

**DEROGATION LETTER  
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED  
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002**

Please note that [X] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 8 June 2020**

**Completed acquisition by Aragorn Parent Corporation of OverDrive Holdings Inc.**

We refer to your emails dated 20 and 22 April 2020 requesting that the CMA consent to derogations from the Initial Enforcement Order of 8 June 2020 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, KKR Group (including KKR & Co. Inc. (**KKR**)), Opuspond and Aragorn, are required to hold separate the OverDrive business from the KKR business and refrain from taking any action which might prejudice a reference under section 22 or 33 of the Act or impede the taking of any remedial action following such a reference. In this derogation, KKR Group, Opuspond and Aragorn are together referred to as **KKR/Aragorn**.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, KKR/Aragorn and OverDrive may carry out the following actions, in respect of the specific paragraphs:

**1. Paragraphs 6(a), 6(j) and 6(l) of the Initial Order – OverDrive UK Employees**

The CMA understands that there are four OverDrive employees in the UK (the **Transferred UK Employees**) that are seconded to OverDrive but employed by Rakuten Marketing Europe, Ltd. (an entity that will remain an affiliate of the seller post-Merger).

KKR/Aragorn submit that the Stock Purchase Agreement of 24 December 2019 (**SPA**) and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) require these employees to be employed by KKR/Aragorn upon closing of the Merger.

KKR/Aragorn submit that it will be necessary to transfer the Transferred UK Employees to WFHO UK Limited (a newly formed entity owned indirectly by KKR/Aragorn) (**WFHO**) to meet these obligations. This was contractually agreed because there is no UK subsidiary within the OverDrive structure to which these employees' contracts could be transferred. The Transferred UK Employees are listed in Annex 1.

KKR/Aragorn submit that this derogation does not seek to integrate the KKR and OverDrive businesses nor to enable KKR/Aragorn to control the OverDrive business. KKR/Aragorn also submit that this derogation does not prejudice the outcome of a CMA reference or impede the taking of any remedial action which may be justified by the CMA's decision on a reference.

1. The CMA consents to a derogation from paragraphs 6(a), 6(j) and 6(l) of the Initial Order for KKR/Aragorn to:
  - a) employ the Transferred UK Employees via WFHO; and
  - b) allow KKR/Aragorn staff identified in Annex 2 to access the OverDrive business's confidential information contained in the Transferred UK Employee's employment contracts.
2. This derogation is granted from paragraphs 6(a), 6(j) and 6(l) strictly on the basis that:
  - a) the Transferred UK Employees' employment contracts will be on the same or substantially similar terms as their contracts with Rakuten Marketing Europe, Ltd. and their functional roles will not change in any respect;
  - b) the Transferred UK Employees will report to the same OverDrive executives to whom they reported when employed by Rakuten Marketing Europe, Ltd. and for the avoidance of doubt, will not report to KKR/Aragorn;
  - c) the Transferred UK Employees will continue to work from the OverDrive IT system and will not be granted access to any KKR/Aragorn IT systems or applications;
  - d) the Transferred UK Employees will enter into a confidentiality undertaking in a form to be approved by the CMA which will include a requirement that the Transferred UK Employees do not share any commercially sensitive or confidential information of the OverDrive business with the KKR business;
  - e) the Transferred UK Employees will not gain access to any commercially sensitive or confidential information of the KKR business or interact with the KKR business in any way other than in the ordinary course of business;

- f) the OverDrive business information shared with the KKR business is limited to information related to the Transferred UK Employees' employment contracts which is strictly necessary for KKR/Aragorn to employ the Transferred UK Employees on the same or substantially similar terms as their contracts with Rakuten Marketing Europe, Ltd.;
- g) the KKR/Aragorn staff listed in Annex 2 will enter into a confidentiality undertaking in a form to be approved by the CMA which will include a requirement that they do not share OverDrive business information with other individuals within the KKR business.
- h) firewalls and/or other ring-fencing measures will be put in place to prevent any individuals who are not listed in Annex 2 from accessing the information shared in accordance with this derogation;
- i) for the avoidance of doubt, no other action will be taken by KKR/Aragorn which might prejudice a reference under section 22 or 33 of the Act or impede the taking by the CMA of any action which might be justified by the CMA's decisions on that reference without seeking a derogation from the CMA; and
- j) should the Merger ultimately be prohibited, KKR/Aragorn will ensure that any confidential information received from OverDrive for the purposes of this derogation will be returned or destroyed, except to the extent that record retention is required by law or regulation.

## **2. Paragraphs 6(a), (j) and (l) of the Initial Order – OverDrive Canada Employees**

The CMA understands that there are two OverDrive employees in Canada (the **Transferred Canadian Employees**) that are seconded to OverDrive but employed by Rakuten Kobo Inc. (an entity that will remain an affiliate of the seller post-Merger).

For the reasons listed above, KKR/Aragorn submit that the Transferred Canadian Employees are required to be employed by KKR/Aragorn upon closing of the Merger.

KKR/Aragorn submit that it will be necessary to transfer the Transferred Canadian Employees to RB Audiobooks Canada, Inc. (an existing entity owned indirectly by Recorded Books, Inc.). This was contractually agreed because there is no Canadian subsidiary within the OverDrive structure to which these employees' contracts could be transferred. The Transferred Canadian Employees' roles relate strictly to OverDrive's library accounts in Canada only, and they have no involvement whatsoever in OverDrive's business in the UK. The Transferred Canadian Employees are listed in Annex 3.

KKR/Aragorn submit that this derogation does not seek to integrate the KKR and OverDrive businesses nor to enable KKR/Aragorn to control the OverDrive

business. KKR/Aragorn also submit that this derogation does not prejudice the outcome of a CMA reference or impede the taking of any remedial action which may be justified by the CMA's decision on a reference.

1. The CMA consents to a derogation from paragraphs 6(a), 6(j) and 6(l) of the Initial Order for KKR/Aragorn to:
  - a) employ the Transferred Canadian Employees via RB Audiobooks Canada, Inc.; and
  - b) allow KKR/Aragorn staff identified in Annex 2 to access the OverDrive business's confidential information contained in the Transferred Canadian Employee's employment contracts.
2. This derogation is granted from paragraphs 6(a), 6(j) and 6(l) strictly on the basis that:
  - a) the Transferred Canadian Employees' employment contracts will be on the same or substantially similar terms as their contracts with Rakuten Kobo Inc. and their functional roles will not change in any respect;
  - b) the Transferred Canadian Employees will report to the same OverDrive executives to whom they reported when employed by Rakuten Kobo Inc. and for the avoidance of doubt, will not report to KKR/Aragorn;
  - c) the Transferred Canadian Employees will continue to work from the OverDrive IT system and will not be granted access to any KKR/Aragorn IT systems or applications;
  - d) the Transferred Canadian Employees will enter into a confidentiality undertaking in a form to be approved by the CMA which will include a requirement that the Transferred Canadian Employees do not share any commercially sensitive or confidential information of the OverDrive business with the KKR business;
  - e) the Transferred Canadian Employees will not gain access to any commercially sensitive or confidential information of the KKR business or interact with the KKR business in any way other than in the ordinary course of business;
  - f) the OverDrive business information shared with the KKR business is limited to information related to the Transferred Canadian Employees' employment contracts which is strictly necessary for KKR/Aragorn to employ the Transferred Canadian Employees on the same or substantially similar terms as their contracts with Rakuten Kobo Inc.;
  - g) the KKR/Aragorn staff listed in Annex 2 will enter into a confidentiality undertaking in a form to be approved by the CMA which will include a requirement that they do not share OverDrive business information with other individuals within the KKR business.

- h) firewalls and/or other ring-fencing measures will be put in place to prevent any individuals who are not listed in Annex 2 from accessing the information shared in accordance with this derogation;
- i) for the avoidance of doubt, no other action will be taken by KKR/Aragorn which might prejudice a reference under section 22 or 33 of the Act or impede the taking by the CMA of any action which might be justified by the CMA's decisions on that reference without seeking a derogation from the CMA; and
- j) should the Merger ultimately be prohibited, KKR/Aragorn will ensure that any confidential information received from OverDrive for the purposes of this derogation will be returned or destroyed, except to the extent that record retention is required by law or regulation.

Karina Kucaidze

Assistant Director, Mergers

8 June 2020

### Annex 1

Name	Position
[X]	[X]
[X]	[X]
[X]	[X]
[X]	[X]

## Annex 2

Name	Position
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]
[✂]	[✂]

### Annex 3

Name	Position
[✂]	[✂]
[✂]	[✂]