

## **BBC Submission regarding Notice of provisional findings relating to the acquisition by BSkyB of a 17.9% of the shares in ITV PLC.**

### **Summary**

The BBC welcomes the Competition Commission Inquiry Group's ("the Group's") publication of its Notice of provisional findings and its accompanying report. We welcome both the comprehensive description and review of the industry and the comprehensive analysis included within the report.

In addition, we agree largely with the conclusions reached by the Group, although we believe that there are strong reasons for the Group to amend its findings on plurality (and on the related question of competition in the provision of wholesale news).

In our view, however, the full or partial divestment remedies proposed would address our concern – although the Group may wish to consider a behavioural remedy to accompany any divestment, namely that ***“BSkyB commits to abstain from any shareholder vote which would directly or indirectly impact on ITV’s selection of a wholesale news provider or on ITV’s news strategy”***

### **Submission**

As the Group is aware, the BBC has consistently stated its views to your inquiry – and to the inquiries held by the OFT and Ofcom, which were a precursor to your investigation – that BSkyB's stake gives it material influence over ITV and this could raise a number of substantive public interest and competition issues. We provided evidence and analysis in the area of: news provision, rights, UK production, content and channel distribution, multiplex capacity, ITV's channel strategy and the development of DTT, Freeview and Freesat.

We therefore welcome the Group's conclusion – which we believe is the correct conclusion on the balance of the evidence presented in your report - that BSkyB has acquired material influence over ITV given that the size of BSkyB's holding both in absolute and relative terms was such that on the basis of past voting patterns it would be likely to be able to block special resolutions proposed by the company's management.

We do, however, believe that there is sufficient evidence presented in the report for the Group to have also concluded that there was a possible plurality concern – and a consequential competition issue concerning wholesale news provision – arising from the acquisition.

We note that the Group highlighted the concern that BSkyB's ability to block a special resolution could effectively rule out some of ITV's strategic options by, for instance, limiting ITV's ability to raise funds and recognised that BSkyB's

importance and stature as an industry player, together with its position as the largest shareholder, would give additional weight to its views.

We also note that in paragraph 18 of its provisional report, the Group identified that “*BSkyB could seek to influence investment in content production and commissioning. Given its interests as a competitor and despite its interests as a shareholder, BSkyB would have the incentive to reduce ITV’s investment in content in order to reduce the competitive constraint of FTA on BSkyB.*” We concur with this analysis.

We believe that this conclusion would hold equally true of any decision by the ITV Board to renew the ITN news supply contract. We would suggest to the Group that a contract of the size of the ITN news supply contract would be a strategically significant decision capable of being raised by shareholders. We note in paragraph 5.55 of the Group’s report that ITV states specifically that it would not expect to consult with shareholders on the news contract. However, the possibility still exists that a shareholder of the size of BSkyB could raise the issue at a shareholders meeting despite ITV’s expectations. We believe this possibility is a real risk and would note that BSkyB clearly believes that news provision is of strategic importance to its business. If it did not believe so, it would not invest considerable amounts of money in its 24 hour news channel and broadband offer.

If BSkyB could influence ITV’s strategic decision on whether or not to renew its news contract with ITN, both competition and plurality consequences would arise from the acquisition. We would make the following observations:

- ITN’s commercial viability would be significantly reduced if ITV withdrew its business.
- The removal of ITN from wholesale news provision (or its significant weakening) would reduce competition between potential suppliers of news content to the commercial PSBs, reducing their choice considerably.
- The removal of ITN from wholesale news provision would also reduce significantly the plurality of voice available to the audience – which would not be in the public interest.

Even though the ITV contract is not due to be renewed until 2012, the risk to competition and plurality identified above will become a real risk at that time. Now is the time to address that risk. The cost to both competition and plurality of such an outcome is unacceptably high and it is too important an issue to allow such a risk to persist, particularly as it is not clear to us that that the Regulator(s) would be able to prevent such an outcome.

## **Remedies**

We believe that any of the divestment remedies identified by the Group would be sufficient to address the above concern and the other concerns that the Group has identified. The Group may wish to consider a behavioural remedy

to accompany any divestment, namely that ***“BSkyB commits to abstain from any shareholder vote which would directly or indirectly impact on ITV’s selection of a wholesale news provider or influence ITV’s news strategy”***