to sell the Divestment Business as required by paragraph 6.1 below to a purchaser as directed or approved in writing in advance by the CMA at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
- (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
- (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of the Divestment Business;
- (d) a mandate to comply with any orders and/or directions given by the CMA; and
- (e) a mandate to appoint at GTCR's expense such advisers as the CMA and/or the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

## **6 FUNCTIONS OF TRUSTEE**

6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the CMA, the completion of the sale of the Divestment Business at no minimum price, to a purchaser or purchasers approved by the CMA in accordance with paragraph 6.3 below.

6.2 Without prejudice to the generality of paragraph 6.1 above, the Trustee shall take any of the measures set out in paragraph 2.4 above in relation to the Divestment Business to the extent to which such measures may be necessary to effect the divestment of the Divestment Business in accordance with that provision.

- 6.3 The Trustee shall not sell or permit the divestment of the Divestment Business to a proposed purchaser unless it has been directed to do so by the CMA or has obtained the CMA's prior written approval in respect of the identity of that proposed purchaser. The Trustee shall notify the CMA of the identity of a proposed purchaser as soon as reasonably practicable prior to the signing of a legally enforceable agreement and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.
- 6.4 Pending the divestment of the Divestment Business pursuant to paragraph 6.1 above, the Trustee shall monitor GTCR's compliance with its obligations under paragraph 7.1 and paragraph 7.2 below and shall promptly take such measures as it considers necessary to ensure such compliance, as well as reporting in writing to the CMA, if the Trustee concludes on reasonable grounds that GTCR is failing or will fail to comply with such obligations.
- 6.5 The Trustee may give written directions to GTCR to take such steps as may be specified or described in the directions for the purpose of securing GTCR's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require GTCR to:
- (a) offer any reverse premium or similar inducement to a purchaser; or
  - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Business which would be unusual in scope, duration or financially, having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the CMA for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the CMA such information and reports in relation to the carrying out of the Trustee Functions as the CMA may require. The Trustee shall promptly report in writing to the CMA if the Trustee concludes on reasonable grounds that GTCR is failing or will fail to comply with any of its obligations under these undertakings.
- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of GTCR nor shall the Trustee Functions be extended or



varied in any way by GTCR save with the prior express written consent of the CMA.

## **7 OBLIGATIONS OF GTCR FOLLOWING APPOINTMENT OF TRUSTEE**

7.1 GTCR shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.

7.2 GTCR shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6 above; and
- (b) providing the Trustee with all such assistance and information as it may reasonably require in carrying out the Trustee Functions.

## **8 REMUNERATION OF TRUSTEE**

8.1 GTCR shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in clause 5 above.

## **9 INTERIM ACTION**

9.1 Pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, save as otherwise agreed in advance in writing by the CMA, GTCR shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business and in particular ensure that:

- (a) the Divestment Business is carried on separately from the UK Gorkana Business and the Divestment Business's separate sales identity is maintained;
- (b) the Divestment Business and the UK Gorkana Business are maintained as going concerns and sufficient resources are made available for the development of the Divestment Business and the UK Gorkana Business, on the basis of their respective pre-Transaction business plans;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Divestment Business or the UK Gorkana Business;
- (d) the nature, description, range and quality of UK media databases sold either on a standalone basis or as part of a bundle together with other media solutions and supplied in the UK by each of the Divestment Business and the UK Gorkana Business are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the Divestment Business and the UK Gorkana Business:
  - (i) all of the assets of the Divestment Business and the UK Gorkana Business are maintained and preserved, including facilities and goodwill;
  - (ii) none of the assets of the Divestment Business or the UK Gorkana Business are disposed of; and
  - (iii) no interest in the assets of the Divestment Business or the UK Gorkana Business is created or disposed of;
- (f) there is no integration of the information technology of the Divestment Business or UK Gorkana Business, and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance and the preparation for the sale of the Divestment Business;
- (g) the customer and supplier lists of the Divestment Business and the UK Gorkana Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Business will be carried out by the Divestment Business alone and for the avoidance of doubt the UK Gorkana Business will not negotiate on behalf of the Divestment Business (and vice versa) or enter into any joint agreements with the Divestment Business (and vice versa);
- (h) all existing contracts of the Divestment Business and the UK Gorkana Business continue to be serviced by the business to which they were awarded;

- (i) no changes are made to the Divestment Business Key Staff or the UK Gorkana Business Key Staff;
- (j) no Divestment Business Key Staff are transferred to the UK Gorkana Business, or vice versa;
- (k) all reasonable steps are taken to encourage all Divestment Business Key Staff to remain with the Divestment Business and all UK Gorkana Business Key Staff to remain with the UK Gorkana Business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature (**Confidential Information**) relating to either of the Divestment Business or the UK Gorkana Business shall pass, directly or indirectly, from the Divestment Business (or any of its employees, directors, agents or affiliates) to the UK Gorkana Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or any steps necessary in order for GTCR to comply with these undertakings, including the transfer of information necessary for the divestment process, provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by GTCR and the UK Gorkana Business in relation to the Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed within 90 days (except as may be necessary for the purposes of compliance with the obligations above or granting the Transitional Support Services).

9.2 Pending the completion of the divestment of the Divestment Business to the satisfaction of the CMA in accordance with the provisions of these undertakings, GTCR will actively keep the CMA informed of any material developments relating to the Divestment Business, which includes, but is not limited to:

- (a) details of the UK Gorkana Business Key Staff who leave the UK Gorkana Business or the Divestment Business Key Staff who leave the Divestment Business;
- (b) any interruption of the UK Gorkana Business or the Divestment Business (including without limitation its procurement, production, logistics, sales

and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;

- (c) all substantial customer volumes lost by the Divestment Business; and
- (d) substantial changes in the UK Gorkana Business' or the Divestment Business' contractual arrangements or relationships with key suppliers.

## **10 CONTINUED SEPARATION**

10.1 Except with the prior written consent of the CMA, for a period of 10 years following the divestment of the Divestment Business pursuant to these undertakings, GTCR, or any member of the Group of Interconnected bodies Corporate to which GTCR belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
  - (i) an Interest in the Divestment Business; or
  - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of GTCR or of any members of the Group of Interconnected Bodies Corporate to which GTCR belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
  - (iii) other than in the normal course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of GTCR or any member of the Group of Interconnected Bodies Corporate to which GTCR belongs for as long as they are an employee or director of GTCR or any member of the Group of Interconnected Bodies Corporate to which GTCR belongs holds or is nominated to any directorship or managerial position in the Divestment Business or directorship or managerial position in any company or other undertaking carrying on or having control of the Divestment Business without the CMA's prior written consent;

- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Divestment Business or any company or other undertaking carrying on or having control of that Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of GTCR or of any member of the Group of Interconnected Bodies Corporate to which GTCR belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in sub-paragraphs 10.1(a), 10.1(b) and 10.1(c) above.

## **11 NEW DIVESTMENT IF GTCR OBTAINS POSSESSION OF A DIVESTMENT BUSINESS PROPERTY**

- 11.1 In the event that, following divestment of the Divestment Business in a manner that has involved GTCR assigning an existing lease to the purchaser of the Divestment Business, GTCR benefits from or becomes subject to an Occupation Interest (so long as GTCR so benefits or becomes so subject during the term of the lease assigned by GTCR as part of such divestment), GTCR shall:
  - (a) within 10 Working Days of becoming aware that it is so benefitting or is so subject inform the CMA in writing of that fact; and
  - (b) using its best endeavours and acting in good faith comply with such written directions as the CMA may give to GTCR to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, provided always that such written directions must be of a similar nature to those contained in these undertakings with regard to the original divestment of the Divestment Business.
- 11.2 In determining, for the purposes of sub-paragraph 11.1(b) above, whether to require GTCR to effect a new divestment of the Occupation Interest to a new purchaser approved by the CMA in accordance with the provisions of these undertakings, the CMA may have regard to any change of circumstances since the Decision.

- 11.3 In the event that GTCR fails to divest the Occupation Interest in accordance with paragraph 11.1 above, the CMA may, whether or not initiating the Trustee Functions set out in these undertakings, require GTCR to divest the Occupation Interest at no minimum price to a purchaser approved by the CMA.
- 11.4 GTCR shall notify the CMA in writing of the identity of each proposed purchaser that makes an offer for the Occupation Interest together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within 10 Working Days of receipt of such offers.
- 11.5 In the event that the CMA gives written directions under paragraph 11.1 above for GTCR to effect a new divestment of the Occupation Interest, paragraphs 3, 4, 5, 6, 7, 8 and 9 shall apply to the new divestment in the same way that they applied to the original divestment obligation save that references to 'Divestment Business' in those paragraphs shall be construed as references to 'Occupation Interest'.

## **12 COMPLIANCE**

- 12.1 GTCR shall comply promptly with such written directions as the CMA may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
  - (b) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.
- 12.2 GTCR shall co-operate fully with the CMA when the CMA is:
- (a) monitoring compliance with the provisions of these undertakings; and
  - (b) investigating potential breaches of the provisions of these undertakings.
- 12.3 GTCR shall procure that any member of the same Group of Interconnected Bodies Corporate as GTCR complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as GTCR shall be attributed to GTCR for the purposes of these undertakings.

- 12.4 Where any Affiliate of GTCR is not a member of the same Group of Interconnected Bodies Corporate as GTCR, GTCR shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

### **13 PROVISION OF INFORMATION**

- 13.1 GTCR shall furnish promptly to the CMA such information as the CMA considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any Confidential Information.

### **14 EXTENSION OF TIME LIMITS**

- 14.1 The CMA may, in response to a written request from GTCR, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings.

### **15 SERVICE**

- 15.1 GTCR hereby authorizes Latham & Watkins LLP, whose address for service in the UK is 99 Bishopsgate, London EC2M 3XF, to accept service on its behalf of all documents connected with these undertakings (including any document of any kind which falls to be served on or sent to GTCR, or any of its Subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these undertakings).
- 15.2 Unless GTCR inform the CMA in writing that Latham & Watkins LLP has ceased to have authority to accept and acknowledge service on its or any of its Subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on GTCR if it is served on Latham & Watkins LLP; and service shall be deemed to have been acknowledged by GTCR if it is acknowledged by Latham & Watkins LLP or such other nominee.
- 15.3 Paragraph 15.2 above has effect irrespective of whether, as between GTCR and Latham & Watkins LLP or other nominees, Latham & Watkins LLP or other nominees has or continues to have any authority to accept and acknowledge service on GTCR's or any of its respective Subsidiaries' behalf.

- 15.4 No failure or mistake by Latham & Watkins LLP or other nominees (including a failure to notify GTCR of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these undertakings including any proceedings or judgment.
- 15.5 Any communication from GTCR to the CMA under these undertakings shall be addressed to Manager, Market and Mergers Remedies Monitoring, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing.

## **16 EFFECT OF INVALIDITY**

- 16.1 Should any provision of these undertakings be contrary to law or invalid for any reason, GTCR undertake to continue to observe the remaining provisions.

## **17 GOVERNING LAW**

- 17.1 GTCR recognizes and acknowledges that these undertakings shall be governed and construed in all respects in accordance with English law.
- 17.2 In the event that a dispute arises concerning these undertakings, GTCR undertakes to submit to the courts of England and Wales.

## **18 TERMINATION**

- 18.1 GTCR recognizes and acknowledges that these undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 18.2 GTCR recognizes and acknowledges that the variation, release or supersession of these undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **19 INTERPRETATION**

- 19.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 19.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.



19.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

19.4 For the purposes of these undertakings:

**“the Act”** means the Enterprise Act 2002;

**“Affiliate”** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**“Associated Person”** means a person or persons associated with GTCR within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

**“business”** has the meaning given by section 129(1) and (3) of the Act;

**“CMA”** means the Competition and Markets Authority or any successor body;

**“Confidential Information”** means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

**“Control”** shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**“Decision”** means the CMA’s decision under section 22 of the Act dated 27 March 2014 in connection with the Transaction;

**“Divestment”** means the transfer of the Divestment Business to the Proposed Purchaser;

**“Divestment Business”** means the businesses of Cision UK Limited and Vocus UK Limited providing Integrated Media Solutions in the UK;

**“Divestment Business Key Staff”** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

**“Divestment Business Property”** means the relevant property associated with the Divestment Business as at the date of these undertakings;

**“Group of Interconnected Bodies Corporate”** has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“Gorkana”** means Gorkana Group Limited;

**“GTCR”** means GTCR Canyon UK Investments Ltd.;

**“Integrated Media Solutions”** means media database, media monitoring, media analysis and media distribution solutions sold either on a standalone basis or as part of a bundle;

**“Interest”** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings but does not include a contract to acquire shares in the future; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**“Occupation Interest”** means an interest in the Divestment Business Property by virtue of which GTCR enjoys an unconditional right or is under an unconditional obligation to occupy the Divestment Business Property provided always that: (i) the original purchaser (or its successor) is not in occupation of the Divestment Business Property; and/or (ii) before such interest in the Divestment Business Property arose, the most recent use to which the Divestment Business Property had been put was that of carrying on the delivery of UK media databases sold either on a standalone basis or as part of a bundle together with other media solutions in the UK;

**“Proposed Purchaser”** means [[Access Intelligence plc./an affiliate of Access Intelligence plc.] or [Innodata/affiliate of Innodata]] or such other proposed purchaser for the Divestment Business;

**“Subsidiary”** shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

**“Transaction”** means the completed acquisition by GTCR Canyon UK Investments Ltd of Gorkana Group Limited on 21 October 2014;

**“Transitional Support Services”** means [ ● ]<sup>2</sup>

**“Trustee”** means the person appointed pursuant to paragraph 4.4, paragraph 4.5 or paragraph 4.7 to carry out the Trustee Functions;

**“Trustee Functions”** means the functions set out in clause 6;

**“UK”** means the United Kingdom of Great Britain and Northern Ireland;

**“UK Gorkana Business”** means the activities carried out by Gorkana in the UK;

**“UK Gorkana Business Key Staff”** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the UK Gorkana Business;

**“Working Day”** means any day of the week other than a Saturday or a Sunday or any day that is a public holiday in England; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

## **FOR AND ON BEHALF OF GTCR**

Signature

Name

Title

Date

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<sup>2</sup> To be confirmed following agreement between GTCR and the Proposed Purchaser.