

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 LP of certain businesses from Wireless Group Limited

We refer to your emails dated 29 August 2019, 2 October 2019 and 4 October 2019, as well as our phone conversation of 28 August 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. Bauer Radio Limited (**Bauer Radio**), a subsidiary of HBV (trading as Bauer Media Group (**Bauer**)), is the operating company of HBV's UK radio business.

Under the Initial Order, save for written consent by the CMA, Scala Radio (renamed Bauer Media Audio LP (**Bauer Media Audio**) on 11 March 2019) 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 Bauer Media Audio may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 5(l) of the Initial Order

On 15 March 2019, the CMA consented to a derogation (see section 4 of the CMA's derogation [letter](#) of 15 March 2019) permitting Bruce Davidson, Broadcast Technology Director of Bauer Radio, to assist Wireless with the renegotiation of certain of its transmission arrangements. The CMA granted this derogation subject to the condition that, *inter alia*, Bruce Davidson signed a non-disclosure agreement preventing him from sharing any commercially-sensitive information relating to Wireless with Bauer Media Audio or HBV.

Also on 15 March 2019, the CMA consented to another derogation (see section 2 of the CMA's derogation [letter](#) dated of 15 March 2019) permitting Bauer Media Audio to appoint Phil Riley as Senior Independent Advisor to the Wireless business, as well as a separate derogation (see section 3 of the CMA's derogation [letter](#) of 15 March 2019) permitting Phil Riley to share information with Peter Brimacombe, Bauer's

Business Development Director, in exceptional circumstances for the purpose of ensuring the viability of the Wireless business.

Bauer Media Audio submitted on 29 August 2019 that, should exceptional circumstances arise related to the Wireless business, the most appropriate course of action would be for Bruce Davidson to engage directly with Peter Brimacombe (as opposed to doing so through Phil Riley). This would facilitate the resolution of the critical transmission items mentioned in section 4 of the CMA's derogation [letter](#) of 15 March 2019.

On the understanding that direct engagement between Bruce Davidson and Peter Brimacombe would facilitate the resolution of these critical transmission items, the CMA verbally consented on 28 August 2019 to a derogation permitting Bruce Davidson to discuss certain matters relating to the renegotiation of Wireless' transmission arrangements with Peter Brimacombe. The CMA consented to this derogation on the understanding that:

- Peter Brimacombe will not share any commercially-sensitive information relating to Wireless, including with any employee of Bauer Radio or HBV.
- Peter Brimacombe would enter into a non-disclosure agreement in accordance with the derogation set out in section 3 of the CMA's derogation [letter](#) of 15 March 2019.

Bauer Media Audio confirmed on 29 August 2019 that Peter Brimacombe had entered into the non-disclosure agreement referenced above.

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

Bauer Media Audio submitted that Bauer Media Audio purchased assets and businesses specific to Wireless' local radio stations. Bauer Media Audio did not acquire the central support functions provided by Wireless Media (GB) (**WMGB**), itself a subsidiary of News Corp UK & Ireland Limited. While certain services continue to be provided on an interim basis by WMGB pursuant to a Transitional Services Agreement, immediately following the acquisition Wireless did not have a full senior financial management team.

On an understanding of the resourcing issues raised by the above circumstances, the CMA consented on 15 March 2019 to a derogation (see section 5 of the CMA's derogation [letter](#) dated of 15 March 2019) permitting Bauer Media Audio to second Tony Frangos, Bauer Radio's Head of Business Support and Financial Control, to the Wireless business. Bauer Media Audio subsequently seconded Tony Frangos to the Wireless business.

On 2 October 2019, Bauer Media Audio submitted that, in September 2019, one of the two management accountants supporting Tony Frangos chose to leave the Wireless business with immediate effect. [REDACTED].

Bauer Media Audio also submitted on 2 October 2019 that the Wireless management team (Iain Fowler and Tony Frangos) and Phil Riley, in his capacity as Senior Independent Advisor, concluded that further resource was required to provide effective financial oversight and support to the acquired Wireless businesses through the duration of the CMA's Phase 2 inquiry. [REDACTED]. Recruitment of an experience radio management accountant to deal with these and related work-streams would enable Tony Frangos to focus to a greater degree on urgent financial and operational governance matters.

On 11 October 2019, the CMA consented in writing to the secondment of [REDACTED], a Reporting Accountant at Bauer Radio, to the Wireless business in the role of management accountant for the duration of the Initial Order. The CMA consented to this secondment on the understanding and condition that:

- Additional immediate support of Tony Frangos from an experienced radio management accountant with sector-specific knowledge would be required to ensure the continued viability of the Wireless business.
- Recruiting within a short period of time a candidate external to Bauer Radio with the appropriate expertise would pose considerable challenges and risks to the Wireless business.
- During the period of her secondment, [REDACTED] will cease to work for or report to Bauer Radio. She will not perform any duties on behalf of Bauer Radio.
- [REDACTED] will either perform secondment duties at relevant Wireless' premises or else remotely. [REDACTED] will not work from any Bauer Radio premises for the duration of the secondment.
- [REDACTED] will give a Confidentiality Undertaking approved by the CMA as part of her secondment, which will include appropriate safeguards on the receipt, use and storage of confidential and commercially sensitive information received from Wireless in performance of her secondment role.

3. Paragraph 5(l) of the Initial Order

On 15 March 2019, the CMA consented to a derogation (see section 2 of the CMA's derogation [letter](#) dated of 15 March 2019) permitting Bauer Media Audio to appoint Phil Riley as Senior Independent Advisor to the Wireless business, as well as a separate derogation (see section 3 of the CMA's derogation [letter](#) of 15 March 2019) permitting Phil Riley to share information with Peter Brimacombe, Bauer's Business

Development Director, in exceptional circumstances for the purpose of ensuring the viability of the Wireless business.

Bauer Media Audio submits that to ensure all items escalated by Phil Riley are addressed by Bauer Radio effectively and on a timely basis, Bauer Radio requires an additional member of Bauer Radio staff to assist Peter Brimacombe in responding to inquiries or otherwise act as a substitute point of contact. Bauer Media Audio proposed on 4 October 2019 that Alice Douglas, a Senior Legal Counsel at Bauer, should be authorised to receive inquiries from Phil Riley and to assist Peter Brimacombe in dealing with such inquiries on a timely basis.

On 11 October 2019, the CMA consented in writing to a derogation permitting Phil Riley to escalate matters in exceptional circumstances to Alice Douglas for the purpose of assisting Peter Brimacombe in responding to relevant inquiries or else act as an alternate point of contact for Phil Riley, as appropriate. The CMA consented to this derogation on the understanding and condition that:

- [✂].
- Some of these requests are of an administrative nature and so do not require assistance from a member of Bauer Radio's senior UK management team.
- Alice Douglas, as a Senior Legal Counsel at Bauer, is well equipped to deal with requests of a more administrative nature and has no involvement in the operation or management of Bauer Radio.
- Alice Douglas will sign a non-disclosure agreement with terms substantially identical to those approved by the CMA previously and agreed by Peter Brimacombe as a condition to the derogations issued on 15 March (see section 3 of the CMA's derogation [letter](#) of 15 March 2019).
- The CMA and Grant Thornton, the Monitoring Trustee, will be copied on all email communications between Alice Douglas and Phil Riley.

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

Yours sincerely,

Douglas Cooper
Project Director, Mergers
14 November 2019