

COMPLETED ACQUISITIONS BY BAUER MEDIA GROUP OF CERTAIN BUSINESSES OF CELADOR ENTERTAINMENT LIMITED, LINCS FM GROUP LIMITED AND WIRELESS GROUP LIMITED AND THE ENTIRE BUSINESS OF UKRD GROUP LIMITED

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On 7 August 2019, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (**the Act**), referred the completed acquisitions by Heinrich Bauer Verlag KG (trading as Bauer Media Group (**Bauer**)) through subsidiaries, of certain businesses of Celador Entertainment Limited (**Celador**), Lincs FM Group Limited (**Lincs**) and Wireless Group Limited (**Wireless**), as well as the entire business of UKRD Group Limited (**UKRD**) (collectively, **the Acquisitions** and individually each an **Acquisition**), for further investigation and report by a group of CMA panel members (**the Group**). Celador, Lincs, the business acquired from Wireless and UKRD are collectively referred to as the **Acquired Businesses** and each is an **Acquired Business**.
2. Initial enforcement orders (each an **IEO**) requiring the Acquired Businesses to be held separate from Bauer were served on 1 March 2018 in regard to the acquisition of certain businesses of Celador, Lincs and Wireless and on 12 March 2019 in regard to the acquisition of UKRD. Details of the individual IEOs and subsequent derogations can be found at:
 - (a) [Celador](#)
 - (b) [Lincs](#)
 - (c) [Wireless](#)
 - (d) [UKRD](#).

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, 2014).

3. A monitoring trustee, Grant Thornton LLP was appointed on 6 September 2019.
4. In its provisional findings on the reference notified to Bauer on 5 December 2019, the Group among other things, provisionally concluded that each of the Acquisitions has resulted in the creation of a relevant merger situation, and that
 - (a) the Acquisitions, as a result of each of Bauer's acquisition of the ability to exercise material influence over First Radio Sales Limited (**FRS**) and its acquisition of a large proportion of FRS' customers, have resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the market for the supply of representation for national advertising to independent radio stations in the UK; and
 - (b) the Wireless Acquisition has resulted, or may be expected to result, in an SLC in the supply of local advertising in the Wolverhampton area.
5. The CMA's analysis provisionally indicates that the Acquisitions may be expected to result in adverse effects, for example in the form of:
 - (a) higher prices (commissions rates) and/or the worsening of other terms for representation of independent radio stations for national advertising compared to what would otherwise have been the case absent the Acquisitions; and
 - (b) higher prices for local advertising in the Wolverhampton area compared to what would otherwise have been the case absent the Wireless Acquisition.
6. This Notice sets out the actions that the CMA considers it might take for the purpose of remedying the provisionally identified SLCs or any resulting adverse effects identified in the provisional findings report.²
7. The CMA invites comments on possible remedies by 19 December 2019.

Criteria

8. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.³

² See the [inquiry webpage](#).

³ Sections 35(4) of the Act.

9. To this end, the CMA will seek remedies that are effective in addressing the SLC or its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
10. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁴

The Provisional SLCs

Representation of independent radio stations for national advertising

11. As a consequence of the Acquisitions:
 - (a) Bauer has gained the ability to exercise material influence over FRS.
 - (b) Bauer has acquired a large proportion of FRS' customers.
12. Each of these outcomes means that FRS is likely to cease to be an independent competitor in the supply of representation services, an area where we consider Bauer would have been a credible and growing competitor to FRS absent the Acquisitions.
13. As such, competition to represent independent radio stations will reduce, from FRS and actual and potential competition from Bauer and Global pre-Acquisitions, to competition only between Bauer and Global post-Acquisitions. By eliminating the principal route of choice for independent radio stations to sell advertising slots to purchasers of airtime for national advertising, the Acquisitions reduce the number of options for independent stations from three to two. Furthermore, one of the remaining options, Global, appears more limited because it is unlikely to wish to serve some stations and other stations are unlikely to want to accept its branding and content conditions.
14. For these reasons the Group have provisionally found an SLC in the market for the representation of independent radio stations for national advertising in the UK.
15. Notwithstanding the provisional conclusion, in light of the evidence we have received, we also considered whether, over a longer period, FRS would have continued to operate absent the Acquisitions. Whilst there is inherent uncertainty over precisely what events could happen, and their timing, we considered that particular industry specific factors would mean that over time FRS would be likely to lose one or more of the Acquired Businesses, and that

⁴ [Merger Remedies: CMA87](#) (December 2018), paragraphs 3.3 and 3.4.

a loss of significant scale is likely to make FRS less attractive to advertisers. It would likely become economically unviable and close. While the timing of closure is uncertain, we have provisionally concluded that the most likely longer-term position for FRS is that it would have exited the market at some point, after the foreseeable counterfactual period but within, at most, 10 years.

Wolverhampton

16. Bauer's Free Radio FM and Wireless' Signal 107 broadcast areas mostly overlap and their transmitters are the only radio options for local advertisers wishing to specifically target the Wolverhampton area. There are no substantial differences between the two stations, making it likely that despite some differences in their offering, they would be alternatives for local advertisers. We consider that the elimination of the constraint imposed by the two stations on each other will mean that the only alternative to a Bauer radio station would be to switch to a different form of advertising.
17. For the reasons set out above, we provisionally find that as a result of the Wireless Acquisition, there would be a substantial lessening of competition in the supply of local radio advertising in the Wolverhampton area.

Possible remedies on which views are sought

18. The CMA prefers structural remedies, such as divestiture or prohibition, over behavioural remedies, because:
 - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
 - (c) structural remedies rarely require monitoring and enforcement once implemented.⁵
19. Potential structural and behavioural remedies currently identified by the CMA are set out below for each of the two provisional SLCs. The CMA will consider any other practicable remedies (structural or behavioural) that the main parties, or any interested third parties, may propose that could be effective in addressing the SLCs or any resulting adverse effects.

⁵ [Merger Remedies: CMA87](#) (December 2018), paragraph 3.46.

20. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLCs or any resulting adverse effects that have been provisionally identified.
21. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLCs and any resulting adverse effects.

The market for the representation of independent radio stations for national advertising in the UK

22. The provisionally identified SLC results from a reduction in competition in the market for the representation of independent radio stations for national advertising through the loss of FRS. An effective remedy will need to ensure that independent radio stations are able to access representation either through the continuation of FRS as was the case pre-Acquisitions or through access to representation for national advertising on no worse terms than they were able to do so through FRS pre-Acquisitions.

Potential structural remedies

23. At this stage, the CMA has identified the following potential structural remedies in regard to representation of independent radio stations for national advertising in the UK:
 - (a) Divestiture of the Acquisitions ie all four businesses acquired by Bauer: Celador, Lincs, the business acquired from Wireless and UKRD, including its 50% shareholding in FRS.
 - (b) Divestiture of a smaller package of businesses including at least the 50% shareholding in FRS along with whatever other assets (or behavioural remedies) would need to be added to this to make FRS an effective competitor for the duration of the SLC.
24. The CMA will also consider any other partial divestiture remedies put forward as part of this consultation.

Potential behavioural remedies

25. The CMA invites views on whether there are potential behavioural remedies that may be effective in remedying the SLC or any resulting adverse effect

that it has provisionally identified. The Group has found that the SLC applies for at most a period of 10 years

26. The CMA envisages that to be effective any behavioural remedy would need to include at least:
- (a) Representation of independent radio stations on at least the same or better terms than customers currently have with FRS. Terms would include, but not be limited to: the commission payable, customer payment terms and general representation terms eg the current geographic clusters that stations are sold under.
 - (b) Mechanisms to ensure that these terms do not deteriorate over the duration of the SLC. These would need to take account of:
 - (i) Changes in listener hours.
 - (ii) Changes in the level of national advertising spend in commercial radio as a whole.
 - (iii) Other market changes might also need to be addressed eg changes in advertising slots per hour.
 - (iv) Access to both analogue and digital national advertising (if the station currently has both or expands into digital channels).
 - (c) New entrants would need to be able to access the same terms as they would do if FRS was in existence. This might occur through new entrants following a re-advertising of a licence or a change in ownership of a station.
 - (d) A mechanism to ensure access for all current FRS stations on a non-discriminatory basis, ie Bauer should not be able to favour its own stations over overlapping stations it represents.
 - (e) Monitoring and enforcement, including any adjudication, arbitration or other dispute resolution mechanism.
27. The CMA also invites views on whether any behavioural remedy would need to include measures to address future changes in advertising technologies and media buying. For example, Bauer being obliged to make such advertising opportunities available to independents on non-discriminatory terms.

Evaluation of potential remedies

Divestiture

28. In evaluating possible divestitures as a remedy to the SLC it has provisionally found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:

The scope of the divestiture package

29. To be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor.
30. The CMA invites views on whether:
- (a) the divestiture of the Acquisitions would be effective;
 - (b) the divestiture of a package less than the Acquisitions would be effective and what this package would consist of;
 - (c) Bauer should be able to retain non-local radio station assets such as the interests in multiplexes it obtained through the Acquisitions;
 - (d) there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market for representation services to independent radio stations;
 - (e) there are risks that a suitable purchaser is not available or that Bauer will divest to a weak or otherwise inappropriate purchaser. The CMA invites views on the availability of a purchaser for either all of the Acquired Businesses or for a partial divestiture and in particular for UKRD's 50% shareholding in FRS;
 - (f) there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture; and
 - (g) any other elements, including behavioural remedies are required in the package to make it effective. This may be particularly relevant to any partial divestment package.

Identification of a suitable purchaser(s)

31. The CMA invites views on whether there should be one purchaser for the Acquired Businesses or whether multiple purchasers are possible.
32. The CMA will wish to be satisfied that any prospective purchaser:
 - (a) is independent of the main parties;
 - (b) has the necessary capability to:
 - (i) compete at the local radio station level. The CMA invites views on whether the purchaser for example needs to be a current UK independent radio operator and/or have the ability to take advantage of recent Ofcom deregulation in the sector;
 - (ii) own and operate FRS. In particular whether the purchaser can satisfy the CMA of its commitment to maintaining FRS as a representative of independent radio stations for national advertising in the UK;
 - (c) is committed to maintaining the Acquisitions as independent radio stations;
 - (d) will not create further competition concerns.⁶

Effective divestiture process

33. The CMA invites views on the appropriate timescale for achieving either a full or partial divestiture.
34. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.
35. At this stage, the CMA expects that if a partial divestiture can be found that is effective it will be necessary to require that any divestiture(s) is / are completed before integration of the remaining elements of the Acquisitions is allowed to proceed.
36. The CMA invites views on whether Bauer should be required to extend the functions of the current monitoring trustee to oversee the divestiture(s) and to ensure that the business / assets to be divested is / are maintained during the course of the process.

⁶ [Merger Remedies: CMA87](#) (December 2018), paragraphs 5.20 and 5.21.

37. The CMA has the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
- (a) the merger parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the merger parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
38. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of the Acquisitions necessitate such an approach.

Behavioural remedies

39. The CMA invites views on potential risks of a behavioural remedy and ways to mitigate these risks. Risks in relation to behavioural remedies are categorised under the following areas.
- (a) Specification: these risks arise if the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance.
 - (b) Circumvention: the risk that in this case Bauer could circumvent the remedy and FRS customers receiving worse terms and conditions etc than they would have done pre-Acquisitions with FRS.
 - (c) Distortion: the risk that the remedy distorts behaviour within the market for the representation of independent radio stations for national advertising in the UK.
 - (d) Monitoring and enforcement: the risk that the remedy cannot be effectively monitored and behaviour enforced.⁷

The supply of local advertising in the Wolverhampton area

40. At this stage, the CMA has identified the following potential structural remedies to address the provisionally identified SLC in the supply of local advertising in the Wolverhampton area:
- (a) the divestiture of all of the business acquired from Wireless being 12 local radio stations and associated local FM radio licences, as well as digital multiplexes in Stoke, Swansea and Bradford. The radio stations are: The

⁷ [Merger Remedies: CMA87](#) (December 2018), paragraph 7.4.

Wave (Swansea); Swansea Sound; Peak FM; Wave FM; Wish FM; Wire FM; Tower FM; Pulse 1 (Bradford); Pulse 2 (Bradford); Signal 107; Signal One (Stoke); and Signal Two (Stoke).

(b) the divestiture of Signal 107 or Free Radio FM.

41. The CMA is currently not proposing divestment of just the Wolverhampton area as: each station has a single licence for the whole of its transmission area which cannot be split without Ofcom approval; and the Wolverhampton part of each of Signal 107 and Free Radio FM is not a separate business. The CMA though invites views on whether it is practical and effective in addressing the SLC to divest just the Wolverhampton area given the above constraints.
42. The CMA's current view is that a behavioural remedy is very unlikely to be an effective remedy to the SLC or any resulting adverse effect that it has provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation.

Evaluation of potential remedies

Divestiture

43. In evaluating possible divestitures as a remedy to the SLC it has provisionally found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the CMA will have regard to the following critical elements of the design of divestiture remedies:

The scope of the divestiture package

44. To be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor.
45. The CMA invites views on:
 - (a) whether the divestiture of the business acquired from Wireless would be effective;
 - (b) whether the divestiture of either Signal 107 or Free Radio FM would be effective;
 - (c) what assets would need to be included within the divestment package to make it effective: for example the licence(s) and/or the premises, etc.;

- (d) whether in the case of the divestiture of either Signal 107 or Free Radio FM, Bauer should be allowed to propose which station should be divested, subject to the consent of the CMA;
- (e) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;
- (f) whether there are risks that a suitable purchaser is not available or that the merger parties will divest to a weak or otherwise inappropriate purchaser;
- (g) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture; and
- (h) whether there are other possible risks in the scope of the package not described above that we should take into account.

Identification of a suitable purchaser

46. The CMA will wish to be satisfied that a prospective purchaser:
- (a) is independent of the main parties;
 - (b) has the necessary capability to compete. In particular whether the purchaser for example needs to be of a certain size or have complementary radio stations nearby etc;
 - (c) is committed to competing in the supply of local radio with local advertising in the Wolverhampton area; and
 - (d) will not create further competition concerns.⁸

Effective divestiture process

47. The CMA invites views on the appropriate timescale for achieving a divestiture.
48. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with this divestiture.

⁸ [Merger Remedies: CMA87](#) (December 2018), paragraphs 5.20 and 5.21.

49. At this stage, the CMA expects that it will be necessary for Bauer to complete the required divestiture before integration is allowed to proceed in regard to the acquisition of the remaining business acquired from Wireless. Until that time the existing initial enforcement order will remain in force.
50. The CMA currently considers in regard to this SLC that there are no reasons to require the divestiture to be completed before Bauer can integrate the Celador, Lincs and UKRD Acquisitions. However, this position is likely to be affected by the requirements of the remedy in regard to the SLC in respect of the market for the representation of independent radio stations for national advertising in the UK.
51. The CMA invites views on whether Bauer should be required to extend the functions of the current monitoring trustee to oversee the divestiture and to ensure that the business / assets to be divested is / are maintained during the course of the process.
52. The CMA has the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
 - (a) the merger parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the merger parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
53. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

Cost of remedies and proportionality

54. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose the remedy which imposes the least cost or restriction. In relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.⁹

⁹ [Merger Remedies: CMA87](#) (December 2018), paragraphs 3.8 and 3.9.

55. The CMA invites views on what costs are likely to arise in implementing each remedy option.

Relevant customer benefits

56. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.¹⁰
57. Relevant customer benefits are limited by the Act to benefits to customers in the form of:
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services.'¹¹
58. The Act provides that a benefit is only a relevant customer benefit if:
- (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.¹²
59. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options we are considering.
60. During the inquiry Bauer submitted potential benefits it believed arose from the acquisition. The Group took the view that it was more appropriate to assess these potential benefits as possible relevant customer benefits. Bauer's potential benefits arising from the Acquisitions and our views are set out in Chapter 12 of the provisional findings at paragraphs 12.30 to 12.40.¹³

¹⁰ Section 36(4) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.15 and 3.16.

¹¹ Section 30(1)(a) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.17.

¹² Section 30(3) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.19.

¹³ See the [inquiry webpage](#)

Next steps

61. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by 19 December 2019 (see Note (i)).
62. A copy of this notice will be posted on the CMA [website](#).

Stuart McIntosh

Group Chairman

5 December 2019

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLCs or any resulting adverse effects is made having regard to the Provisional Findings announced on 5 December 2019. The main parties have until 6 January 2019 to respond to the Provisional Findings. The CMA's findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.