



**BAUER MEDIA**  
**COMPLETED ACQUISITIONS BY BAUER OF CELADOR, LINCS, WIRELESS AND UKRD**  
**RESPONSE TO THE ISSUES STATEMENT DATED 4 SEPTEMBER 2019**

1. **INTRODUCTION**

1.1 This Paper sets out the response of Bauer Media Group ("**Bauer**") to the CMA's Issues Statement dated 4 September 2019 (the "**Issues Statement**") in respect of the completed acquisitions of certain businesses from Celador Entertainment Limited ("**Celador**"), Lincs FM Group Limited ("**Lincs**"), Wireless Group Limited ("**Wireless**") and UKRD Group Limited ("**UKRD**") (each a "**Target**"). These acquisitions each constitute a "**Transaction**" and are referred to collectively as the "**Transactions**". Bauer and the Targets are collectively the "**Parties**".<sup>1</sup>

1.2 Bauer has previously set out its substantive position in respect of the matters raised in the Issues Statement in a number of submissions to the CMA, including its response to the CMA's Phase 1 SLC Decision.<sup>2</sup> In this Paper, Bauer summarises its position on what it considers to be the key matters raised in the Issues Statement, in respect of which it intends to provide further evidence to the CMA during Phase 2 (for instance at the Site Visit, the Main Parties Hearing and in written submissions).<sup>3</sup>

1.3 In short, Bauer considers that there is no basis for a finding that the Transactions result in an SLC on any relevant market, and looks forward to working constructively with the CMA towards this conclusion during the remainder of the Phase 2 process.

1.4 This Paper is structured as follows:

1.4.1 **Section 2** highlights the broader context in which the Transactions take place, and the associated benefits of the Transactions for advertisers, listeners, the acquired stations and, should they choose to be represented by Bauer, the third party stations represented by FRS;

1.4.2 **Section 3** provides further representations on the appropriate counterfactual for the assessment of the Transactions;

1.4.3 **Sections 4 to 6** identify the key areas where Bauer intends to adduce further evidence in respect of the theories of harm identified by the CMA, i.e.:

(A) horizontal unilateral effects in the supply of national radio advertising (**Section 4**);

(B) horizontal unilateral effects in the supply of local radio advertising (**Section 5**); and

(C) vertical effects in the supply of national radio advertising as a result of the loss of First Radio Sales ("**FRS**") as a national advertising sales house (**Section 6**).

1.5 **It should be noted that this Response contains confidential information and business secrets which should not be disclosed to third parties.** It also contains material that is confidential as between the Parties, in particular material highlighted cyan is confidential to the Targets and should not be disclosed to Bauer while the initial enforcement orders of 1 March 2019 and 12 March 2019 remain in force.

2. **CONTEXT AND BENEFITS OF THE TRANSACTION**

2.1 The Transactions take place at a time of significant change in the commercial radio industry. The way in which listeners engage with radio content is changing rapidly. For example, the

<sup>1</sup> Unless otherwise stated, defined terms in this Paper shall have the same meaning as in the Issues Statement.

<sup>2</sup> Document 084 submitted 27 August 2019.

<sup>3</sup> Bauer does not address all points raised in the Issues Statement in this Paper, and should not be taken to agree with any points not expressly addressed. Nor should this Paper be read as an exhaustive list of all areas where Bauer made adduce further evidence to the CMA during Phase 2.



majority of radio listening (56% as reflected in RAJAR data<sup>4</sup>) is now digital, either via DAB/DAB+ or IP (such as through smartphone apps, smart speakers, or streamed in the home).<sup>5</sup>

- 2.2 Changes in the way in which listeners engage with audio content has increased the competitive pressures faced by commercial radio stations. The increase in digital listening (in particular IP) has led to increased competition between commercial radio stations and streaming music services such as Spotify, Apple, Amazon and YouTube (part of the Alphabet group). These are typically large, well-resourced, international groups which are able to offer large amounts of high quality content to listeners, and, as a result, a large and diverse audience base to advertisers.<sup>6</sup>
- 2.3 As a result, commercial radio stations need to invest extensively in order to remain viable on a long-term basis. This includes investment in new content to retain and attract listeners, as well as in the infrastructure to offer digital services, and in innovative new ways of marketing those services. An example of this is [redacted] Bauer's IP broadcasts on Amazon's 'Alexa' smart speaker.
- 2.4 Local commercial radio stations face additional challenges. Data shows that listeners are moving from local to national services. The decline of the high street throughout the UK is leading to a smaller pool of local businesses looking to advertise on local commercial radio. At the same time, local commercial radio stations face growing competition from digital advertising such as Google and Facebook, which can offer targeted advertising and a simple to use 'self-service' business model.
- 2.5 Ofcom's deregulation of the radio industry recognises the explicit challenges faced by local commercial radio stations, in particular the increased competition for listeners and advertisers and the shift in listening away from local to national radio services. The deregulation is intended to assist in safeguarding their long-term viability.<sup>7</sup> It does this by allowing local stations to reduce the amount of local programming they air, broadening the definition of "local", and allowing local stations to replace local programming with (higher quality) nationally networked programming.
- 2.6 The Transactions need to be assessed in light of this background of changing listener behaviour, increased competition enabled by technological change, and commercial pressures affecting the long-term viability of independent local radio stations. Bauer believes that the transactions will benefit the Targets by safeguarding their long-term viability, and will also benefit both listeners and advertisers.
- 2.7 The long-term viability of the Targets will be safeguarded because:
  - 2.7.1 the Targets will be able to benefit from the significant investment Bauer has already made into digital services to enable them to develop and launch their own digital distribution to develop their digital and IP listening;
  - 2.7.2 Bauer will also enable them to develop non-airtime sources of revenue such as S&P and from listeners [redacted] where Bauer has had a long and successful track record;
  - 2.7.3 Bauer is well placed to assist the Targets to benefit from deregulation which should result in higher quality content that is attractive to and will retain listeners at a lower

---

<sup>4</sup> Q2 2019.

<sup>5</sup> See further Bauer's Response to the SLC Decision (Document 084, 27 August 2019) paragraph 3.7 and footnotes thereto.

<sup>6</sup> Bauer understands that these services will typically carry advertising when made available to listeners for free, with listeners having the option to pay for an advertising free version of the service.

<sup>7</sup> See Localness of commercial radio Proposals to amend guidelines 21 June 2018 at paragraphs 2.17ff [https://www.ofcom.org.uk/data/assets/pdf\\_file/0012/115113/consultation-localness-radio.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0012/115113/consultation-localness-radio.pdf)



cost (which in turn benefits advertisers). Bauer has a successful commercial radio news team [REDACTED]; and

2.7.4 the Transactions will also [REDACTED].

2.8 Bauer will also include the Targets' stations in its "Hits network" which will benefit advertisers who purchase through national agencies as the Hits network will have greater reach, audiences and geographic coverage. This will enhance the Targets' national airtime sales volumes and revenues. Should the third party FRS stations<sup>8</sup> wish to be represented by Bauer, these benefits will accrue to those stations also.

2.9 Bauer submits that in light of these factors the Transactions are pro-competitive. Bauer will develop this point further, in particular at the Site Visit.

3. **THE COUNTERFACTUAL**

3.1 The CMA must assess what would have been the most likely situation absent the Transactions.<sup>9</sup>

3.2 Bauer considers that it is not appropriate to assume that the pre-Transaction conditions of competition would have continued absent the Transactions when assessing the counterfactual.<sup>10</sup>

3.3 [REDACTED]<sup>11</sup> absent the Transactions the most likely scenario is that:

3.3.1 Celador [REDACTED].<sup>12</sup> [REDACTED].<sup>13</sup> [REDACTED].

3.3.2 Lincs [REDACTED].<sup>14</sup> [REDACTED].

3.3.3 As regards Wireless, Bauer understands that [REDACTED]. Wireless previously sold its Juice Liverpool and Juice Brighton stations to Global. It is unlikely therefore that in the counterfactual it would have acquired further local stations and more likely that it would have sold some or all of its existing local stations to Global and/or Communicorp. These stations would thus have ceased their arrangements with FRS in the counterfactual.

3.3.4 UKRD [REDACTED].

3.4 [REDACTED].<sup>15</sup> [REDACTED].

3.5 [REDACTED].

3.6 Bauer submits<sup>16</sup> that it is likely that, in the period prior to the Transactions, FRS was [REDACTED]. In particular the stations it represented collectively lacked the geographic coverage, audience share and reach of Bauer or Global. This is reflected in its inability to secure share deals from national agencies which use it primarily for upweighting national campaigns in the areas that it is able to cover or local/regional campaigns. FRS was also losing stations either as a result of their sale or in the case of UKRD because they were withdrawn. As a result [REDACTED].

<sup>8</sup> The "third party FRS stations" refers to the stations currently represented by FRS but excluding the acquired stations [REDACTED].

<sup>9</sup> Paragraph 36 of the Issues Statement; see also paragraph 4.3.6 of CC2 Revised Merger Assessment Guidelines.

<sup>10</sup> As to paragraph 35 of the Issues Statement, Bauer notes that at Phase 1 it acknowledged, on a pragmatic basis, that the CMA was likely to assess the Transactions in Phase 1 by reference to the pre-merger conditions of competitive as the relevant counterfactual. Bauer did not however positively endorse that as the appropriate counterfactual at Phase 1 and in particular noted that given the position of the Targets and the circumstances of the sale it was likely that absent the Transactions they would have been acquired by another party, most likely Global; see UKRD Merger Notice at 6.12 and the Response to the question 18 of the First S.109 Request (Phase I).

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].

<sup>15</sup> [REDACTED].

<sup>16</sup> As set out further in Bauer's Response of 13 September 2019 to question 37 of the CMA's RFI dated 29 August 2019. (document 102).



4. **HORIZONTAL EFFECTS – NATIONAL RADIO ADVERTISING**

- 4.1 Bauer agrees with the conclusion reached by the CMA at Phase 1 that there is no realistic prospect of an SLC arising as a result of horizontal effects in the supply of national radio advertising.
- 4.2 FRS due to its limited audience share and reach and geographic coverage is not a material competitive constraint on Bauer (or Global) for the sale of airtime<sup>17</sup> to the national agencies.<sup>18</sup> As a result the Transactions will not have any adverse impact on the prices or quality offered to national advertisers by Bauer. Nor will the Transactions undermine the significant bargaining power that national advertising agencies have.
- 4.3 Conversely, as the CMA acknowledges,<sup>19</sup> the Transactions are rivalry enhancing in the supply of national radio advertising. The acquisitions are largely complementary to Bauer's existing local radio stations. They increase Bauer's share of listening, reach and geographic coverage, particularly in the South of England, enabling Bauer to offer a more attractive product (an enhanced Hits network) to national advertisers and agencies. The increased audience, reach and geographic coverage from the Transactions, combined with Bauer's ongoing intense efforts to compete with Global for listeners (for example, through new station launches and investments in digital listening), [REDACTED].<sup>20</sup>
- 4.4 In addition, for the reasons outlined in Section 3 above, FRS would likely [REDACTED] absent the Transactions.
- 4.5 Bauer therefore considers that it remains the case that there is no realistic prospect of a SLC arising as a result of horizontal effects in the supply of national radio advertising. Bauer looks forward to continuing to engage with the CMA to explain why the dynamics of national radio advertising, for example, how national advertising is purchased and how agreements are reached with agencies, mean that the intense competition between Global and Bauer will continue post-Transaction, and indeed be enhanced, to the benefit of national advertisers.

5. **HORIZONTAL EFFECTS – LOCAL RADIO ADVERTISING**

- 5.1 Bauer agrees with the CMA's approach in the Issues Statement of focussing only on those local areas where a potential SLC was identified at Phase 1.<sup>21</sup> Bauer does not consider that it is appropriate or necessary for the CMA to assess potential horizontal effects in any other local areas at Phase 2.
- 5.2 Bauer has provided extensive evidence to the CMA on why no SLC arises in any of the local areas identified by the CMA.<sup>22</sup> Bauer will adduce further evidence during the course of Phase 2 to assist the CMA in reaching this conclusion.
- 5.3 As set out above,<sup>23</sup> local commercial radio stations face significant challenges, and the Transactions will help the Targets to overcome these challenges by benefiting from being part of the larger Bauer group. In light of these significant benefits (which accrue not just to the 50 retained Target stations, but also to their listeners and local and national advertisers), the CMA should exercise caution and proportionality in its assessment of horizontal effects at the local level, particularly in light of the limited scale of the relevant overlaps. For example:
- 5.3.1 in the West of England, Bauer's Kiss (West) which is a regional station (and part of a national network) with very different coverage, content and audience demographics from the local Celador stations had local advertising revenues of

<sup>17</sup> Practically it is very difficult for FRS to offer S&P on a national basis as it is hard for it to coordinate in programme advertising across a large number of stations under different ownership so it is primarily focussed on the sale of airtime.

<sup>18</sup> As demonstrated by, for example, its inability to agree share deals with national advertising agencies.

<sup>19</sup> Paragraphs 56 and 74 of the Issues Statement.

<sup>20</sup> See further paragraphs 3.1 to 3.3 of Bauer's Response to the SLC Decision.

<sup>21</sup> Paragraphs 47 to 48.

<sup>22</sup> See for example Sections 5 to 7 of Bauer's Response to the SLC Decision.

<sup>23</sup> Section 2.



[REDACTED] in 2018 of which only approximately [REDACTED] was generated locally comprising [REDACTED] customers located in the area;<sup>24</sup>

5.3.2 in South Yorkshire, the CMA acknowledges that the Lincs stations are only a substitute for Bauer's Hallam FM when all three Lincs stations are bought together. However this happens rarely and the [REDACTED] such advertisers accounted for just [REDACTED] spend in 2018, with most of this [REDACTED] attributable to just [REDACTED] advertisers who do not use Hallam FM.<sup>25</sup> In any event, it is not clear that the three Lincs' stations together are a viable alternative to Hallam FM, in light of the lack of geographic overlap in coverage, particularly in and around Sheffield, the main conurbation in Hallam FM's TSA, and significant differences in audience shares, demographics and pricing; and

5.3.3 in the West Midlands, the CMA's concerns are limited to Shropshire and Wolverhampton. Wireless' Signal 107 is not a significant competitive constraint on Bauer's Free Radio, with only a *de minimis* share of local commercial listening in the relevant TSAs of Free Radio (i.e. Shropshire and Birmingham and Black Country)<sup>26</sup> and a very low share in even its own TSA.<sup>27</sup> It is notable in this context that the CMA in its SLC Decision considers stations with a 5% or less share of local commercial listening in their TSAs do not exert a material competitive constraint on competitors present in those TSAs.<sup>28</sup> Moreover, in 2018 the total value of local advertising using both the Signal Shrewsbury and Telford transmitters (which together have the closest coverage to Free Radio Shropshire) is *de minimis* at [REDACTED], representing [REDACTED] advertisers compared to [REDACTED]<sup>29</sup> on Free Radio Shropshire only. Similarly the value of local advertising on the Signal Wolverhampton transmitter only is [REDACTED] compared to [REDACTED]<sup>30</sup> on the Free Radio Black Country transmitter only, in circumstances where there are strong out of market constraints and differences in coverage.

5.4 Bauer submits that there are no grounds for a SLC finding in any of the local areas identified by the CMA, and looks forward to working with the CMA to provide more evidence in support of this conclusion.

## 6. **VERTICAL EFFECTS IN THE SUPPLY OF NATIONAL RADIO ADVERTISING**

6.1 Bauer submits that there is no basis on which a SLC could arise as regards vertical effects.

6.1.1 First, Bauer does not have the ability or the incentive to foreclose the third party FRS stations. There is limited geographic overlap between Bauer's local stations and those stations and, to the extent there are overlaps, Bauer will not necessarily have the capacity to replace all national airtime offered by those stations. More importantly, Bauer has clear incentives to represent those stations as representing those stations will make a material contribution to Bauer competing more effectively with Global. Representing the third party FRS stations as part of Bauer's Hits network would give it [REDACTED].<sup>31</sup> [REDACTED]. In addition, if Bauer followed such a foreclosure strategy, it would risk pushing stations to seek representation from Global instead (as Quidem has recently done). This [REDACTED] as it would reduce the share of listening which Bauer represents, and increase the share represented by Global. Moreover, Bauer's representation of the third party stations will benefit them through lower

<sup>24</sup> Local advertising is defined as that booked by local advertising sales teams; approximately [REDACTED] of the Kiss (West) local advertising revenue was booked by local Bauer sales teams located elsewhere for clients running effectively regional or national campaigns such as [REDACTED].

<sup>25</sup> Just [REDACTED]% of Lincs' stations local advertisers purchased advertising across all three stations and this accounted for [REDACTED]% of Lincs' revenue in 2018 – see paragraph 1.6 of Bauer's Response of 20 September 2019 to the CMA's s.109 Notice dated 27 August 2019.

<sup>26</sup> 1% in Birmingham & Black Country and 6% in Shropshire.

<sup>27</sup> 8%.

<sup>28</sup> Paragraph 260.

<sup>29</sup> [REDACTED].

<sup>30</sup> [REDACTED].

<sup>31</sup> See Bauer Response to the Issues Letter, paragraph 6.3.



commission rates, and inclusion in the Hits network will make them more attractive to national advertisers and generate more national revenues for them.

- 6.1.2 Second, as set out above, the [X].
- 6.2 Bauer will submit to the CMA further evidence on why no SLC arises, in particular as regards Bauer's incentives to represent the third party FRS stations.<sup>32</sup>
- 6.3 Bauer further submits that, in concluding on whether a SLC arises in respect of vertical effects, the CMA should balance any limited and short-term benefits which it alleges would come from the continuation of FRS in its pre-merger condition ([X]) with the very significant and longer-term benefits that will accrue to the Target stations and those third party FRS stations which accept representation by Bauer, listeners and advertisers as a result of the Transactions.

**Herbert Smith Freehills LLP**

---

<sup>32</sup> This will supplement, for example, Bauer's Foreclosure Analysis dated 5 July 2019.