



**BAUER MEDIA**  
**COMPLETED ACQUISITIONS BY BAUER OF CELADOR, LINCS, WIRELESS AND UKRD**  
**RESPONSE TO THE NOTICE OF POSSIBLE REMEDIES DATED 5 DECEMBER 2019**

1. **INTRODUCTION**

1.1 This is the Response of Bauer Media Limited ("**Bauer**") to the CMA's Notice of Possible Remedies under Rule 12 of the CMA's rules of procedure for merger market and special reference groups dated 5 December 2019 (the "**Remedies Notice**")<sup>1</sup> and to the observations of the CMA at the hearing held on 14 January 2019 in respect of the completed acquisitions by 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**". UKRD has a 50% interest in First Radio Sales Limited ("**FRS**"), which is a national sales house which sells national radio advertising on the behalf of radio stations, including the Targets, [§] and other independent radio stations (the latter are referred to as the "**Third Party Stations**" below).

1.2 This Response should be read in conjunction with Bauer's Response to the CMA's Provisional Findings report dated 5 December 2019 (the "**Provisional Findings**") submitted on 23 December 2019 ("**Bauer's Response to the PFs**"). That Response demonstrates that no substantial lessening of competition ("**SLC**") arises in any relevant market as a result of the Transactions, and therefore there is no basis on which the CMA can require remedies. That Response highlights in particular that: (i) the options for representation for independent stations are not reduced relative to the correct counterfactual in which FRS would have failed rapidly absent the Transactions; and (ii) there are significant differences between Free Radio and Signal 107 in the Wolverhampton area and substantial evidence that the stations do not materially constrain one another.

1.3 Nonetheless, this Response sets out Bauer's proposed remedies in the event that the CMA maintains its provisional SLC findings in its final report, specifically:

1.3.1 Bauer submits that the most proportionate and effective remedy in respect of the SLC the CMA has provisionally found in the market for the supply of representation for national advertising to independent radio stations (the "**Representation SLC**") is a behavioural remedy whereby Bauer commits to representing the Third Party Stations on terms at least equivalent to their current terms with FRS for a period of no more than 5 years (Section 2); and

1.3.2 Bauer submits that the most proportionate and effective remedy in respect of the SLC the CMA has provisionally found in the market for the supply of local radio advertising in Wolverhampton (the "**Wolverhampton SLC**") is the disposal of the business comprising the management and operation of Signal 107's Wolverhampton licence (Section 3).

1.4 [§].

2. **REPRESENTATION SLC – BEHAVIOURAL REMEDY**

2.1 In this section, Bauer sets out why a behavioural remedy, committing to represent the Third Party Stations on terms at least equivalent to their current terms with FRS for a period of no more than 5 years, is the most proportionate and effective remedy available should the CMA maintain the Representation SLC in its final report. Specifically this section:

2.1.1 demonstrates that a structural remedy would be both disproportionate and ineffective (paragraphs 2.3 to 2.14);

2.1.2 outlines Bauer's proposed behavioural remedy (paragraphs 2.15 to 2.28); and

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<sup>1</sup> Footnote references to chapters / paragraphs / appendices / tables are to the Remedies Notice unless otherwise stated.



2.1.3 explains why Bauer's proposed behavioural remedy effectively addresses the Representation SLC and the additional concerns raised by the CMA in the Remedies Notice (paragraphs 2.29 to 2.31).

2.2 Bauer submits that, for the reasons set out below, its proposed remedy will not give rise to any specification, circumvention, distortion or monitoring and enforcement risks (paragraph 2.32).

**A structural remedy would be disproportionate and ineffective**

2.3 The CMA proposes two structural remedies in respect of the Representation SLC:

2.3.1 divestiture of all of the Targets (in effect, prohibition of the Transactions);<sup>2</sup> or

2.3.2 divestiture of a smaller package of assets including at least UKRD's 50% shareholding in FRS and such other assets (or behavioural remedies) that would be needed "to make FRS an effective competitor for the duration of the SLC".<sup>3</sup>

2.4 Bauer submits that both of these options (and any other partial divestiture remedy<sup>4</sup>) are disproportionate and ineffective.

A structural remedy would be disproportionate

2.5 As set out in Bauer's Response to the PFs,<sup>5</sup> even if the CMA is right about the Representation SLC, it is very small in magnitude. By way of illustration, the commission FRS earned representing the Third Party Stations in the year to March 2019 was just £[~~3~~].<sup>6</sup> If Bauer were to hypothetically raise commission rates by 5%, this would produce a negligible effect of only c.£[~~3~~].

2.6 Imposing a structural solution (in particular prohibition of the Transactions) would be disproportionate in and of itself given the very small scale of the potential Representation SLC.

2.7 Moreover, the Transactions give rise to benefits which offset any anti-competitive effects, which would be lost in whole or in part in the event of a structural remedy. In particular:

2.7.1 It is not in dispute that Bauer would, post-Transactions, represent the Third Party Stations. Bauer would offer more effective representation than those stations currently receive from FRS. It would drive increased revenues through increased sales volumes, improving the financial position of these stations;<sup>7</sup> and

2.7.2 the Transactions give rise to substantial benefits for the commercial radio sector as a whole, including the Targets, advertisers and listeners. These benefits constitute relevant customer benefits for the purposes of section 30 of the Enterprise Act 2002 ("EA02") and significantly outweigh the minimal anti-competitive effects for the reasons set out in Section 6 of Bauer's Response to the PFs.

2.8 Bauer therefore submits that a structural remedy of any form would be disproportionate given the benefits that would be lost and the availability of an effective behavioural remedy, and should therefore be ruled out.

A structural remedy would not effectively address the Representation SLC

2.9 One of the primary reasons why the CMA has a preference for structural solutions over behavioural solutions is that "structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry".<sup>8</sup> The CMA clearly has this in mind in proposing structural solutions in this case, stating that any

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<sup>2</sup> Paragraph 23(a).

<sup>3</sup> Paragraph 23(b).

<sup>4</sup> Paragraph 24.

<sup>5</sup> See Section 4 thereof.

<sup>6</sup> Provisional Findings, Appendix C, Table 3.

<sup>7</sup> See Section 6 of Bauer's Response to the PFs.

<sup>8</sup> Paragraph 18(a), quoting the CMA's Merger Remedies guidance (CMA87), paragraph 3.46.



structural solution would need "to make FRS an effective competitor for the duration of the SLC".<sup>9</sup>

- 2.10 However, no structural solution, not even prohibition of the Transactions, can achieve this.
- 2.11 FRS' FY20 budget forecasts pre-tax profit of just £[REDACTED].<sup>10</sup> This is less than the commission revenue that FRS generates from representing [REDACTED].<sup>11</sup> [REDACTED].
- 2.12 It is therefore impossible for FRS to be preserved as an effective competitor even in the short term. [REDACTED]. Therefore, a structural remedy cannot effectively address the Representation SLC.
- 2.13 In the present case, a structural remedy (prohibition of the Transactions) poses greater risks for Third Party Stations than approving the Transactions unconditionally. If FRS were to fail in the near future (as Bauer submits that it would for reasons explained in its Response to the PFs), this would potentially leave Third Party Stations without an immediate option for representation, and/or seeking to negotiate a new representation deal urgently. This could be disruptive for the Third Party Stations. In contrast, permitting Bauer to proceed with the Transactions and planned post-Transaction strategy to represent the Third Party Stations ensures continuity of service provision for the Third Party Stations.
- 2.14 Unless the CMA decides to clear the Transactions unconditionally, as Bauer submits it should, the only effective solution to the Representation SLC is a behavioural remedy, as outlined below. In contrast with a structural remedy, this would ensure continuity of service provision for the Third Party Stations. Maintaining the continuation of FRS in its pre-Transactions form, as the CMA suggests at paragraph 22, is therefore not possible and would in any event go beyond a remedy to the Representation SLC.

#### **Bauer's proposed behavioural remedy**

- 2.15 Bauer will commit to providing national advertising sales representation to all Third Party Stations receiving national advertising sales representation from FRS as at the date of acceptance of undertakings.<sup>12</sup> Bauer will offer this representation on their existing terms as agreed with FRS and in effect as at 31 March 2019 (the date on which Bauer completed its acquisition of UKRD). Those terms will be supplemented by additional protections given by way of undertakings, as described below.
- 2.16 The terms of representation between Bauer and the Third Party Stations may be amended or replaced at any time by mutual agreement. For the avoidance of doubt Bauer would not require a BCL as a condition of providing representation services, but would be willing to make such an agreement available to the Third Party Stations if they desired. The Third Party Stations will have the sole discretion as to whether to accept any new or amended terms or retain their existing terms.
- 2.17 Following the expiry of terms in place between Bauer and each Third Party Station, Bauer will be obliged for the life of the remedy to offer to renew its services on either the terms the relevant Third Party Station had with FRS as at 31 March 2019, or, if different, the most recent terms agreed between Bauer and the Third Party Station, at the option of the Third Party Station.
- 2.18 In the event that a Third Party Station declines Bauer's initial offer of representation, or any subsequent offer of representation during the life of the remedy, the Third Party Station will still be able to obtain representation from Bauer at that station's request at any time during the life of the remedy. The applicable terms would be the terms in place between that Third Party Station and FRS as at 31 March 2019, or such other terms as offered by Bauer, at the option of the Third Party Station.
- 2.19 Bauer will provide the Third Party Stations with a minimum revenue guarantee ("**MRG**"). The MRG will guarantee that the Third Party Stations will receive gross revenue from Bauer at

<sup>9</sup> Paragraph 23(b).

<sup>10</sup> Provisional Findings, Appendix C, Table 5.

<sup>11</sup> Provisional Findings, Appendix C, Table 3.

<sup>12</sup> Including for the purposes of this Response the station to be divested by Bauer in relation to the Wolverhampton SLC (see below). It is noted that some stations have left or are leaving FRS, for example, Quidem, and it is not intended that stations that have left FRS prior to the effective date of the remedy should benefit from it.



least equivalent to the gross revenue they received from FRS during the most recent calendar year (2019), subject to certain adjustments which take account of changes in the overall market for national advertising and changes in listening hours for the individual stations. It is understood that the existing FRS terms do not contain such a provision and therefore this is an improvement on the terms that Third Party Stations currently have.

- 2.20 Bauer will also commit to provide national advertising sales representation to new entrants. The CMA envisages two scenarios in which entry could occur:<sup>13</sup>
- 2.20.1 following the re-advertising by Ofcom of an FM/DAB radio licence; or
  - 2.20.2 following the change of ownership of an existing station.
- 2.21 Bauer will commit to providing national advertising sales representation to such new entrants on the following basis:
- 2.21.1 in the event of a re-advertising of a licence, where the licence holder was a beneficiary of the remedy, on the terms on which the previous licence holder had with FRS as at 31 March 2019 or had otherwise agreed with Bauer, at the option of the new licence holder; or
  - 2.21.2 in the event of a change of ownership of a station where the previous owner was a beneficiary of the remedy, on the terms which that station had with FRS as at 31 March 2019 or had otherwise agreed with Bauer, at the option of the new owner.
- 2.22 Bauer agrees with the CMA's provisional conclusion that new entry of FM/DAB services outside of these scenarios is unlikely.<sup>14</sup> Bauer will nonetheless commit to offering representation to such new FM/DAB entrants on terms which are at least materially equivalent to the terms offered by FRS as at 31 March 2019.
- 2.23 In each case of new entrant representation the terms of representation may be amended or replaced by mutual agreement and the same provisions as set out in paragraphs 2.16 to 2.18 in relation to renewal and reinstatement of representation will apply to new entrants.
- 2.24 Bauer has not had sight of all of FRS' agreements with Third Party Stations.<sup>15</sup> It will therefore commit to the following (to the extent that those agreements do not contain equivalent provisions):
- 2.24.1 First, in relation to its representation of each the Third Party Stations:<sup>16</sup>
    - (A) to provide a professional sales service and use all reasonable endeavours to promote an awareness of the Third Party Station to media buying agencies on the same basis in all material respects as for Bauer's own stations;
    - (B) to negotiate and conclude sales contracts on behalf of the Third Party Station in good faith and acting in their commercial interests;
    - (C) to use reasonable commercial endeavours to negotiate the best price for each sale of national advertising taking account of the marketplace and agreement between Bauer and the Third Party Station as to how the advertising is to be sold;
    - (D) to promptly notify the Third Party Station of any material concerns that it may have regarding the identity of an advertiser or subject matter of a campaign on the same basis as for Bauer's own stations; and
    - (E) to act in good faith and in a timely fashion in relation to the performance of all of its obligations under the representation agreement and comply with all reasonable instructions and requests of the Third Party Station.

<sup>13</sup> Paragraph 26(c).

<sup>14</sup> Provisional Findings, paragraphs 12.8 to 12.23.

<sup>15</sup> Herbert Smith Freehills has had access to certain of these documents for the purpose of responding to question 13 of the CMA's RFI dated 9 October 2019, but these documents were not disclosed to Bauer pursuant to the restrictions of the IEOs.

<sup>16</sup> [REDACTED].



- 2.24.2 Second, it will continue to make available the FRS buying points (i.e. station groupings) on the JET (and any successor) system. Subject to the agreement of the Third Party Station, Bauer would in addition include that station as part of its Hits Radio Network as offered to media buying agencies (but as noted above there would be no requirement on the Third Party Station to rebrand or take content from Bauer). In doing so, Bauer would make the Hits Radio Network one of the largest radio networks in the UK and inclusion within it would be a material benefit to Third Party Stations which FRS could not match.
- 2.24.3 Third, Bauer will adopt appropriate safeguards to ensure that confidential information relating to the Third Party Stations is solely disclosed to those Bauer employees responsible for the provision and management of national sales representation to the Third Party Stations ("**Bauer National Sales Staff**"). In particular, Bauer National Sales Staff will be subject to confidentiality obligations, in a form approved by the CMA, which shall designate the permitted uses for confidential information and prohibit the disclosure of such information to Bauer employees who are not Bauer National Sales Staff. Moreover, Bauer will ensure that the Bauer National Sales Staff maintain separate physical and electronic storage of confidential information and that such information is not accessible to Bauer employees who are not Bauer National Sales Staff.
- 2.25 Bauer understands that FRS represents the Third Party Stations in relation to their advertising inventory on their analogue and digital services but it cannot offer targeted sales of IP inventory and that some Third Party Stations use the Global owned DAX sales house for this purpose. Bauer is willing to offer this representation to Third Party Stations through inclusion in Bauer's InStream service [X] if they do not want to use DAX. For those Third Party Stations who wish to avail of this service, Bauer will offer to represent those stations in the sale of targeted IP inventory when it is able to provide such a service to represented stations.
- 2.26 Bauer's remedy will include the following mechanisms for monitoring compliance and dispute resolution:
- 2.26.1 A monitoring trustee will be appointed to monitor Bauer's compliance with the remedy (including the MRG), and to report to the CMA on a periodic basis. The identity of the monitoring trustee will be agreed with the CMA. The monitoring trustee will be remunerated by Bauer.
- 2.26.2 Third Party Stations who consider Bauer has not complied with the remedy will be able to refer disputes to an independent adjudicator with the power to obtain information from Bauer / the Third Party Station as may be reasonably required and to resolve disputes. Bauer and the Third Party Station would commit to be bound by the decisions of this adjudicator. Bauer is considering potential candidates and can propose a shortlist to the CMA in due course. Bauer considers that the chosen candidate should have experience in dispute resolution and/or the radio industry.
- 2.26.3 The dispute resolution mechanism, in summary would operate as follows:
- (A) Bauer would offer, by way of undertaking, a dispute resolution mechanism – the Third Party Stations would be free to decide whether or not to accept, and therefore be bound by, this mechanism;
  - (B) the dispute resolution mechanism would apply to all disputes between Bauer and a Third Party Station regarding the remedy; and
  - (C) Bauer and the relevant Third Party Station would be required to seek to reach a negotiated outcome prior to either party referring any dispute to the adjudicator – this would involve Bauer and the Third Party Station seeking to resolve the dispute through cooperation.
- 2.26.4 Bauer considers that this dispute resolution mechanism is effective and proportionate given the limited number of instances in which a dispute could arise and the likely limited financial value of any such disputes.





- 2.27 Bauer's remedy will remain in place for up to 5 years. For the reasons set out in Bauer's Response to the PFs, this is considerably longer than the maximum possible duration of the Representation SLC. In any event, it is not in issue that Bauer will represent the Third Party Stations, and this would continue to be the case following the end of the remedy period.

Implementation

- 2.28 There are no conditions for the implementation of this remedy. [REDACTED].

**Bauer's proposed remedy addresses the Representation SLC and the CMA's concerns in the Remedies Notice**

- 2.29 The Representation SLC is based on the CMA's concern that Bauer could raise commission rates or otherwise worsen the terms offered to the Third Party Stations.<sup>17</sup> This concern is fully addressed by the remedy outlined above pursuant to which Bauer commits to offering representation on terms no worse than the terms currently in place between the Third Party Stations and FRS. Any changes to those terms can only be by mutual agreement. It will therefore not be possible for Bauer to degrade the terms on which it provides representation to the Third Party Stations. Indeed, Bauer expects the Third Party Stations to be materially better off as a result of Bauer acting as a more effective representative and therefore generating increased national advertising revenues for those stations. Moreover, the MRG guarantees that the Third Party Stations' national advertising revenues cannot fall below a clearly defined baseline. It provides reassurance to Third Party Stations that Bauer's incentives are to provide the same or better representation than that provided by FRS.

- 2.30 The CMA set out the provisions it expects a behavioural remedy to contain in respect of the Representation SLC in paragraphs 26 and 27 of the Remedies Notice. Bauer submits that its proposed remedy satisfies each of these requirements:

2.30.1 Paragraph 26(a). The CMA requires that representation under the remedy is on the same or better terms than the Third Party Stations currently have with FRS, including as to commission, payment terms and other terms, including the geographic clusters stations are sold under. As set out above, Bauer will offer all stations at least the terms they are currently on with FRS, or alternative terms at the option of the Third Party Stations.<sup>18</sup> The Third Party Stations could only be expected to accept alternative terms if they judged them to offer commercial advantages over their current FRS terms. Bauer will commit to additional obligations (to the extent that these are not in the existing FRS agreements) including an MRG,<sup>19</sup> obligations relating to its performance of the agreements with Third Party Stations,<sup>20</sup> maintaining all current FRS buying points<sup>21</sup> and adopting appropriate confidentiality safeguards.<sup>22</sup>

2.30.2 Paragraph 26(b). The CMA considers that the remedy should include mechanisms to ensure that terms do not deteriorate for the duration of the SLC, including to account for changes in listening hours, total spend in the national advertising market, other market changes and access to analogue and digital advertising. By committing to maintain the existing FRS terms these terms cannot degrade. Bauer understands that the FRS terms do not contain explicit terms relating to listening hours etc.

2.30.3 To the extent that the CMA's concerns relate to performance of the representation by Bauer this is addressed by the additional obligations relating to its performance set out at paragraph 2.24.1 above. Should a station's listening hours increase or decrease, its revenues would be expected to follow (particularly where advertising is sold on the basis of impacts (i.e. ad listens) and priced on a 'cost per thousand impacts' or 'CPT' basis). Similarly, in ordinary circumstances, the Third Party Stations should expect their revenue to be positively affected by market growth

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<sup>17</sup> Provisional Findings, paragraph 8.4.

<sup>18</sup> See paragraphs 2.15 to 2.17 above.

<sup>19</sup> See paragraph 2.19 and Annex 1.

<sup>20</sup> See paragraph 2.24.1 above.

<sup>21</sup> See paragraph 2.24.2 above.

<sup>22</sup> See paragraph 2.24.3 above.



provided that they maintain their listening share (although this has not been the case with FRS to date where revenues have declined despite market growth). In addition, the MRG guarantees that Third Party Stations will receive a defined baseline level of national advertising revenue based on the gross revenue generated by FRS for each of those Third Party Stations in the 2019 calendar year. The MRG contains an adjustment mechanism that varies the level of the guarantee based on the station's listening hours and total spend in the national advertising market. It is unclear what the CMA envisages within the category of "*other market changes*". Bauer notes that the example the CMA gives, changes in slots per hour, is a commercial decision for each station, not a market factor and the impact on revenues is not clear cut.

- 2.30.4 As to access to monetisation for both analogue and digital services, FRS currently represents the Third Party Stations in respect of analogue and digital (DAB) services. Bauer also understands that it represents them in respect of IP listening to the extent their IP listenership is included within their RAJAR figures. Accordingly, the Third Party Stations' existing access to both analogue and digital services will be maintained under the remedy. In addition, as explained above in paragraph 2.25, Bauer is willing to undertake to offer the Third Party Stations targeted sales of their IP inventory – a service which is not currently provided by FRS. This also addresses the CMA's concern regarding future changes in advertising technologies or media buying, at paragraph 27, as targeted IP advertising is the most likely development over the period of the commitments.
- 2.30.5 Paragraph 26(c). The CMA considers that the remedy should apply to new entrants, including as a result of the re-advertising of a licence or a change of control of an existing station. Bauer's remedy will apply to new entrants, including specific mechanisms for these two classes of entrant, being the most likely entrants in practice.<sup>23</sup>
- 2.30.6 Paragraph 26(d). The CMA considers that the remedy should include a mechanism to ensure that Bauer does not discriminate in favour of its own stations with which the Third Party Stations overlap. Bauer submits that this mechanism is not necessary. Bauer notes that it does not form part of the Representation SLC.<sup>24</sup> In addition, Bauer submits that it does not have the ability or incentive to discriminate in favour of its own stations, for the reasons set out in its Response to the PFs.<sup>25</sup> Bauer therefore submits that no such mechanism is necessary. In any event, Bauer's proposed remedy includes a number of obligations on Bauer relating to the performance of the representation agreements (including the MRG which provides reassurance that Bauer does not have an incentive to divert national advertising revenue away from represented stations). These obligations together prevent Bauer from discriminating in favour of its own stations. Moreover, these obligations are supported by the dispute resolution mechanism. [§].
- 2.30.7 Paragraph 26(e). The CMA considers the remedy should include monitoring and enforcement provisions, including a dispute resolution or adjudication provision. Bauer's proposed remedy includes such provisions.<sup>26</sup> Bauer has proposed a monitoring trustee and a dispute resolution mechanism. The highly transparent nature of the sale of national radio advertising (see Section 6 of Bauer's Submission on Vertical Effects<sup>27</sup>) and their longstanding experience as customers of FRS means that the Third Party Stations would, for example, be able to identify any instances of discrimination or degradation in the quality of representation and be able to use the dispute resolution mechanism to resolve them.
- 2.31 Bauer has proposed a remedy term of up to 5 years. Bauer notes that the CMA considers the Representation SLC will last for "*at most a period of 10 years*".<sup>28</sup> As set out in the

<sup>23</sup> See paragraph 2.21 above.

<sup>24</sup> Provisional Findings, paragraph 8.5.

<sup>25</sup> See Section 4 thereof.

<sup>26</sup> See paragraph 2.26 above.

<sup>27</sup> Document 264, submitted 23 October 2019, see paragraphs 6.7 to 6.12 thereof.

<sup>28</sup> Paragraph 25.



Response to the PFs, Bauer submits that there is no evidence to support this duration. [X] In these circumstances, Bauer submits that a term of up to 5 years is more than effective to address the Representation SLC, and that a longer period would be disproportionate as a result. Nonetheless, Bauer agrees with the CMA's provisional conclusion that Bauer has the commercial incentive to represent the Third Party Stations,<sup>29</sup> and Bauer will continue to be incentivised to provide high quality representation to those stations following the expiry of the term of the remedy,

**Conclusion – Bauer's proposed remedy does not give to any specification, circumvention, distortion or monitoring and enforcement risks**

2.32 Bauer therefore submits that the proposed remedy gives rise to no specification, circumvention, distortion or monitoring and enforcement risks. As regards the specific concerns raised by the CMA:<sup>30</sup>

2.32.1 Specification risk. As detailed above, Bauer's proposed remedy is clear and simple being based on existing FRS terms and precisely addresses the Representation SLC as formulated in the Provisional Findings. The MRG means that Third Party Stations have a clear baseline against which they can measure the revenues delivered by Bauer.

2.32.2 Circumvention risk. The CMA's concern is that Bauer could circumvent the remedy and offer worse terms and conditions than the Third Party Stations had from FRS prior to the Transactions. The basic design of Bauer's proposed remedy avoids this, the terms the Third Party Stations currently have with FRS will remain available to them as a backstop option throughout the life of the remedy. These terms are supplemented by the MRG which means that the national advertising revenue currently achieved by Third Party Stations (subject to adjustments) is guaranteed. In any case, Bauer has strong commercial incentives through commission income and competition with Global to perform as effectively as FRS (if not more so) and this is underpinned by the obligations set out above and further supported by the dispute resolution mechanism.

2.32.3 Distortion risk. Bauer's remedy does not give rise to any risk of market distortion. It remains in place for a short and targeted period. It is based on existing market based terms of representation and any amendments/new agreements can be reached only by mutual agreement. Changes in the market such as changes in listening hours and overall market growth will have the same effect as they would absent the remedy.

2.32.4 Monitoring and enforcement risk. Bauer has included specific mechanisms to allow for monitoring and dispute resolution. The remedies take place in a highly transparent marketplace and the Third Party Stations are long-term and experienced users of FRS and will have all of the information they need to detect potential breaches of Bauer's obligations and bring a dispute before the adjudicator. The MRG is easily monitored and Bauer will periodically provide the Monitoring Trustee with the information it requires in order to certify compliance with the remedy (including the MRG).

3. **WOLVERHAMPTON SLC – STRUCTURAL REMEDY**

3.1 In this section, Bauer explains why a structural remedy involving the disposal of the Signal 107 Wolverhampton licence is an effective and proportionate remedy should the CMA maintain the Wolverhampton SLC in its final report. Bauer submits:

3.1.1 the disposal of the acquired Wireless stations in totality is disproportionate, as is the disposal of the entirety of Signal 107 (paragraphs 3.2 to 3.4); and

3.1.2 the disposal of Signal 107's Wolverhampton licence with such of Signal 107's assets necessary for a viable business is an effective and proportionate remedy (paragraphs 3.5 to 3.11).

<sup>29</sup> Provisional Findings, paragraph 10.92.

<sup>30</sup> Paragraph 39.





### Proportionality

- 3.2 The scale of the Wolverhampton SLC is not significant. Local advertising revenue on Signal 107's Wolverhampton transmitter only is just £[REDACTED], and on Bauer's Free Radio (Black Country) transmitter only is just £[REDACTED]. The potential harm to competition would only be a fraction of this combined turnover: for example a 5% price increase on Wolverhampton-only campaigns across both transmitters (assuming no reduction in volumes) would represent just c.£[REDACTED].<sup>31</sup> In addition, the Wireless Transaction generates material benefits which constitute relevant customer benefits under section 30 EA02. See further Section 6 of Bauer's Response to the PFs. These benefits accrue to the Target stations, advertisers and listeners both in the Wolverhampton area, the West Midlands, and nationally.
- 3.3 Accordingly, Bauer submits that requiring disposal of all of the Wireless business (i.e. prohibition of the Wireless Transaction) is disproportionate. It is also not necessary for the purposes of an effective remedy, as set out below.
- 3.4 Moreover, the Signal 107 licences in Telford, Shrewsbury and Kidderminster will each benefit from significant benefits constituting relevant customer benefits under section 30 EA02. Accordingly, broadening the divestment package beyond Signal 107's Wolverhampton licence unless strictly necessary to do so for an effective remedy would also be disproportionate.

### Bauer's proposed remedy

- 3.5 Bauer's primary proposal is the divestment of the business that comprises the management and operation of Signal 107's Wolverhampton licence (AL100766BA/2) as a going concern (the "**Divestment Business**"). The Wolverhampton SLC relates solely to that licence and therefore divesting the Divestment Business alone will effectively remedy the SLC.<sup>32</sup>
- 3.6 The CMA states at paragraph 41 that it is not possible to divest only Signal 107's Wolverhampton licence without approval from Ofcom to split the Signal 107 licence. This is not correct. Whilst Signal 107 has a single TSA for marketing purposes, it is comprised of four distinct licences. The Wolverhampton transmitter is a separate licence, and was previously broadcast as a standalone station (107.7 The Wolf). There would therefore be no bar to disposing of the Wolverhampton licence alone, apart from Ofcom's consent to the change of control, which is required for all radio licences. Bauer would expect this consent to be forthcoming (and in any event it is not required before completion).
- 3.7 The Divestment Business comprises the following key assets:
- 3.7.1 FM broadcast licence AL100766BA/2, pertaining to 107.7FM and expiring on 31 December 2027;
  - 3.7.2 leasehold property over part of the second floor of a property located at Mander House, Wolverhampton WV1 3NB, which is the premises in which the Signal 107 studio is based;
  - 3.7.3 approximately [REDACTED] permanent staff;
  - 3.7.4 if required by the acquirer a licence to use the registered trademark and business name "Signal 107";
  - 3.7.5 if required by the acquirer, the right to use the internet domain names "signal107.co.uk", "signal107.com" and "signal107.net"; and
  - 3.7.6 to the extent required by the acquirer, key business contracts with:<sup>33</sup>
    - (A) [REDACTED];
    - (B) [REDACTED];
    - (C) [REDACTED];
    - (D) [REDACTED];

<sup>31</sup>  $(£[REDACTED] + £[REDACTED]) * 0.05 = £[REDACTED]$ .

<sup>32</sup> Provisional Findings, paragraph 11.65.

<sup>33</sup> These contracts will need to be novated (in whole as they pertain to Signal 107 Wolverhampton only, or in part as they pertain to Signal 107's other licences as well).



(E) [REDACTED];

(F) [REDACTED].

- 3.8 Bauer considers that the Divestment Business is a viable standalone business (as it was as 107.7 The Wolf pre-2012). Bauer submits that divestment of the Divestment Business is the most proportionate and effective remedy.
- 3.9 [REDACTED], if Bauer is unable to find a buyer for the Divestment Business, Bauer is willing, as a fall back, to sell a package of Signal 107 licences comprised of up to and including all four Signal 107 licences and the associated business to manage and operate those licences. Bauer believes that this package would be highly attractive and therefore an effective remedy. At Phase 1 Bauer offered a UIL to sell Signal 107 excluding the Kidderminster licence. [REDACTED]. Bauer therefore considers that it will face no difficulties in identifying a suitable purchaser in order to implement this divestment.
- 3.10 The full divestiture package necessary will depend on the identity of the buyer. Bauer is willing to offer such arrangements (e.g. the provision of transitional services) as are necessary to enable an effective divestment to take place. In addition, irrespective of the bundle of licences divested, [REDACTED].
- 3.11 As to the other points raised by the CMA in relation to the effectiveness of the divestiture process:
- 3.11.1 In the light of the submissions above, there is no need for the IEO to remain in force in respect of the acquired Wireless assets pending the divestment.<sup>34</sup> It would be sufficient if the IEO is limited to Signal 107.
- 3.11.2 In relation to the Monitoring Trustee, if the IEO is maintained in respect of Signal 107 the Trustee will be able to monitor the status of Signal 107 during the divestment process.<sup>35</sup> There is no need for a separate mandate in this regard; or for the Trustee to monitor the sale process; or, given the presence of potential buyers, appoint a divestiture trustee at this stage.

**Herbert Smith Freehills LLP**

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<sup>34</sup> See paragraph 49.

<sup>35</sup> See paragraphs 51 to 53.