

**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 11 and 24 May and 3 June 2020 requesting that the CMA consents to derogations to 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.

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 Group, Aragorn and OverDrive may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 6(a), 6(e) and 6(l) of the Initial Order

The CMA understands that, on the basis of the information provided by KKR, upon completion of the Merger, the KKR business and the OverDrive business will enter into arrangements to obtain a shared credit facility (together with all documents ancillary and related thereto, the '**Credit Facility**') required to finance part of the Merger.

KKR and Aragorn submit that under the Credit Facility the KKR business and the OverDrive business and their subsidiaries will be jointly and severally liable for servicing the debt and will be required to provide security and guarantees for the debt. This will require funds to flow from the OverDrive business to the KKR business.

KKR and Aragorn also submit that this derogation does not seek to integrate the KKR and OverDrive businesses nor to enable the KKR Group or Aragorn to control the OverDrive business. KKR and 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.

On the specific facts of this case, and taking account of KKR's and Aragorn's representations that nothing in this derogation will impede the CMA's ability to take remedial action in relation to the Merger, the CMA consents to a derogation from paragraphs 6(a), 6(e) and 6(l) of the Initial Order for the KKR Group and Aragorn and OverDrive to:

- transfer funds between the OverDrive business and the KKR business strictly for the purposes of servicing of the Credit Facility;
- grant guarantees in relation to the Credit Facility by any required entities in the KKR business and the OverDrive business;
- create and/or perfect any and all security granted and/or required under the Credit Facility by the KKR business and the OverDrive business; and
- comply with their other obligations under the Credit Facility from time to time (including reporting obligations, subject to condition (d) below).

This derogation is granted from paragraphs 6(a), 6(e) and 6(l) subject to the following conditions:

- (a) any funds transferred from the OverDrive business to the KKR business: (i) shall not exceed the amounts strictly necessary to service OverDrive's debt service costs under the Credit Facility; and (ii) shall not service the debt service costs owed by the KKR business under the Credit Facility (without the prior written consent of the CMA);
- (b) this derogation will not lead to any integration of the KKR business with the OverDrive business;
- (c) the debt service costs payable by the OverDrive business do not undermine the OverDrive business's ability to pursue its pre-merger business plan;
- (d) unless otherwise amended with the prior written consent of the CMA (including by email), any Profit and Loss information of the OverDrive business disclosed to the KKR business will be limited to consolidated revenues and consolidated EBITDA and only be provided to the individuals listed in Annex 1 for the purpose of complying with the obligations under the Credit Facility (subject to each recipient entering into a confidentiality agreement in a form approved by the CMA);

- (e) firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the KKR business from accessing the information shared with the individuals listed in Annex 1 for the purposes of this derogation; and
- (f) should the Merger be prohibited, the KKR business will ensure that any confidential information received from the OverDrive business for the purposes of this derogation will be returned to the OverDrive business and any copies destroyed, except to the extent that record retention is required by law or regulation.

This derogation is granted without prejudice to the CMA's ability to take remedial action under the Act, including under Schedule 8 of the Act, in relation to the Merger.

2. Paragraphs 6(a), 6(g) and 6(l) of the Initial Order

The CMA understands that, on the basis of information provided by KKR, upon completion of the Merger, the OverDrive business will cease to have access to insurance cover which was previously provided by the seller. Upon completion and to ensure the effective continuation of the OverDrive business, the OverDrive business will obtain its own insurance cover which will be entered into through the KKR Group insurance program. This will be substantially similar to the OverDrive business's previous insurance cover.

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

The CMA consents to a derogation from paragraphs 6(a), 6(g) and 6(l) for the OverDrive business to obtain its own insurance cover which will be entered into through the KKR Group insurance program and is substantially similar to the OverDrive business's previous insurance cover.

This derogation is granted from paragraphs 6(a), 6(g) and 6(l) strictly on the basis that:

- (a) any confidential information of the OverDrive business disclosed to the KKR business will only be provided to the KKR personnel listed in Annex 2 (or as otherwise amended with the prior written consent of the CMA, including by email) for whom it is strictly necessary to see the information for the purpose the OverDrive business obtaining the insurance cover;
- (b) each of the persons listed in Annex 2 shall enter into a confidentiality agreement in a form approved by the CMA;

- (c) firewalls and/or other ring-fencing measures will be put in place to prevent any unauthorised individuals within the KKR business from accessing the information shared with the individuals listed in Annex 2 for the purposes of this derogation;
- (d) the OverDrive business (or any new owner of the OverDrive business) is free at any time and for any reason to stop this insurance programme and is capable of taking out replacement insurance cover; and
- (e) should the transaction be prohibited, the KKR business will ensure that any confidential information received from the OverDrive business for the purposes of this derogation will be returned to the OverDrive business and any copies 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 |
|-------------|-----------------|
| [X] | [X] |
| [X] | [X] |