

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 1 March 2019**

**Completed acquisition by Scala Radio of certain assets of the Wireless business**

We refer to your emails dated 12 and 13 March 2019 and your previous note of 7 March 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 1 March 2019 (the 'Initial Order'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Scala Radio and HBV are required to hold separate the HBV business from the Wireless business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, HBV and Scala Radio may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 5(c) and 5(i) of the Initial Order**

The CMA understands that the Wireless assets and business were acquired by Scala Radio, which is managed by its General Partner, Bauer Media Audio Limited. The directors of Bauer Media Audio Limited are two Bauer group directors, Paul Keenan and Sarah Vickery. The CMA understands these Directors will not exercise powers on behalf of the Wireless business and will delegate their powers to Iain Fowler, the previous Managing Director of the Wireless business.

To ensure the effective operation of the Wireless business, the CMA consents to a derogation from paragraphs 5(c) and 5(i) strictly limited to the purpose of allowing Iain Fowler to be appointed as Managing Director for the Wireless business and to manage its responsibilities while the CMA's Initial Order is in force.

**2. Paragraphs 5(c) and 5(i) of the Initial Order**

Scala Radio submitted that, as a result of the transaction, the Wireless business does not have a complete management team. Consequently, it proposes appointing Phil Riley as Senior Independent Advisor to the Wireless business to provide

independent advice and support to the management team of the Wireless business, led by Iain Fowler. Scala Radio submitted that Phil Riley has significant relevant experience in the commercial radio sector and senior management experience that will be necessary to aid Wireless' commercial decision-making.

To ensure the effective operation of the Wireless business, the CMA consents to the appointment of Phil Riley for the purpose of offering support to the management of Wireless on the understanding that:

- Phil Riley is independent of Scala Radio and is not, and has not been, an employee of Scala Radio or HBV;
- Day-to-day management of the Wireless business will be performed by its management, with authorisation from Phil Riley only required in exceptional circumstances (ie only for contracts and expenditure exceeding a value of £[~~500k~~]).

### **3. Paragraph 5(l) of the Initial Order**

Scala Radio requests that Phil Riley is able to escalate certain matters in exceptional circumstances to Peter Brimacombe, Bauer's Business Development Director. Scala Radio submitted that information shared with Scala Radio and HBV through Phil Riley will be shared in exceptional circumstances only, including for the authorisation of contracts and expenditure exceeding a value of £[~~500k~~].

The CMA consents to Phil Riley sharing information with Peter Brimacombe in exceptional circumstances for the purpose of ensuring the viability of the Wireless business on the condition that:

- The CMA will be copied into any communication on matters escalated by Phil Riley to Peter Brimacombe.
- The commercially-sensitive information which may be exchanged as a result of escalation to Peter Brimacombe will be limited to that which is strictly necessary.
- Peter Brimacombe will sign a non-disclosure agreement, obliging him not to share any commercially sensitive information relating to the Wireless Business with any employee of Scala Radio or HBV, in a form agreed in advance with the CMA.

This derogation should not prevent any remedial action that the CMA may need to take regarding this merger.

### **4. Paragraphs 5(f), 5(g) and 5(l) of the Initial Order**

Scala Radio submitted that the Wireless business does not have senior employees with the technical expertise to resolve the following three critical transmission items, [REDACTED]:

- (i) [REDACTED].
- (ii) [REDACTED].
- (iii) [REDACTED].

Scala Radio proposes that Bruce Davidson, its Broadcast Technology Director, should assist Wireless with negotiations with respect of the above transmission items, and that he has the specialist knowledge to provide this assistance.

The CMA consents to Bruce Davidson assisting the Wireless business with the transmission items above on the condition that:

- [REDACTED].
- The new [REDACTED] should be based on pre-Merger business plans.
- Bruce Davidson will sign a non-disclosure agreement, obliging him not to share any commercially sensitive information relating to the Wireless Business with any employee of Scala Radio or HBV, in a form agreed in advance with the CMA.
- [REDACTED] documents and related plans should be stored on a secured file system, which no Scala Radio or HBV employees except Bruce Davidson can access.
- Iain Fowler, the MD of the Wireless business, will provide final consent on the three [REDACTED].

## **5. Paragraphs 5(c), 5(j) and 5(l) of the Initial Order**

Scala Radio submitted that because it acquired the Wireless business through an asset acquisition, it did not acquire all personnel and central support functions relating to the local radio stations. In particular, it does not have the senior financial management necessary to ensure that the Wireless business can continue to operate as a going concern. Bauer proposes that Tony Frangos, Bauer's Head of Business Support and Financial Control, is temporarily seconded to the Wireless business to provide administrative support, as he has the requisite skills to exercise financial oversight.

The CMA consents to the secondment of Tony Frangos on the condition that:

- During the secondment, he will cease to work or report to Bauer and will not work from any Bauer premises for the duration of the secondment.
- The secondment will last for the period of the Interim measures.
- Tony Frangos will sign a non-disclosure agreement, obliging him not to share any commercially sensitive information relating to the Wireless Business with any employee of Scala Radio or HBV, in a form agreed in advance with the CMA.