

**REFERENCE RELATING TO THE ACQUISITION BY BRITISH SKY  
BROADCASTING PLC OF 17.9 PER CENT OF THE SHARES IN ITV PLC**

**Notice of possible remedies issued under Rule 11 of the  
Competition Commission Rules of Procedure**

**Introduction**

1. On 24 May 2007 the Secretary of State for Trade and Industry, now the Secretary of State for Business, Enterprise and Regulatory Reform, referred the acquisition by British Sky Broadcasting plc (BSkyB) of 17.9 per cent of the shares in ITV plc (ITV) to the Competition Commission (CC) for investigation and report. The reference was made under section 45(2) of the Enterprise Act 2002 (the Act) which makes provision for mergers which appear to raise public interest considerations.
2. On a reference under section 45(2) of the Act the CC has to decide whether a relevant merger situation has been created. If it decides that such a situation has been created it must decide the following additional questions:
  - (a) whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services; and
  - (b) whether, taking account only of any SLC and the admissible public interest consideration, the creation of that situation operates or may be expected to operate against the public interest.
3. In public interest cases the CC delivers its report to the Secretary of State who is the ultimate decision-maker on the public interest. The Secretary of State also decides what remedial action is appropriate and is responsible for implementing remedies.<sup>1</sup> In doing so he will take account of the CC's recommendations on remedies.
4. In its provisional findings on the reference notified to the main parties on 2 October 2007, the CC Inquiry Group (the Group) concluded that the acquisition by BSkyB of a 17.9 per cent stake in ITV had resulted in the creation of a relevant merger situation. It decided that the creation of that situation has resulted or may be expected to result in an SLC. It also decided that, taking account only of the SLC and the specified public interest consideration (the need, in relation to every different audience in the UK or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience), the creation of that situation may be expected to operate against the public interest.
5. This notice sets out the actions that the Group considers might be recommended to the Secretary of State for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have resulted, or may be expected to result, from the SLC and the consequent effects adverse to the public interest, and invites comments on possible remedies it might recommend to the Secretary of State

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<sup>1</sup>Under section 56(6) of the Act the duty to take remedial action may revert to the CC if the Secretary of State makes no finding, because he decides that there is no relevant public interest consideration, and the CC has found that a merger situation has resulted or may be expected to result in an SLC.

(see note (i)). Since the Group's adverse public interest finding arises from its SLC finding, the Group has addressed together the questions of what action is required to address the SLC and the adverse public interest effects. In the rest of this Notice, in referring to remedies to address the SLC we are referring to the remedies which we consider may be appropriate to address the SLC and the effects adverse to the public interest arising from it.

## **Possible remedies on which views are sought**

6. The Group invites views on whether divestiture of all or part of the shares in ITV acquired by BSkyB would be effective in addressing the SLC it has provisionally found in the 'all-TV' market. Options being considered by the Group are:
  - (a) *Divestiture of the whole of BSkyB's shareholding in ITV.* The Group notes that the CC's guidance<sup>2</sup> states that our starting point will be to choose the remedial action that will restore the competition that has been, or is expected to be, lessened as a result of a merger situation. Our guidance further states that remedies that aim to restore all or part of the market structure prior to a merger are likely to be a direct way of addressing the adverse effects.
  - (b) *Divestiture of such part of BSkyB's shareholding in ITV that it would cease to have material influence over ITV.* Views are invited in particular as to the level of divestiture that would need to take place in order to achieve this. In previous partial divestiture remedies the investors have been required to reduce their stake in the relevant company to various levels according to the specific circumstances, including just below 10 per cent and just below 15 per cent.
  - (c) *Behavioural remedies to accompany partial divestiture remedies.* The Group invites views as to whether any partial divestiture remedy, in order to address the adverse effects effectively, would need to be accompanied by any behavioural remedies. Such remedies might include measures relating to certain aspects of BSkyB's conduct as a shareholder in ITV, including voting behaviour and the solicitation or acceptance of board representation.
7. Views are also sought on any other measures that may be needed to make effective either a full or partial divestiture of BSkyB's shareholding in ITV and to ensure that no new competition concerns would arise. These may include measures relating to the purchaser, the method or the timing of divestiture.
8. The Group is not, at this stage, proposing behavioural remedies on their own for discussion as none appear to be appropriate and effective in addressing the SLC. However, the Group remains willing to consider any practical alternative remedies to divestiture that the main parties or other persons would like to propose which they consider would remedy the SLC identified and/or the adverse effects.

## **Criteria**

9. In deciding what remedial action it should recommend, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects. When deciding what is an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between

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<sup>2</sup>Merger References: Competition Commission Guidelines, CC2, paragraph 4.23.

two remedies which the Group considers equally effective, it will recommend that which imposes the least cost or restriction.

### **Relevant customer benefits**

10. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger situation. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods and services. The Group welcomes views on the nature, scale and likelihood of such benefits.

### **Next steps**

11. The main parties are requested to provide any views in writing, including any alternative remedies it wishes the Group to consider, by 15 October 2007 (see note (i)).
12. A copy of this notice will be posted on the CC's website. Other interested parties are requested to provide any views in writing, including any alternative remedies they wish the Group to consider, by 15 October 2007 (see note (i)).

*(signed)* PETER FREEMAN  
Group Chairman  
2 October 2007

#### *Note*

(i) This Notice of possible actions to remedy the SLC and any of the effects adverse to the public interest which have resulted from the creation of the relevant merger situation is given having regard to the Group's provisional findings notified to the main parties on 2 October 2007. The main parties have until 23 October 2007 to respond to those provisional findings and comments are also welcomed by that date from other interested parties. In the light of any responses by the main parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.