

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

Notice of addendum to provisional findings and possible remedies

1. On 5 December 2019, the Competition and Markets Authority (CMA) published its [Notice of provisional findings, Notice of possible remedies and full provisional findings report](#).
2. Following publication, new evidence relating to the provisional finding of a substantial lessening of competition (SLC) in the supply of local radio advertising in the Wolverhampton area was submitted and further investigations carried out. We have taken account of this new evidence alongside the remaining evidence. For reasons explained in paragraphs 5 to 13 the Group has now revised its view, and provisionally concludes that no SLC has occurred or may be expected to occur in the supply of local radio advertising in the Wolverhampton area.
3. We also received submissions and evidence relating to the provisional finding that FRS' position is potentially vulnerable in the longer term¹ and 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, ten years.² A consequence of this finding was that we concluded that our provisional finding of an SLC in the market for supply of representation for national advertising to independent radio stations in the UK was expected to apply for a period of up to ten years.³
4. We have taken account of these submissions and evidence on the prospects for FRS in the longer term and in relation to the duration of this provisional SLC. For reasons explained in paragraphs 14 to 37, we no longer believe the evidence is sufficiently plausible to support a conclusion that if radio stations were sold, they would necessarily cease using FRS. Accordingly, the Group has now revised its view, and no longer considers it reasonable that FRS may be expected to exit the market within, at most, ten years. In light of this, the Group provisionally concludes that the SLC is not time-limited.

¹ Provisional findings paragraph 24.

² Provisional findings paragraph 25.

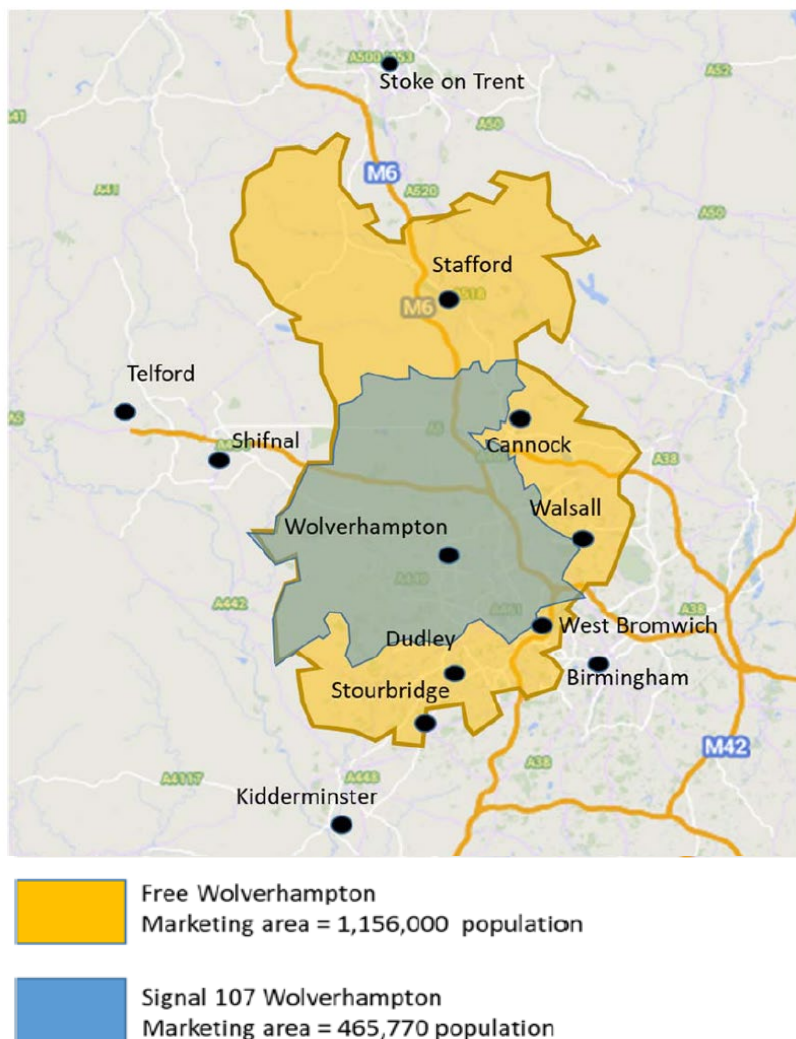
³ Provisional findings paragraph 40-41.

5. We are now publishing changes to the provisional findings and notice of possible remedies.

The supply of local radio advertising in the Wolverhampton area

6. In paragraphs 11.20 to 11.65 of our provisional findings report, we set out our reasons for provisionally finding that the Wireless Acquisition may be expected to result in an SLC in the supply of local radio advertising in the Wolverhampton area. Among the key reasons for this provisional finding were that the Parties' broadcast areas mostly overlap, that their transmitters are the only radio options for local advertisers wishing to specifically target the Wolverhampton area, and that a small number of local advertisers expressed concerns. Since publishing our provisional findings, we have received further evidence on the geographic overlap and the views of local advertisers.
7. To improve our understanding of the geographic overlap between the Parties' Wolverhampton transmitters, Bauer has provided a detailed map specific to Wolverhampton and an estimate of the population overlap (see Figure 1). A similar overlap was shown in maps of the actual FM measured coverage areas of the transmitters.

Figure 1: New map of Parties' Wolverhampton transmitter marketing areas



Source: Bauer

8. As can be seen in Figure 1, this new evidence shows that the area covered by Signal 107's Wolverhampton transmitter is entirely within the area covered by Free Radio's Wolverhampton transmitter. It further shows that Signal 107's Wolverhampton transmitter covers just 40% of the area covered by Free Radio's Wolverhampton transmitter. This means that the overlap between the Parties' Wolverhampton transmitters is significantly less than we had considered to be the case in our provisional findings where we considered that the broadcast areas mostly overlap.
9. As set out in our provisional findings, we asked local advertisers who had advertised on Signal 107 or Free Radio in the West Midlands for their views on the Acquisitions. A small number of local advertisers expressed concern about the acquisition of Signal 107. These advertisers were drawn from the whole of the Signal 107 area rather than specifically the Wolverhampton area. While slightly more local advertisers were unconcerned, these unconcerned advertisers were using parts of the Parties' stations other than Wolverhampton. Following the publication of our provisional findings, we sought the views of more local advertisers, specifically those that were

the top users of the Parties' Wolverhampton transmitters as a stand-alone option (ie rather than part of a wider package including the use of other transmitters).

10. We received 12 responses with a roughly even split between the customers of each of Free Radio and Signal 107. These responses provided evidence that:
 - (a) Local advertisers see a number of differences between the Parties' offerings in the Wolverhampton area including in the area covered, the price and the demographics.
 - (b) The Parties' offerings in the Wolverhampton area may be alternatives, with five advertisers either stating they are alternatives or saying they use or approached both.
 - (c) Global's Heart station may be an alternative for some advertisers, with two advertisers either using or approaching Heart.
 - (d) Local advertisers use other forms of advertising than radio and for some this can be a replacement for radio, but for others it could not.
11. Notwithstanding the suggestion that the Parties' offerings may be viewed as alternatives by some advertisers, we found few concerns from local advertisers, with only one out of the seven that expressed a view in response to the question of whether it was concerned saying that it was. While the concerned local advertiser considered that there would be reduced competition, it also considered that the Parties offer different packages and that it would not reallocate its advertising spending if the station it used became 5-10% more expensive. Further, the advertiser said some of the concern was based on the experience of the takeover of Free Radio by Bauer and they would have a similar concern if it was Global purchasing Signal 107. We thought this suggested that some of the concern was based on the change of ownership of Signal 107 rather than any loss of competition between the stations.
12. Based on the new evidence set out above and the previous evidence (see paragraphs 11.37-11.47 and 11.49-11.59 in our provisional findings report), we consider that there are sufficient differences between the Parties' offerings in Wolverhampton, particularly in terms of the geographic area covered (and the related differences in the advertising options provided by the two stations), to mean that at present they compete with each other to only a limited degree and to some extent they will remain constrained by non-radio advertising.
13. As such, we have now revised our view and provisionally find that the Wireless Acquisition has not resulted, and may not be expected to result, in an SLC in the supply of local radio advertising in the Wolverhampton area.
14. Therefore, reference to this provisional SLC in the notice of possible remedies and the need for remedies to address it no longer apply.

Prospects for FRS in the longer term

15. In para 6.68 of our provisional findings, we provisionally concluded that absent the Acquisitions, the appropriate counterfactual is that FRS would have continued as an independent business owned by UKRD and Wireless, operating on the same basis as pre-Acquisitions. In paragraphs 6.69 to 6.73 of our [provisional findings report](#), we set out our reasons for concluding that FRS' position is potentially vulnerable in the longer term. Although FRS is currently profitable, in our provisional findings, we noted that FRS' revenues have been in decline and that several factors are likely to reduce FRS' revenues further (ie the declining share of local radio listening, increased ability for independent stations to enter into BCLs and as a result NSAs with a brand licensee, and the risk of a mutually reinforcing interaction between station exits and declining advertising revenues). We were unable to assess forecasts for FRS' financial prospects, as it would be influenced by whether and when any major clients were lost. We said at paragraph 6.73:

While the speed and extent to which this might happen is unpredictable, in light of the factors noted in paragraph 6.70, it seems likely that one or more of the Acquired Businesses would have been sold and removed from FRS representation within a number of years beyond the time period relevant to the counterfactual. A loss of significant scale is likely to make FRS less attractive to advertisers and so increase the likelihood of further stations choosing to leave. Because FRS' profitability is dependent on maintaining a scale of turnover (as potential for cost-savings in proportion to scale appear limited) it is likely that it would no longer be economically viable to continue in such circumstances. While the timing of closure is uncertain, we provisionally conclude 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, ten years.

16. Bauer, in its [response to our provisional findings](#),⁴ submitted that the evidence (together with further evidence it submitted) indicated that FRS would have failed in a much shorter period. In summary, it submitted:
- (a) 'On the evidence, FRS would have failed in the very near future, and within at most [redacted]' (paragraph 3.2.3).
 - (b) 'As a result, FRS would not have been able to compete to represent independent radio stations' (paragraph 3.2.4).

⁴ Bauer made submissions on a range of points relation to the provisional SLC in the market for the supply of representation for national advertising to independent radio stations in the UK. Here, we only address those submissions relevant to prospects for FRS in the longer term.

- (c) 'Had the Transactions⁵ not proceeded... Bauer would have considered and identified alternative means of delivering the step change required, such as other acquisitions or launches' (paragraph 3.6.5). 'If it had not been possible to acquire all of the Targets⁶ then Bauer would have sought to acquire some or parts of the Targets' (paragraph 3.6.6).
- (d) 'The CMA has failed to have regard to concrete evidence that two substantial FRS clients would have left in the counterfactual' (paragraph 3.27). It said Celador '[X]' (paragraph 3.27.1), and 'Bauer [X]' (3.17). It said '[X]'. (paragraph 3.27.2). It said 'these groups accounted for a substantial proportion of FRS' revenues and the commission revenues of each is likely to exceed FRS' budgeted pre-tax profit for FY20' (paragraph 3.28).
- (e) That in its view the CMA is giving insufficient weight to the following evidence supporting the conclusion that station groups would likely leave FRS: 'examples of stations leaving FRS prior to the Transactions', and of stations which have taken steps towards obtaining alternative representation or otherwise expressed concerns regarding FRS' ability to represent them' (paragraph 3.30.1); that third party radio stations 'expected FRS to struggle to retain clients' (paragraph 3.30.2); 'deregulation creates an environment supporting greater consolidation and/or representation by national station groups' (3.30.3); and 'the appropriate counterfactual for each of the Acquired Businesses is that they would have instead have been acquired by an alternative group (most likely Global/Communicorp) resulting in their withdrawal from FRS' (paragraph 3.30.4). It said 'the most likely purchasers of any station would be the groups with the longest track record of acquisitive activity – ie Global, Communicorp, Bauer and, more recently, Nation' (paragraph 3.30.3).
- (f) If Bauer were competing 'with FRS to represent third party stations, then Bauer would have been incentivised to target the largest FRS customers first' (paragraph 3.31).
- (g) It said 'the CMA does not need to satisfy itself that any particular station or station group would, on the balance of probabilities, have left FRS in the counterfactual. It only needs to satisfy itself that it is the case, on the balance of probabilities, that FRS would have lost sufficient clients (in fact just one of the larger groups) so as to become unviable in the short to medium term' (paragraph 3.32).
- (h) Bauer submitted that the CMA was incorrect to dismiss Bauer's financial modelling evidence on the viability of FRS, and that the CMA's evidence

⁵ 'Transactions' is used by Bauer for what we have called 'the Acquisitions' in our provisional findings report.

⁶ The 'Targets' is the term used by Bauer to describe the Acquired Businesses ie Celador, Lincs, Wireless and UKRD.

‘demonstrates Bauer’s modelling assumptions were conservative’ (paragraph 3.36). It said ‘Bauer therefore submits that it is not open to the CMA to conclude that FRS would have remained viable for more than [X], i.e. beyond [X]. In reality FRS would likely have failed within at most [X] absent any further station losses’ (paragraph 3.39).

17. Global, in its [response to provisional findings and the notice of possible remedies](#), told us that a scenario which contemplates the exit of FRS within the next 10 years is not only highly speculative, but is also not plausible based on ... the cited evidence (paragraph 2.4). In summary, it told us:
- (a) Global ‘considers that on the basis of the evidence presented by the CMA, the exit of FRS in the next 10 years is highly speculative (nor is it the “most likely” longer term outcome)’ (paragraph 3.4).
 - (b) ‘The CMA’s counterfactual analysis goes well beyond what was contemplated by the Court of Appeal⁷ ... or by the CMA in its own Merger Guidelines’ (paragraph 3.4).
 - (c) ‘The available evidence of competition over recent years suggests that, whilst the constituent stations within FRS may continue to change, FRS itself will continue to provide viable and credible national sales representation alongside Global and Bauer’ (paragraph 5.5). ‘No stations have left FRS in the past five years as a result of concluding a national sales representation agreement with Bauer’ (paragraph 5.1) and ‘nor is it plausible that local FRS stations will switch their representation to Global. With the exception of Quidem, the only stations which have moved their national sales representation from FRS to Global have done so following being acquired by Global or Communicorp’ (paragraph 5.2).
 - (d) ‘There is no objective market evidence that the independent stations in FRS have shown any greater appetite to enter into brand licensing agreements as a result of Ofcom’s relaxation of localness requirements’ (paragraph 6.2).
 - (e) That the assumptions underlying Bauer’s calculations regarding the longevity of FRS (eg regarding long run revenue trends)⁸ are ‘speculative at best’ (paragraph 8.2).
 - (f) ‘The only circumstances in which FRS might become financially unviable in the future is if it were to lose one or more of its larger customers’ (paragraph 9.1).

⁷ The Merger Assessment Guidelines refer to the Court of Appeal judgment in BSkyB and Virgin Media v Competition Commission and BERR [2010] EWCA CIV 2. In its submission (paragraph 3.2) Global stated ‘In this case, the Court of Appeal cited with approval paragraphs 91 and 92 of the Tribunal’s decision. In these paragraphs, the Tribunal had argued that the counterfactual analysis should take into account “the potential for change in the market”. However, this was not an unfettered discretion - the Tribunal went on to say that the Commission was entitled to take into account “plausible situations or strategies which might result in the postulated independent ITV ceasing to be so”.

⁸ These are set out in Appendix C of the provisional findings report.

‘The only circumstances in which FRS would be likely to see a significant loss of scale would be if one or more of the Acquired Businesses were to be acquired and taken out of FRS’ (paragraph 9.3). ‘Global and Bauer are the only players who have made any significant acquisitions in UK local commercial radio in the last 5 years’ (paragraph 9.4). ‘If the businesses in question were acquired either by Bauer or by Global... Such a transaction would clearly fall within the scope of the CMA’s merger review regime. The CMA cannot assume that such a transaction would receive approval; indeed given the market positions of the parties, it may not be likely or plausible that such a transaction would be approved... The CMA cannot therefore reasonably adopt as part of its counterfactual a scenario in which it prejudices the outcome of a future CMA competition assessment. Second, ... this argument is entirely circular: the CMA’s assessment essentially amounts to no more than saying that if Bauer were the only buyer available for the local stations in the future, then there can be no SLC arising from a purchase now. This is nonsensical and inconsistent with CMA’s own Merger Guidelines’ (paragraph 9.5).

18. Global also submitted an analysis which it said showed that the stations currently represented by FRS have grown their reach and listening hours during the past 10 years, with only a modest decline in listening hours of under 5% over the past 5 years, offset by a growth in reach (paragraph 4.7). This includes the addition of new digital stations which have joined FRS (paragraph 4.8).⁹

Reconsideration of prospects for FRS in the counterfactual and in the long run

19. We have reconsidered our provisional findings on the counterfactual and the prospects for FRS in the long run in light of these submissions and evidence.
20. In accordance with *BAA* at [20(3)], and as reiterated in the CAT’s *Tobii* judgment,¹⁰ in reaching its decisions the CMA must take reasonable steps to acquaint itself with the relevant information to enable it to answer each statutory question posed to it. The counterfactual is not itself a statutory question, but is a tool that assists in determining whether not there is an SLC.
21. In relation to the counterfactual assessment, the CMA Merger Assessment Guidelines¹¹ state:

To help make this judgement on the likely future situation in the absence of the merger, the CMA may examine several possible scenarios, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely

⁹ Bauer subsequently told us it disagreed with this analysis, including because it claimed that Global’s methodology excluded some FRS stations’ figures from the base year.

¹⁰ *Tobii AB (publ) v Competition and Markets Authority* [2020] CAT 1.

¹¹ [CC2 Revised](#), paragraph 4.3.6.

scenario will be selected as the counterfactual. When it considers that the choice between two or more scenarios will make a material difference to its assessment, the CC will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual. However, the CMA will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments; it seeks to avoid importing into its assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary for the CMA to make finely balanced judgements about what is and what is not the counterfactual.

22. We have received no new evidence to change our provisional view that, absent the Acquisitions, neither Celador nor [X] would be expected to leave FRS in the near future. In the case of Celador, while we acknowledge [X]. [X]. Nor have we received any new evidence indicating that any other of FRS' large customers would have likely left FRS in the foreseeable future absent the Acquisitions.
23. Therefore, our counterfactual is unchanged, ie that it remains as the competitive conditions that prevailed prior to the Acquisitions. We now set out our re-assessment of the prospects for FRS in the longer run in light of the submissions and new evidence we have received.
24. We have first given further consideration to our assessment of the likelihood of one or more of the Acquired Businesses withdrawing its business from FRS in the long run, once under new ownership. We accept that some of the four Acquired Businesses, in the counterfactual, would have been likely to look for sales opportunities in the medium or longer term.¹² Based on the recent history of acquisitions, the ability to realise synergies, and the size and financing available to acquire the larger independent radio groups, in our view the most likely prospective acquirers would normally be expected to be Bauer or Global. Bauer have told us that in the counterfactual it would still be looking to acquire stations (see paragraph 15(c)).
25. However, given the existing size and market share of Bauer and Global, any significant acquisition of radio stations in the UK would be likely to qualify as a relevant merger situation (within the meaning of the Act) and could give rise to a realistic prospect of an SLC arising from the same representation theory of harm we have provisionally found arises from the Acquisitions, or other potential theories of harm. Accordingly, whilst we cannot anticipate the outcome of such an investigation, it is not possible for us to form an expectation that such an acquisition would be

¹² See provisional findings paragraphs 6.24, 6.32, 6.36, and 6.41

cleared such that it would be sufficiently certain to be able to be considered as the relevant counterfactual.¹³

26. Apart from Bauer or Global, Bauer suggested (see paragraph 15(e)) alternative radio groups who may be interested in acquisitions could include Communicorp or Nation. [REDACTED]. Communicorp has told us that it might be interested in certain acquisitions depending on fit and brand strategy. However, this was in the context of discussing a divestment remedy. We note that Communicorp has not taken on purchases of the scale of the Acquired Businesses in recent years, and given its BCL with Global, it would need to take account of whether or not these stations fitted with gaps in Global's coverage. Accordingly, there is insufficient certainty that Communicorp would be an acquirer of any of the Acquired Businesses in their totality.
27. In addition, we have received no evidence that there would be likely potential entrants to local radio who would be purchasers of the Acquired Businesses and who would be likely to choose to leave FRS.
28. Therefore, while it is quite possible that FRS' customers might be put up for sale, it is not possible for us to determine which, if any, radio station groups would be sold and when and if so, to whom; whether there would be a merger investigation which might prohibit or place conditions and controls on the acquisitions; and whether any acquired radio stations would be likely to leave FRS.
29. It is also possible that FRS' existing customers could seek representation by Bauer or Global. Indeed, our expectation is that Bauer would be seeking to secure opportunities for representation.¹⁴ While Bauer has said that it expects to offer a better service to independent radio stations, we are not in a position where we can anticipate Bauer's offer (or FRS' response). Nor do we know how Global will choose to respond. It [REDACTED], that there are very few independent stations which broadcast to areas not already served by Global's brands, [REDACTED]. Bauer may or may not be successful in attracting stations away from FRS, and similarly Global may attract stations, but we have no plausible evidential basis to form an expectation of the extent to which this would occur. It is possible that FRS would lose a significant level of customers, threatening its viability, but we cannot predict the outcome of this competitive process with a sufficient level of certainty.
30. We accept that FRS' financial position is at risk if it loses a significant portion of its customer base. We have considered Bauer's revised financial analysis which it says indicates that FRS can be expected to become loss making within a few years even without the loss of significant radio group clients. Because of the substantial levels of

¹³ We acknowledge that there are smaller radio stations and groups of stations currently with FRS that may not raise the same level of concerns if acquired by Bauer or Global. However, such stations would not represent a significant proportion of FRS' revenues and so are unlikely to affect its ability to continue to operate in the longer term.

¹⁴ See paragraph 8.59 of provisional findings

uncertainty around several different future developments that its analysis assumes, we do not place significant weight on this evidence. In particular we are uncertain whether FRS' advertising revenues will continue to decline in line with recent trends (Bauer has projected continuing declines of revenues of [X] % a year based on just one year from FY17 to FY18). We are aware that the market for radio advertising, particularly local advertising, has been challenging over the last year or two. But we cannot predict whether this will continue, or might, for example, respond to changes in the economic climate where uncertainty may have disrupted the demand for advertising in the last couple of years.

31. Bauer has also assumed that the only cost savings FRS would make would be that direct costs would decline in proportion to revenue and 25% of staff costs would be reduced in line with revenue decline. We cannot predict to what extent FRS has an ability to restructure and reduce costs going forward. However, we consider that the budget set out in Table 2 of Appendix C of the provisional findings carries greater evidential weight, because it was prepared by FRS itself with knowledge of FRS' financials, performance and potential. In that exercise, a budget was prepared [X]. Despite the predicted [X], and as a result FRS would be a viable, although a weakened business. This indicates that in contrast to Bauer's submissions, FRS could survive a loss of some substantial clients (long-term revenue trends were not addressed in this exercise). FRS [X].
32. We also note that the radio sector itself is likely to continue to evolve as a result of changes in listening habits, technology, the options available for consuming audio output, the advertising market and regulation. It is not feasible to account for how these and related factors might affect the prospect for radio advertising revenues (and FRS specifically) in the context of a merger inquiry.
33. Bauer argued (paragraph 15(g)) that the CMA does not need to satisfy itself that any particular station or station group would have left FRS in the counterfactual, rather it only needs to satisfy itself that it is the case, on the balance of probabilities, that FRS would have lost sufficient clients so as to become unviable in the short to medium term. As noted at paragraph 23, we have given further consideration to whether there would be possible acquirers of the larger radio groups who would not themselves raise competition concerns, and who would have their own national advertising sales representation facility. We have not found that such a prospect can be expected. We accept that there will be competition from Bauer and Global with FRS to represent FRS' existing clients, but we are not in a position to form an expectation of the outcomes of this competition or to conclude that as a result of these factors together, FRS will necessarily lose enough business so as to become unviable.
34. Given these significant uncertainties, we do not consider that there is a sufficient evidence base to conclude that FRS could be expected to lose customers such that it would become unprofitable and close within a period of ten years. Such a situation

could occur, but to form such an expectation would involve speculation unsupported by clear evidence. We therefore consider that the possibility is not sufficiently plausible based on the evidence we have and the uncertainties associated with FRS' future financial position. This is more than just saying it would require spurious claims to predict the outcome for any individual station group, it is rather that there is significant uncertainty on: whether or not in the absence of the Acquisitions any sales or NSAs for the larger FRS customers (that would result in them leaving FRS) would go ahead; the possible industry-wide market changes; and how FRS would react to changes including its ability to evolve its model and costs.

35. Having re-considered our assessment in light of the submissions and new evidence we have received, we therefore consider we do not have evidence with sufficient probative value to conclude that, absent the merger, FRS would have exited the market 'after the counterfactual period but within, at most, ten years'. It is possible that this might happen, but a conclusion to this effect would be based on undue speculation given the context and market uncertainties discussed above. In such circumstances, we therefore expect that in the absence of the Acquisitions, FRS would continue in the market.

Revisions to the provisional finding of an SLC in the market for supply of representation for national advertising to independent radio stations in the UK

36. We therefore reconfirm the finding of an SLC but we no longer provisionally find it to be limited to apply for a period of at most 10 years, and provisionally find that the SLC is unlimited in time.

Implications for the notice of possible remedies

37. The [Notice of possible remedies](#) noted at paragraphs 15 and 25 that the Group had identified that the provisional SLC in relation to representation of independent radio stations for national advertising in the UK applied for at most a period of ten years. It therefore considered and invited responses on behavioural remedies to address the SLC for this period of time, alongside responses on possible structural remedies.
38. We now invite submissions on possible behavioural and structural remedies but where the duration of the SLC is unlimited. Given this change, we particularly invite views on whether:
- (a) Behavioural remedies could remain effective in the longer term given market developments and new technologies.
 - (b) Whether there would be need for further mechanisms to ensure that terms offered to independent radio stations do not deteriorate in the longer term.

- (c) Whether there should be time limits on the behavioural remedy or other mechanisms to identify when a review should be undertaken of whether behavioural remedies are still required, and if so how that review should be conducted.

Responses to the addendum

39. Any party wishing to respond to this addendum should do so in writing, by no later than **5pm on 11 February 2020**. Please email BauerMedia-inquiries@cma.gov.uk or write to:

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