

Terms of reference and conduct of the inquiry

Terms of reference

1. On 24 May 2007 the CC received the following terms of reference from the Secretary of State for Trade and Industry:

Whereas the Secretary of State has given an intervention notice in relation to a relevant merger situation, as defined in section 23 of the Enterprise Act 2002 (“the Act”), and has received a report of the Office of Fair Trading and of OFCOM under sections 44 and 44A of the Act in relation to the matter.

Whereas the Secretary of State believes that it is or may be the case that—

- (a) a relevant merger situation has been created in that:
 - (i) enterprises carried on by or under the control of ITV plc have ceased to be distinct from enterprises carried on by or under the control of British Sky Broadcasting Group plc (BSkyB); and
 - (ii) the value of the turnover in the United Kingdom of the enterprise taken over exceeds £70 million;
- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services including the respective UK-wide markets for (1) all TV; (2) premium pay TV; (3) television advertising; and (4) acquisition of premium sports rights;
- (c) the media public interest consideration specified in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- (d) taking account only of the substantial lessening of competition and the media public interest consideration concerned, the creation of the

relevant merger situation operates or may be expected to operate against the public interest.

Now, therefore, the Secretary of State, in exercise of his powers under section 45(2) of the Act, hereby refers to the Competition Commission ("the Commission") for investigation and report within a period ending on 7 November 2007 the questions referred to in section 47(1), (2), (7) and (8) of the Act.

In relation to the question whether a relevant merger situation has been created, which arises under section 47(1) of the Act, the Commission shall exclude from consideration one of subsections (1) and (2) of section 23 of the Act if the Commission finds that the other is satisfied.

Thursday 24 May 2007
(signed) ANDREW REES
An official of the Department of Trade and Industry

2. On 17 September 2007 the CC extended the deadline for the submission of the final report to the Secretary of State by eight weeks until 2 January 2008.¹

Conduct of inquiry

3. Advertisements inviting interested parties to submit written evidence to the CC were placed in *Broadcast* magazine, *Media Guardian* and *Financial Times*. A notice inviting written views was also posted on the CC website on 24 May 2007. The administrative timetable for the inquiry was published on 12 June 2007.
4. We requested evidence from competitors, customers, advertisers and media buyers, financial institutions, government departments and other interested parties. Oral hearings were held with third parties, including a round-table discussion with media

¹In accordance with section 51(3) of the Act.

experts. Non-sensitive versions of the submissions we received from third parties and agreed summaries of the hearings can be found on the CC website.

5. Members of the Group, accompanied by staff, visited BSkyB's headquarters in Isleworth on 21 June and ITV's central London offices on 26 June 2007.
6. We published an Issues Statement on 9 July 2007.
7. We received written evidence from BSkyB and ITV and held hearings with them. Non-sensitive versions of their main submissions can be found on the CC's website. BSkyB also submitted comments on the Issues Statement and these too appear on the CC website.
8. In the course of this inquiry so far we have sent BSkyB and ITV, and some third parties, extracts from working papers on various subjects and received their comments on them.
9. Separately from the CC's conduct of the inquiry, the Secretary of State accepted statutory undertakings from BSkyB to ensure that, with effect from 26 June 2007, no action would be taken pending final determination of the reference which might prejudice the reference or impede the taking of any actions following its conclusion. These undertakings can be accessed via the CC website (see 'Related Documents: DTI Referral Decisions').
10. We would like to thank all those who have assisted in our inquiry to date.