

## **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 Bauer Radio of certain assets of the Celador business**

We refer to your emails dated 26 April 2019 and 16 April 2019, as well as 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, Bauer Radio and HBV are required to hold separate the HBV business from the Celador 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 Bauer Radio may carry out the following actions, in respect of the specific paragraphs:

#### **1. Paragraphs 5(g) and 5(l) of the Initial Order**

The CMA understands, on the basis of information provided by Bauer Radio, that upon completion of the Celador transaction, Bauer Radio made necessary arrangements to provide the acquired Celador business, through Bauer Corporate Services (**BCS**), with certain essential services that had previously been provided by other parts of the Celador business which Bauer did not purchase. One of these essential services was payment processing for website bookings using Bauer Radio's PayPal account.

Bauer Radio submitted on 16 April that the acquired Celador business was in the process of applying for its own separate PayPal account. To sustain the viability of the acquired Celador business, Bauer Radio submits that it must continue to provide these services while PayPal processes an application for a new account separate from Bauer Radio's existing account. The period between 7 May 2019 and PayPal's approval of the request for an account separate from Bauer Radio's existing PayPal account is referred to henceforth as the '**Interim Period**'.

To ensure the effective operation of the acquired Celador business, the CMA consents to a derogation from paragraphs 5(g) and 5(l) strictly limited to the purpose of allowing the acquired Celador business to benefit from payment processing services for website bookings using Bauer Radio's PayPal account for the Interim Period. The CMA consents to this derogation on the understanding that:

- Information disclosed for the purpose of processing payments related to Celador website bookings will be made accessible only to Jo Rice (Treasury Analyst at BCS) and Alpa Shah (Treasurer at BCS). Jo Rice and Alpa Shah will be responsible for the communication of relevant information to the acquired Celador business and will engage in correspondence with the acquired Celador business to the extent required to administer website bookings effectively.
- Information disclosed to Jo Rice and Alpa Shah for the purpose of processing payments related to Celador website bookings will not be circulated more widely within BCS or Bauer Radio more generally.
- Accordingly, Jo Rice and Alpa Shah will both sign non-disclosure agreements approved by the CMA, including appropriate safeguards on the use, treatment and storage of confidential information.
- To ensure the independence of the acquired Celador business from the Bauer Radio business, and that the acquired Celador business can remain a going concern in its own right, Bauer Radio transferred payments it received on behalf of the acquired Celador business back to the acquired Celador business on [X] in respect of amounts received in [X]. From May 2019 onwards, Bauer will download the relevant PayPal transaction report [X] per month, on [X], and arrange for funds to be transferred to the acquired Celador business [X].
- The above transfers will be processed by Jo Rice and Alpa Shah, as well as Brendan Ford (Treasury Analyst at BCS), Giles Cooper (Finance Director at BCS), and Trudy Heasman (Head of Transaction Processing at BCS).
- Information disclosed to Brendan Ford, Giles Cooper and Trudy Heasman for the purposes of processing transfers to the acquired Celador business will not be circulated more widely within BCS or Bauer Radio more generally.
- Accordingly, Brendan Ford, Giles Cooper and Trudy Heasman will sign non-disclosure agreements approved by the CMA, including appropriate safeguards on the use, treatment and storage of confidential information.

## 2. Paragraphs 5(e)(ii and iii), 5(g) and 5(l) of the Initial Order

The CMA understands, on the basis of information provided by Bauer Radio, that Celador operates radio stations in the south coast of England from a property in Southampton, known as Roman Landing. Celador entered into a new [redacted] lease on the property in [redacted] but at that time negotiated a break clause. In the course of negotiations in respect of the acquisition of part of its business, Celador notified Bauer Radio that it intended to exercise the break clause by [redacted]. Celador gave notice to exercise the break clause, such that termination of the lease was due to take effect on [redacted].

Bauer Radio submitted on 26 April that, before the imposition of the Initial Order, Bauer Radio and Celador negotiated the below agreements with the landlord to ensure that post-transaction, and the expiry of Celador's existing lease, Celador would continue to have access to adequate facilities from which to operate its south coast radio stations:

1. The grant of a reversionary lease covering the period [redacted]. It was agreed that [redacted].
2. A sub-let right. This was to enable Bauer Radio to sub-let part of a Southampton property [redacted].
3. An amendment of [redacted].

Bauer submitted on 26 April that the grant of the reversionary lease completed [redacted], but that none of the other steps listed above have been formally completed due to the Initial Order. Bauer also submitted on this date that completion of the remaining two agreements is necessary for the acquired Celador business to retain short-term access to the properties used to conduct its business while ensuring that Celador is able to dispose of the long-term interest (and accompanying financial burden) in a property which it no longer requires in the long term. The CMA therefore consents to the following:

1. A derogation from paragraphs 5(e)(ii) and 5(g) to permit Celador to complete the agreement to effect the sub-let of part of the Southampton property [redacted] and to permit Bauer Radio to engage with Celador, [redacted] and/or the landlord for this purpose, including for the purpose of negotiating and agreeing the terms on which the landlord will consent to sub-letting.
2. A derogation from paragraphs 5(e)(iii), 5(g) and 5(l) to permit Bauer Radio to complete the agreement under which [redacted] and to engage with Celador and/or the landlord for this purpose.

The CMA consents to these derogations on the understanding that:

- Only Peter Brimacombe (Business Development Director at Bauer Radio), Richard Jackson (Finance Director at Bauer Radio) and Sue Tattum (Financial Controller at Bauer Radio) will receive information that is confidential to Celador. [✂].
- The information shared with these three individuals will be limited to the extent required for the purposes stated in both derogations.
- Each of these three Bauer Radio employees will sign NDAs approved by the CMA including appropriate safeguards on the use, treatment and storage of confidential financial information.

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