



## DETERMINATION OF MERGER NOTIFICATION M/22/059 – BAUER MEDIA / SITERIDGE LIMITED (REDFM)

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Bauer Media of sole control of Siteridge Limited (t/a RedFM).

Dated 22 December 2022

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### Introduction

1. On 16 November 2022, in accordance with section 18(1)(b) of the Competition Act 2002 as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Bauer Media Audio Holding GmbH (“Bauer Media”), an indirectly wholly-owned subsidiary of Heinrich Bauer Verlag KG (“Bauer”)<sup>1</sup>, would acquire the entire issued share capital, and thus sole control of Siteridge Limited (“Siteridge”), t/a RedFM (the “Proposed Transaction”).
2. Given that Bauer and Siteridge each carry on a “media business” within the State (as defined in section 28A(1) of the Act), the Commission considers that the Proposed Transaction constitutes a “media merger” for the purposes of Part 3A of the Act.

### The Proposed Transaction

3. The Proposed Transaction is to be implemented by way of a share purchase agreement dated 10 November 2022, pursuant to which Bauer Media will acquire the entire issued share capital, and thus sole control, of Siteridge from its current legal and beneficial owners (the “SPA”).<sup>2</sup>

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<sup>1</sup> Bauer and its subsidiaries are collectively referred to in this determination as the “Bauer Group”.

<sup>2</sup> Vienna Investments Limited is the current legal owner of approximately 73.6% of the issued share capital of Siteridge, the current beneficial ownership of which is split between eight private individuals, namely Dermot



## The Undertakings Involved

### The Acquirer – Bauer

4. Bauer is the ultimate parent of Bauer Media. Bauer is a privately-owned German media business which operates in fourteen countries, including the State. Bauer is active in four business areas: Publishing, Audio, Online Comparison Platforms, and SME Services.<sup>3</sup> Through various subsidiaries,<sup>4</sup> Bauer operates a number of media related operations in the State, including:

- several radio stations (*Today FM, Newstalk, 98FM, Spin 1038, and Spin SW*);
- the multi-platform sports media brand '*Off The Ball*';
- the radio and digital content app '*GoLoud*'; and
- '*Audio Xi*', an advertising platform.

5. For the financial year ending 31 May 2022,<sup>5</sup> Bauer's worldwide turnover was approximately €2.2 billion, of which approximately €[...] was generated in the State.

### The Target – Siteridge

6. Siteridge is a private company limited by shares incorporated in the State under registered number 324025. Siteridge operates the *RedFM* radio station and the *Cork's RedFM* mobile app. It is a local commercial radio station, licenced by the Broadcasting

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Hanrahan, Maurice Cassidy, Pearse Farrell, Peter Aiken, Ulick McEvaddy, Desmond McEvaddy, Greg Sparks, and John O'Callaghan. The current legal and beneficial owners of the remaining approximately 26.4% of the issued share capital of Siteridge are Sappho Limited, Regent Mercantile Holdings Limited, and five private individuals, namely Deanna Hallett, Tim Fenn, Colm Hayes, Helena Kelly and David (a.k.a. Dave) Kelly.

<sup>3</sup> SME Services entail digital marketing experts developing tools and services tailored to the needs of SME (i.e. small and medium-sized enterprise) owners in order to make it easy and efficient for small and medium-sized businesses to connect with their customers online. See <https://www.bauermedia.com/business-areas/sme-services>.

<sup>4</sup> Bauer entered the Irish radio broadcasting sector in 2021 with its acquisition of Communicorp Group Limited.

<sup>5</sup> That is, for the first 12 months of Bauer Group's ownership of the Communicorp business – the period from 1 June 2021 to 31 May 2022.



Authority of Ireland (“BAI”) which broadcasts, pursuant to this licence, throughout Cork City and County.

7. For the financial year ending 31 December 2021, Siteridge’s worldwide turnover was approximately €3.4 million, all of which was generated in the State.<sup>6</sup>

## Rationale for the Proposed Transaction

8. In the notification, the parties state that:

*“Bauer operates radio businesses in nine European countries. Bauer considers the Irish radio market to be attractive and wishes to expand its presence in the market. Using its gained experience, Bauer believes that it can deliver an enhanced listener and advertising experience to Cork based listeners.”*

## Third-Party Submissions

9. No third-party submissions were received.

## Competitive Analysis

### Horizontal Overlap

10. There is a potential horizontal overlap between the activities of the parties as the national radio stations of the Bauer Group (*Newstalk* and *Today FM*) and Siteridge’s Cork-based *RedFM* station can both be accessed by listeners in Cork City and County.
11. In relation to radio broadcasting, a commercial radio station cannot legally broadcast in the State without a licence issued by the BAI. The licence sets out the nature of the radio service to be provided (e.g. the target age demographic, content, etc.) and the precise geographic area within which that service can be broadcast in the State (referred to as the “franchise area”).
12. In light of the above, the parties submit in the notification that there is no actual horizontal overlap between the activities of the undertakings involved, either in the

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<sup>6</sup> All of Siteridge’s turnover is generated in Cork City and County.



island of Ireland or in the State, as although both of the parties carry out radio activities in the State (i.e. radio broadcasting and the sale of radio advertising), these activities take place in different parts of the island of Ireland on the basis of different franchise areas (national versus local). The Commission's conclusions on this issue are set out in its competitive analysis below.

13. The Commission and the Commission's predecessor the Competition Authority ("the Authority") have considered that a distinction should be drawn between (i) radio broadcasting; and (ii) the sale of radio advertising.<sup>7</sup> In *M/17/056 – Bay/Radio Nova*, the Commission stated that:

*"Radio stations satisfy the needs of both listeners and advertisers. Any assessment of the nature of competition between radio stations requires a consideration of the interaction between advertisers and listeners. This type of assessment is typically carried out in the context of a two-sided market analysis. In a two-sided market, two groups interact through a particular medium (e.g., a radio station) that enables them to achieve inter-related objectives."*<sup>8</sup>

14. For example, in its determination in *M/19/002 – Kerry FM / Clare Radio, Dreamglade*, the Commission assessed the proposed transaction by reference to each of (i) radio broadcasting and (ii) radio advertising.
15. The Commission sees no reason to depart from this approach, i.e. it is appropriate to assess the competitive effects of the Proposed Transaction by reference to a product frame of reference for each of: (i) radio advertising; and (ii) radio broadcasting.

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<sup>7</sup> See the determination of the Authority in [M/07/040 – Communicorp/SRH](#), [M/13/006 – Clare FM & Terence and Gay Mangan / Tipp FM](#), paragraph 25; and the determinations of the Commission in [M/17/056 – Bay / Radio Nova](#), paragraphs 20-26; and [M/19/002 – Kerry FM / Clare Radio, Dreamglade](#), paragraphs 19-22.

<sup>8</sup> See *M/17/056 – Bay/Radio Nova*, paragraph 30, which is available at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/10/M-17-056-Bay-Radio-Nova-Public.pdf>



16. Although the parties overlap in respect of the activities of radio broadcasting and radio advertising, they undertake these activities in different geographic areas.
17. As explained above in paragraph 11, independent commercial radio stations cannot legally broadcast in the State without a licence issued by the BAI which indicates the precise geographic area within which a target radio station can broadcast in the State, pursuant to its BAI licence. The Commission and the Authority have previously considered the sale of radio advertising and radio broadcasting in several determinations, including in the Authority's determinations in *M/03/033 – SRH/Capital Radio*<sup>9</sup> and *M/07/040 – Communicorp/SRH*.<sup>10</sup> The conclusions reached in their determination in these cases by the Authority and the Commission, respectively, indicate that local radio stations only compete (in terms of listenership and advertising) with other local radio stations that are targeted at the same franchise area. Any advertising spend is limited to services and events that are relevant to the locality.
18. Although the parties overlap in radio broadcasting, the parties submit in the notification that there is no geographic overlap, as the Bauer Group does not have any local radio station targeted at the same franchise area as Siteridge, which only broadcasts locally in Cork City and County.
19. Siteridge's licence, granted by the BAI, restricts its broadcasting in the Cork City and County franchise area. Bauer does not have any radio station with a franchise area of Cork City and County.
20. The Commission's investigation has confirmed that the entirety of Siteridge's turnover is generated by the sale of advertising in Cork City and County. All advertising is bought from Siteridge with the aim of reaching customers exclusively in Cork City and County. Advertisers will purchase either: (i) locally via Siteridge's local sales team; or

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<sup>9</sup> [M/03/033 – SRH/Capital Radio](#)

<sup>10</sup> [M/07/040 – Communicorp/SRH](#). See also the determination of the Authority in [M/13/006 – Clare FM & Terence and Gay Mangan / Tipp FM](#), paragraph 25; and the determinations of the Commission in [M/17/056 – Bay / Radio Nova](#), paragraphs 20-26; and [M/19/002 – Kerry FM / Clare Radio, Dreamglade](#), paragraphs 19-22.



- (ii) indirectly using third-party agencies. Siteridge does not sell radio advertising on a national basis as it cannot be received outside of the Cork City and County franchise area.
21. Although Bauer's national radio stations, *Newstalk* and *Today FM* can be received in Cork City and County, they do not compete with Siteridge for listeners, and in turn advertisers, in the same way as other radio stations with a BAI franchise area of Cork City and County (such as Cork Media Enterprises Limited's *C103* and *96FM*). This is because Bauer advertising revenue is generated from the sale of advertising either directly (to large advertisers) or indirectly (through agencies) for the purposes of either: (i) national advertising campaigns and targeting listeners throughout the country (*Today FM* and *Newstalk*); or (ii) local/regional advertising campaigns and targeting listeners in local areas which do not include Cork City and County (*98FM* and *Spin 1038* in Dublin and *Spin South West* in Kerry, Limerick, Clare, Tipperary and Laois).
22. Therefore, the Commission considers that there is no overlap between Bauer and Siteridge in respect of the sale of radio broadcasting or radio advertising nationally or in Cork City and County.

### *Conclusion*

23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in relation to:
- (i) radio broadcasting nationally, or in Cork City and County; or
  - (ii) the sale of radio advertising nationally, or in Cork City and County.

### **Vertical Relationship**

24. There is an existing vertical relationship between the parties as:
- (i) *Newstalk* (operated by Bauer) is a provider of wholesale news services to radio stations in the State, including *RedFM*; and



(ii) *Audio Xi* (operated by Bauer) sells digital audio advertising for some third-party radio stations in Ireland, including *RedFM*.

25. In the notification, the parties submit that the revenue generated by Bauer from *Newstalk* supplying wholesale news services to *RedFM* is *de minimis* and does not form a material vertical relationship.<sup>11</sup>

26. The parties also submit that the total “*revenue shareback*”<sup>12</sup> generated by Bauer through *Audio Xi* selling digital audio advertising in the State was less than €[...] in 2022. This figure was generated across seventeen radio stations.<sup>13</sup>

27. Given the small absolute scale of the existing vertical relationship between Bauer and *Siteridge*, the Commission does not consider that the Proposed Transaction would materially increase the likelihood of customer foreclosure or input foreclosure through its effects on Bauer’s ability and incentive to foreclose its upstream and/or downstream competitors following implementation of the Proposed Transaction.

28. In light of the above, the Commission considers that the Proposed Transaction is unlikely to give rise to vertical foreclosure concerns in relation to:

(i) radio broadcasting nationally, and in Cork City and County;

(ii) the sale of radio advertising nationally, and in Cork City and County.

### Conclusion of Competitive Analysis

29. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

### Ancillary Restraints

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<sup>11</sup> The annual income derived by *Newstalk* from *RedFM* for national news services was €[...].

<sup>12</sup> The Commission understands “*revenue shareback*” to refer to a type of revenue sharing arrangement.

<sup>13</sup> *RedFM; Classic Hits; Radio Nova; Sunshine; iRadio; Highland Radio; Beat; WLR; Radio Kerry; East Coast; Northern Sound; KFM; Clare FM; KCLR; Shannon Side; South East Radio; Tipp FM.*



30. The parties state in the notification that Clause 9 of the SPA contains restrictions which are directly related to and necessary for the implementation of the Proposed Transaction.
31. The Commission notes that Clauses 9.1.1 and 9.1.2 of the SPA impose non-compete and non-solicitation obligations on the sellers for a maximum period of [...] years. The scope and duration of these obligations does not exceed the maximum scope and duration acceptable to the Commission. The Commission considers the restrictive obligations contained in Clauses 9.1.1 and 9.1.2 of the SPA to be directly related and necessary to the implementation of the Proposed Transaction, insofar as they relate to the State.
32. The Commission notes that Clause 9.1.3 of the SPA imposes an obligation on the sellers not to *“(a) use or adopt or purport to use or adopt the name “Siteridge”, “Red FM” or any similar name; or (b) use or procure the use, in connection with any business, of any name or any trade name used or owned by [Siteridge] on Completion or any part or combination or abbreviations thereof likely to be confused therewith or any Corporate Intellectual Property owned or exclusively entitled to be used by [Siteridge]”*  
The Commission considers that Clause 9.1.3 of the SPA appears to form an integral part of the transfer of ownership of Siteridge, rather than an ancillary restraint directly related and necessary to the implementation of the Proposed Transaction. Therefore, the Commission considers that Clause 9.1.3 of the SPA will not benefit from the protections offered by section 4(8) and 5(3) of the Act.





## Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Bauer Media Audio Holding GmbH would acquire the entire issued share capital, and thus sole control, of Siteridge Limited, t/a *RedFM*, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Patrick Kenny**

**Member**

**Competition and Consumer Protection Commission**