

Provisional Findings Report (the “Report”) of the Competition and Markets Authority (“CMA”) into the 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

Rule 12 notice of possible remedies (“Remedies Notice”) notified on 5 December 2019.

Response by [X]¹

We would make the following points² with reference to points on which views are sought within the Remedies Notice.

Remedies Notice Para reference	Topic on which Views Sought	[X] Response
25	Whether there are potential structural remedies that may be effective in remedying the SLC or any resulting adverse effect that it has provisionally identified (SLC for at most 10 years)	<p>We believe divestment of Bauer’s shareholding in FRS and the acquired radio stations to appropriately vetted purchaser(s) would represent the best remedy to address the SLC presented by the acquisition by Bauer of FRS.</p> <p>As the continuing supply to FRS of national advertising inventory from FRS Stations is necessary for FRS’s continuing viability – and for the effective function within the market it performs for independent radio stations, we believe both sale of FRS and the acquired radio stations is the option that should be pursued.</p> <p>The alternative – of operating FRS from within Bauer under behavioural conditions would be in our view be difficult from an enforcement/governance perspective. Given the uncertainties of finding an appropriate buyer of FRS, we do provide comments to this alternative scenario below</p>
26	<p>Comments on suggested CMA minimum behavioural conditions:</p> <p>(a) Representation of independent radio stations on at least the same or better terms than customers currently have with FRS, including commission payable, customer payment terms, general representation</p>	<p>We think the measures proposed here by the CMA make sense (bearing mind our general reservations set out in response to para 25 above.</p> <p>With respect to paragraph (d), we think in addition that Bauer should be under a positive obligation to include and/or propose FRS stations (on non-discriminatory terms) within any</p>

¹ Unless indicated otherwise, defined terms in this response have the meaning given to them in the Remedies Notice.

² Our principal interest in the CMA’s investigations is – and remains – the impact of the Acquisitions on the national advertising market for radio (**Focus Market**) and particular the acquisition of control and influence over FRS and the SLC arising. We express no particular view on the remedies in respect of the Wolverhampton advertising market, except insofar as the impacted stations may form part of a remedy in our Focus Market.

	<p>terms, eg the current geographic clusters that stations are sold under</p> <p>(b) Mechanisms to ensure that these terms do not deteriorate over the duration of the SLC. These would need to take account of:</p> <p>(i) Changes in listener hours</p> <p>(ii) Changes in the level of national advertising spend in commercial radio as a whole</p> <p>(iii) Other market changes: eg changes in advertising slots per hour</p> <p>(iv) Access to both analogue and digital national advertising (if the station currently has both or expands into digital channels)</p> <p>(c) New entrants having access to the same terms as they would do if FRS was in existence (eg via new licence holders or change of ownership of station)</p> <p>(d) 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</p> <p>(e) Monitoring and enforcement, including any adjudication, arbitration or other dispute resolution mechanism</p>	<p>advertising negotiation involving overlapping stations – ie to give equal and non-discriminatory access to advertising opportunities. We believe this could have positive impacts both at the FRS station level as well as at the consumer level (ie greater audience penetration and information)</p> <p>Our biggest concern lies in the transparency that independent stations would have that Bauer was adhering to these arrangements and the policing and enforcement of these arrangements. We believe this would best be achieved via some sort of regulatory oversight both for dispute resolution as well as for transparency. We would invite CMA to consider a potential role for OFCOM in this regard.</p> <p>From direct experience, a secondary concern of behavioural measures is the power and influence Bauer can bring to bear (in bargaining terms/recriminatory effects) in adjacent parts of the radio market – eg the granting/refusal of access and/or terms of access to Bauer's broadcast infrastructure within the UK as an example. Given OFCOM's existing jurisdiction over these matters as licensing authority this would be an additional factor in favour of OFCOM's involvement.</p>
27	<p>Whether any behavioural remedy would need to include measures to address future changes in advertising technologies and media buying – eg Bauer making such advertising opportunities available to independents on non-discriminatory terms</p>	<p>We would agree with this. This ties in with our point above about there being a positive obligation on Bauer to make opportunities available (as opposed to a more passive regime)</p>
30(a)	<p>Would divestiture of the Acquisitions be effective?</p>	<p>This depends on the nature and intent of the purchaser(s) and the surrounding conditions.</p> <p>We believe with the right purchaser of FRS (see para 32(b)(i) below) and the right behavioural conditions divestiture could be an effective route to removing/mitigating the SLC</p>

30(b)	Would divestiture of a package less than the Acquisitions be effective and what would this package consist of	<p>We think divestiture of all, not some of the Acquisitions needs to happen for reason that it appears to us to be the best way of ensuring FRS's independence and survival (in terms of continuing supply of the advertising inventory of the FRS Stations acquired by Bauer) (see para 25 above).</p> <p>We would suggest that any sale of the radio stations would need to come with a exclusive commitment to FRS for a period of time in order for this to be effective as a remedy.</p> <p>As regards FRS, we think the effectiveness of any divestment centres more on the identity or suitability of the purchaser and its proposed plans to run the FRS business. We would suggest that there would need to be some mechanism to ensure on any future change of control of FRS within the 10 year SLC period, any future purchaser would need some degree of similar vetting as to its suitability.</p>
30(c)	Should Bauer be able to retain non-local radio station assets such as the interests in multiplexes it obtained through the Acquisitions	<p>Given the potential challenges in finding purchaser(s) for the Acquisitions (see para 30(e), 31), we think that this should ultimately be something for the purchaser(s) of the Acquisitions to decide. The opportunity of acquiring infrastructure with a station may significantly improve the attractiveness of a divestment lot (and may indeed be a determining factor). It should not be ruled out of any divestment.</p>
30(d)	<p>Whether there is a risk that:</p> <ul style="list-style-type: none"> (i) The scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser; or (ii) May not allow a purchaser to operate as an effective competitor in the market for representation services to independent radio stations 	<p>We don't believe sale of radio stations with a commitment to FRS (see para 30(b) above) should be too constraining for most purchaser(s) given that this would be replicating the pre-Acquisition situation.</p> <p>As regards FRS, this does present purchasers with more of an investment dilemma (see discussion on 30(e) and 31). It may require alternative divestment packages to be considered with certain potential acquirors to make the overall divestment package sufficiently attractive.</p>
30(e)	Whether there are risks that	We think that both of these risks are real (particularly with respect to FRS in terms

	<p>(i) a suitable purchaser may not be found</p> <p>(ii) that Bauer will divest to a weak or otherwise inappropriate purchaser</p>	<p>of finding a purchaser – see following paragraph).</p> <p>We do think that there is an actual, if not potential conflict of interest with Bauer. Failure to divest to a strong or appropriate buyer of FRS may lead to FRS failing which would ultimately be to the detriment of local independent stations (and the benefit of Bauer and other national radio operators)</p>
30(e), 31	<p>Availability of a purchaser for:</p> <p>(i) either or</p> <p>(ii) all</p> <p>of the Acquired Businesses or for a partial divestiture and</p> <p>(iii) for UKRD's 50% shareholding in FRS</p> <p>and whether there should be one purchaser for the Acquired Businesses or whether one purchaser is possible</p>	<p>We doubt if there will be one buyer for all of the Acquisitions– the Acquisitions were ultimately made with a complimentary fit to Bauer's pre-existing footprint in mind, not of those who might now buy these as a result of CMA's decision. We think it more likely, that the strongest interest in the radio stations is likely (we believe) to come from radio or media groups with a presence in adjacent geographical markets (if radio) or directly in the TSA (if for example they have newspapers or other media assets in the location). It is more likely in our view that there will be interest in parts of the Acquisitions - but not necessarily the whole.</p> <p>FRS presents a different proposition to a buyer. On the one hand it would be attractive to an existing local radio group in giving it a more direct national sales presence. FRS may also be of interest to a player within the advertising market.</p> <p>On the other hand, ownership of FRS does come with the risk of exposure to (i) further consolidation/failure of FRS Stations (or those stations folding into the Global or other national branded radio operators) (ii) the additional regulatory responsibility/"headache" (and therefore exit risk) of owning a company that plays an important role for other market players and (iii) the fact that –as the Report outlines and the SLC analysis assumes – FRS most likely has a limited future.</p>
30(f)	<p>There are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture</p>	<p>See para 33 below on timescales and 36 below on trustee. We think the current monitoring trustee should be able to protect against this, assuming there are appropriate provisions in place at present.</p>

30(g)	Any other elements, including behavioural remedies that are required to make any divestment package effective (particularly for partial divestments)	See 30(b) above
31	Whether there should be one purchaser for the Acquired Business or whether multiple purchasers are possible	See 30(e) above. We think this is possible, although we do appreciate multiple purchasers will bring greater execution risk to the desired regulatory outcome overall.
32(b)(i)	Whether purchaser needs to be a current UK independent radio operator and/or have the ability to take advantage of recent OFCOM deregulation in the sector	As regards FRS, we think it makes sense for this to be divested to a current UK independent radio operator of substance since they have both the means and a direct interest in FRS thriving in the future.
33	Appropriate timescale for achieving a full or partial divestiture	<p>We think any process(es) need to be progressed as soon as possible, with FRS being the priority (if, as we expect, there is not one purchaser for all of the Acquisitions). The main risks we see given the current uncertainty around FRS is (i) retention of key staff and a “flight to safety” by FRS Stations – ie some smaller or more risk averse independents folding into Global type brand arrangements</p> <p>This said, given that there are more likely to be multiple purchasers/lots (see para 30(b)) and that there may be some degree of conditionality around the outcome of FRS, we think 6 months would be a prudent timeframe for completion of all divestments.</p>
36	Whether Bauer should be required to extend the functions of the current monitoring trustee to oversee the divestiture(s) and to ensure that the businesses/assets to be divested is/are maintained during the course of the process	We think divestiture should not be under Bauer’s control for the reasons set out in para 30(e) above. We do think that this process needs proper oversight given the qualitative criteria that we believe are important as regards the divestment of FRS.
38	Whether the divestiture trustee is appointed at the outset of the divestiture process	If the CMA considers the risks and concerns we have raised in para 36 to be beyond the reasonable scope or capability of the monitoring trustee, then yes.
39	Potential risks of a behavioural remedy and ways to mitigate these risks	Please see 30(d)

50	Whether integration of Celador, Lincs and UKRD Acquisitions can proceed before divestiture	We would suggest not – particularly if integration would involve advertising inventory and relationships being transferred from FRS to Bauer.
59	Views on the nature of any relevant customer benefits (as set out in 12.30 to 12.40 of the Report)	<p>Our views can be summarised as follows (using the numbering from the Report):</p> <p>12.30 We believe the Acquisitions benefit Bauer principally more than the market as a whole. By creating an SLC with FRS, and the threat to the independent sector we think this creates, we would submit that there is a likely detrimental consumer effect to the plurality and vitality of (and innovation in) the market</p> <p>12.31 As above. With respect to Bauer's strategic rationale and the limited discussion in the Report relating to FRS and representing FRS stations, we note that paras 4.18 and 4.19 seem only to outline the benefits to Bauer, which rather suggests that the interest in FRS Stations and the downstream impacts on their listeners is of secondary concern</p> <p>12.36 We have insufficient information to judge Bauer's contention that consolidation was the only route for survival of the acquired stations. We would disagree with that statement in any more general sense.</p>