

INTERIM UNDERTAKINGS

ANTICIPATED JOINT VENTURE BETWEEN BBC WORLDWIDE LIMITED, CHANNEL FOUR TELEVISION CORPORATION AND ITV PLC RELATING TO THE VIDEO ON DEMAND SECTOR

Undertakings given by the BBC, BBCW, ITV, C4 and UKVOD to the Competition Commission pursuant to section 80 of the Enterprise Act 2002

On 30 June 2008, the OFT made the reference to the CC under section 33 of the Act concerning the anticipated joint venture between the BBC through BBCW, C4 and ITV relating to the video on demand sector:

The CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference:

The reference has not been finally determined in accordance with section 79(1) of the Act:

Now the BBC, BBCW, ITV, C4 and UKVOD hereby give to the CC the following undertakings pursuant to section 80 of the Act for the purpose of preventing pre-emptive action.

Management of the BBCW, ITV and C4 VOD businesses until determination of proceedings

1. Except with the prior written consent of the CC, the BBC, BBCW, ITV and C4 each undertakes that it will not during the specified period take any action which might prejudice the reference or impede the taking of any action under the Act by the CC or by any other party which may be justified by the CC's decisions on the reference other than for the purposes of negotiations between the parties in relation to the creation, development and operation of the anticipated joint venture as provided for in paragraph 2(c) below, including any action which would (other than in relation to a change of control of the BBC, ITV or C4):

(a) lead to the integration of the BBCW, ITV and C4 VOD businesses during the specified period;

(b) transfer the ownership or control of any part of the BBCW, ITV and C4 VOD businesses or any of their subsidiaries involved in the VOD business; or

(c) otherwise impair the ability of BBCW, ITV and C4 VOD businesses to compete independently in any of the markets affected by the acquisition;

but in the case of the BBC this undertaking shall not apply to any action required for the purpose of promotion of the BBC's Public Purposes or the provision of the BBC's UK Public Services.

2. Further and without prejudice to the generality of paragraph 1, BBCW, ITV and C4 will at all times during the specified period, procure that except with the prior written consent of the CC:

- (a) the VOD businesses are carried on separately from each other and each of the parties' separate sales or brand identity is maintained;
- (b) the VOD businesses are maintained as going concerns;
- (c) any negotiations between the parties in relation to the creation, development and operation of the UKVOD business will be conducted at arms length and only by those individuals named in Appendix A;
- (d) the parties shall ensure that effective confidentiality agreements in relation to such negotiations are entered into by and remain in place with all individuals named in Appendix A and copies of those agreements are provided to the CC;
- (e) except in the ordinary course of business, no substantive changes are made to the organizational structure of the VOD businesses or to the management responsibilities within the VOD businesses;
- (f) the nature, description, range and quality of VOD services currently supplied in the UK by each of the VOD businesses are maintained and preserved;
- (g) except in the ordinary course of business for the separate operation of the VOD businesses:
 - (i) the assets of each of the VOD businesses are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of any of the businesses are disposed of; and
 - (iii) no interest in the assets of any of the VOD businesses is created or disposed of;
- (h) there is no integration of the information technology of the VOD businesses, and the software and hardware platforms of each of the VOD businesses shall remain essentially unchanged, except for routine changes and maintenance;
- (i) the customer and supplier lists of each of the VOD businesses shall be operated and updated separately and any negotiations with each of the parties' customers and suppliers in relation to the VOD businesses will be carried out by the parties acting individually and in relation to the VOD businesses none of the parties will negotiate on behalf of each other or UKVOD or enter into any joint agreements with each other or UKVOD;
- (j) all existing contracts continue to be serviced by the VOD business to which they were awarded;
- (k) no changes are made to key staff or to the organizational structure of the VOD businesses or to the management responsibilities within the VOD businesses;
- (l) no key staff are transferred between the VOD businesses;
- (m) reasonable steps are taken to retain key staff in each of the VOD businesses;
- (n) notwithstanding the undertakings set out in paragraphs (k) and (l) above the individuals named in Appendix B will be relieved of all of their current responsibilities (if any) as employees of BBC, BBCW, ITV or C4 to enable them to fulfil the roles described in Appendix B in relation to UKVOD and the exclusive formal reporting line for each of their responsibilities will be to [X] of UKVOD;

- (o) effective protocols or procedures for the handling of Confidential Information and other working practices are established at appropriate levels for all staff of BBC, BBCW, ITV and C4 and any of their subsidiaries whose roles may be affected by these undertakings and copies of these are provided to the CC; and
- (p) no business secrets, confidential know-how, commercially sensitive information (including in relation to licensing of VOD content rights), confidential intellectual property or any other information of a confidential or proprietary nature relating to the VOD businesses or UKVOD [X]), shall pass, directly or indirectly, between the parties or UKVOD or any of their employees, directors, agents or affiliates, except where strictly necessary in the ordinary course of business or where strictly necessary for the purpose of [X] and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.

Management of the UKVOD business until determination of proceedings

- 3. Except with the prior written consent of the CC, UKVOD undertakes that it will not during the specified period take any action which might prejudice the reference or impede the taking of any action under the Act by the CC or by any other party which may be justified by the CC's decisions on the reference other than for the purposes of negotiations between the parties in relation to the creation, development and operation of the anticipated joint venture as provided for in paragraph 4(c), including any action which would:
 - (a) lead to the integration of the BBCW, ITV and C4 VOD businesses during the specified period;
 - (b) otherwise impair the ability of BBCW, ITV and C4 VOD businesses to compete independently in any of the markets affected by the acquisition.
- 4. Further and without prejudice to the generality of paragraph 3, UKVOD will at all times during the specified period, procure that except with the prior written consent of the CC:
 - (a) the UKVOD business is carried on separately from each of the BBC, BBCW, ITV and C4 and any UKVOD sales or brand identity is developed and maintained separately from BBC, BBCW, ITV and C4;
 - (b) except in the ordinary course of business, no substantive changes are made to the organizational structure of the UKVOD business or to the management responsibilities within the business;
 - (c) UKVOD's involvement in any negotiations between the parties in relation to the creation, development and operation of the UKVOD business will be conducted at arm's length and only by those individuals named in Appendix A;
 - (d) UKVOD will not commence supplying VOD services;
 - (e) there is no integration of the information technology of the UKVOD business with BBC, BBCW, ITV or C4;
 - (f) the customer and supplier lists of the UKVOD business shall be operated and updated separately and any negotiations with UKVOD's customers and suppliers shall be conducted by UKVOD acting individually and for the avoidance of doubt

UKVOD will not negotiate on behalf of the BBC, BBCW, ITV or C4, or enter into any joint agreements with the BBC, BBCW, ITV or C4;

- (g) all existing contracts continue to be serviced by the business to which they were awarded;
- (h) effective protocols or procedures for the handling of Confidential Information and other working practices are established at appropriate levels for all staff of UKVOD and any of its subsidiaries whose roles may be affected by these undertakings and copies of these are provided to the CC;
- (i) no business secrets, confidential know-how, commercially sensitive information (including in relation to licensing of VOD content rights), confidential intellectual property or any other information of a confidential or proprietary nature relating to the UKVOD business or the BBCW, ITV or C4 VOD businesses, shall pass, directly or indirectly, between UKVOD and the parties or any of their employees, directors, agents or affiliates, except where strictly necessary for the purpose of [X] and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed.

Compliance

- 5. BBC, BBCW, ITV, C4 and UKVOD shall procure that each of their respective subsidiaries complies with these undertakings as if it had given them.
- 6. BBC, BBCW, ITV and C4 shall forthwith each provide to the OFT and the CC such information or statement of compliance as either of them may from time to time require for the purposes of monitoring compliance by BBC, BBCW, ITV and C4 and their subsidiaries with these undertakings. In particular, on 1 September 2008 and subsequently on the first of each month, (or, where the first does not fall on a working day, the first working day after that) a Director of each of BBCW, ITV and C4 shall provide a monthly statement to the CC confirming compliance with these undertakings in the form set out in the relevant appendix to these Undertakings (Appendices C to E).
- 7. UKVOD shall forthwith provide to the OFT and the CC such information or statement of compliance as either of them may from time to time require for the purposes of monitoring compliance by BBC, BBCW, ITV and C4 and their subsidiaries with these undertakings. In particular, on the first Monday of September 2008 and fortnightly after that the Chief Executive Officer of UKVOD shall provide a statement to the CC confirming compliance with these undertakings in the form set out in Appendix F to these Undertakings.
- 8. At all times, BBCW, ITV and C4 will actively keep the CC informed of any material developments relating to their respective VOD businesses which includes but is not limited to:
 - (a) details of key staff who leave or join the BBCW, ITV and C4 VOD businesses;
 - (b) any interruptions to provision by BBCW, ITV and C4 of VOD services which have lasted more than [X] or changes in the BBCW, ITV and C4 VOD businesses which have affected the working pattern of more than [X] employees;
 - (c) all substantial customer volumes won or lost by the BBCW, ITV and C4 VOD businesses including any substantial changes in customers' demand; and

(d) [✂]

9. BBC, BBCW, ITV, C4 and UKVOD shall each comply insofar as they are able with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

Interpretation

The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

For the purposes of these undertakings:

the Act means the Enterprise Act 2002;

an affiliate of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

business has the meaning given by section 129(1) and (3) of the Act;

the CC means the Competition Commission;

control includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

the decisions means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

key staff means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

the OFT means the Office of Fair Trading;

the ordinary course of business means matters connected to the development of or day-to-day supply of VOD services and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the VOD businesses or UKVOD;

the specified period means the period beginning on the date of these undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act;

subsidiary, unless otherwise stated, has the meaning given by section 736 of the Companies Act 1985 (as amended);

the VOD businesses means the VOD businesses carried on by BBCW, ITV and the C4 and their subsidiaries carried on as at 30 June 2008;

BBC means the British Broadcasting Corporation;

BBC's Public Purposes means the Public Purposes as defined by the Royal Charter granted to the BBC on 19 September 2006 and by the Agreement between Her Majesty's Secretary of State for Culture, Media and Sport and the BBC dated 30 June 2006;

BBC's UK Public Services means the UK Public Services as defined by the Agreement between Her Majesty's Secretary of State for Culture, Media and Sport and the BBC dated 30 June 2006;

BBCW means BBC Worldwide Limited, a company registered in England and Wales (registered number 1420028) whose registered office is at Woodlands, 80 Wood Lane, London W12 0TT;

C4 means Channel Four Television Corporation, a public corporation incorporated by Act of Parliament in the UK, the registered office of which is at 124 Horseferry Road, London SW1P 2TX;

ITV means ITV plc, a company registered in England and Wales (registered number 04967001) whose registered office is at 200 Gray's Inn Road, London WC1X 8HF;

the parties means BBC, BBCW, ITV and C4;

VOD means video on demand;

VOD business means the provision of VOD services and related activities (other than as carried out by the BBC as part of the promotion of the BBC's Public Purposes or provision of the BBC's UK Public Services) including:

- licensing of content rights to VOD consumers;
- licensing of content rights to third-party providers of VOD;
- VOD-related advertising sales and marketing activities; and
- VOD technology licensing and development;

UKVOD means UK VOD LLP a limited liability partnership registered in England and Wales under registration number OC334471 whose registered office is at 21 Holborn Viaduct, London EC1A 2DY;

unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF BBC

..... Signature

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..... Name

..... Name

..... Title

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..... Date

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FOR AND ON BEHALF OF BBCW

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FOR AND ON BEHALF OF ITV

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FOR AND ON BEHALF OF C4

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FOR AND ON BEHALF OF UKVOD

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Compliance statement for BBCW

I [insert name] confirm on behalf of BBCW that since the date of the undertakings given by BBCW and accepted by the CC on [date] (the **Undertakings**):

- (a) BBCW has complied with the Undertakings;
- (b) BBCW's subsidiaries have also complied with the Undertakings;
- (c) No action has been taken by BBCW that will impede the taking of any action by the CC which may be justified by its decision on the reference, other than as provided for in paragraph 2(c) of the Undertakings;
- (d) BBCW and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the BBCW VOD business in accordance with paragraph 8 of the Undertakings;
- (e) The BBCW VOD business has been maintained as a going concern;
- (f) The BBCW VOD business' customer/supplier lists have been operated and updated purely for the purposes of the BBCW VOD business without any involvement of ITV, C4 or UKVOD;
- (g) All customer/supplier negotiations for the BBCW VOD business have been carried out independently of ITV, C4 and UKVOD;
- (h) There have been no substantive changes to the nature, description, range and quality of any goods and/or services currently supplied in the UK by the BBCW VOD business;

Assets—including facilities and goodwill

- (i) Except in the ordinary course of business, none of the assets of the BBCW VOD business have been disposed of;
- (j) Except in the ordinary course of business, no interest in the assets of the BBCW VOD business has been created or disposed of;
- (k) Except in the ordinary course of business, all of the assets of the BBCW VOD business have been maintained and preserved as they were before the merger;

Contracts

- (l) All existing contracts awarded to the BBCW VOD business continue to be serviced by the BBCW VOD business;

Information technology systems

- (m) There have been no changes to the software and hardware platforms of the BBCW VOD business, beyond routine changes and maintenance;

Staff

- (n) No changes have been made to the key staff or the organizational structure of the BBCW VOD business or to the management responsibilities within the BBCW VOD business;

Material developments

- (o) Except as listed in paragraph (p) below there have been no material developments in the BBCW VOD business in the period from [date] to [date], including:
- (i) interruptions to provision of VOD services by the BBCW VOD business which have lasted for more than [x] or changes in the BBCW VOD business which have affected the working pattern of more than [x] employees of the BBCW VOD business;
 - (ii) substantial customer volumes won or lost for the BBCW VOD business and no substantial changes to the BBCW VOD business' customer contracts; or
 - (iii) [x]
- (p) See attached spreadsheet [list of material developments—[x]].

Confidential information

- (q) No business secrets, confidential know-how, commercially sensitive information (including in relation to licensing of VOD content rights), confidential intellectual property or any other information of a confidential or proprietary nature relating to the VOD businesses, has passed, directly or indirectly, from BBCW (or any of its employees, directors, agents or affiliates) to ITV, C4 or UKVOD (or any of their employees, directors, agents or affiliates), or *vice versa*, other than as provided for in paragraph 2(p) of the Undertakings.

FOR AND ON BEHALF OF BBCW

Signature

Name

Title

Date

Compliance statement for ITV

I [insert name] confirm on behalf of ITV that since the date of the undertakings given by ITV and accepted by the CC on [date] (the **Undertakings**):

- (a) ITV has complied with the Undertakings;
- (b) ITV's subsidiaries have also complied with the Undertakings;
- (c) No action has been taken by ITV that will impede the taking of any action by the CC which may be justified by its decision on the reference, other than as provided for in paragraph 2(c) of the Undertakings;
- (d) ITV and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the ITV VOD business in accordance with paragraph 8 of the Undertakings;
- (e) The ITV VOD business has been maintained as a going concern;
- (f) The ITV VOD business' customer/supplier lists have been operated and updated purely for the purposes of the ITV VOD business without any involvement of BBC, BBCW, C4 or UKVOD;
- (g) All customer/supplier negotiations for the ITV VOD business have been carried out independently of BBC, BBCW, C4 and UKVOD;
- (h) There have been no substantive changes to the nature, description, range and quality of any goods and/or services currently supplied in the UK by the ITV VOD business;

Assets—including facilities and goodwill

- (i) Except in the ordinary course of business, none of the assets of the ITV VOD business have been disposed of;
- (j) Except in the ordinary course of business, no interest in the assets of the ITV VOD business has been created or disposed of;
- (k) Except in the ordinary course of business, all of the assets of the ITV VOD business have been maintained and preserved as they were before the merger;

Contracts

- (l) All existing contracts awarded to the ITV VOD business continue to be serviced by ITV;

Information technology systems

- (m) There have been no changes to the software and hardware platforms of the ITV VOD business, beyond routine changes and maintenance;

Staff

- (n) No changes have been made to the key staff or the organizational structure of the ITV VOD business or to the management responsibilities within the ITV VOD business;

Material developments

- (o) Except as listed in paragraph (p) below there have been no material developments in the ITV VOD business in the period from [date] to [date], including:
- (i) interruptions to provision of VOD services by the ITV VOD business which have lasted for more than [X] or changes in the ITV VOD business which have affected the working pattern of more than [X] employees of the ITV VOD business;
 - (ii) substantial customer volumes won or lost for the ITV VOD business and no substantial changes to the ITV VOD business' customer contracts; or
 - (iii) [X]
- (p) See attached spreadsheet [list of material developments—[X]].

Confidential information

- (q) No business secrets, confidential know-how, commercially sensitive information (including in relation to licensing of VOD content rights), confidential intellectual property or any other information of a confidential or proprietary nature relating to the VOD businesses, has passed, directly or indirectly, from ITV (or any of its employees, directors, agents or affiliates) to BBC, BBCW, C4 or UKVOD (or any of their employees, directors, agents or affiliates), or *vice versa*, other than as provided for in paragraph 2(p) of the Undertakings.

FOR AND ON BEHALF OF ITV

Signature

Name

Title

Date

Compliance statement for C4

I [insert name] confirm on behalf of C4 that since the date of the undertakings given by C4 and accepted by the CC on [date] (the **Undertakings**):

- (a) C4 has complied with the Undertakings;
- (b) C4's subsidiaries have also complied with the Undertakings;
- (c) No action has been taken by C4 that will impede the taking of any action by the CC which may be justified by its decision on the reference, other than as provided for in paragraph 2(c) of the Undertakings;
- (d) C4 and its subsidiaries remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the C4 VOD business in accordance with paragraph 8 of the Undertakings;
- (e) The C4 VOD business has been maintained as a going concern;
- (f) The C4 VOD business' customer/supplier lists have been operated and updated purely for the purposes of the C4 VOD business without any involvement of BBC, BBCW, ITV or UKVOD;
- (g) All customer/supplier negotiations for the C4 VOD business have been carried out independently of BBC, BBCW, ITV and UKVOD;
- (h) There have been no substantive changes to the nature, description, range and quality of any goods and/or services currently supplied in the UK by the C4 VOD business;

Assets—including facilities and goodwill

- (i) Except in the ordinary course of business, none of the assets of the C4 VOD business have been disposed of;
- (j) Except in the ordinary course of business, no interest in the assets of the C4 VOD business has been created or disposed of;
- (k) Except in the ordinary course of business, all of the assets of the C4 VOD business have been maintained and preserved as they were before the merger;

Contracts

- (l) All existing contracts awarded to the C4 VOD business continue to be serviced by C4;

Information technology systems

- (m) There have been no changes to the software and hardware platforms of the C4 VOD business, beyond routine changes and maintenance;

Staff

- (n) No changes have been made to the key staff or the organizational structure of the C4 VOD business or to the management responsibilities within the C4 VOD business;

Material developments

- (o) Except as listed in paragraph (p) below there have been no material developments in the C4 VOD business in the period from [date] to [date], including:
- (i) interruptions to provision of VOD services by the C4 VOD business which have lasted for more than [X] or changes in the C4 VOD business which have affected the working pattern of more than [X] employees of the C4 VOD business;
 - (ii) substantial customer volumes won or lost for the C4 VOD business and no substantial changes to the C4 VOD business' customer contracts; or
 - (iii) [X]
- (p) See attached spreadsheet [list of material developments—[X]].

Confidential information

- (q) No business secrets, confidential know-how, commercially sensitive information (including in relation to licensing of VOD content rights), confidential intellectual property or any other information of a confidential or proprietary nature relating to the VOD businesses, has passed, directly or indirectly, from C4 (or any of its employees, directors, agents or affiliates) to BBC, BBCW, ITV or UKVOD (or any of their employees, directors, agents or affiliates), or *vice versa*, other than as provided for in paragraph 2(p) of the Undertakings.

FOR AND ON BEHALF OF C4

Signature

Name

Title

Date

Compliance statement for UKVOD

I [insert name] confirm on behalf of UKVOD that since the date of the undertakings given by UKVOD and accepted by the CC on [date] (the **Undertakings**):

- (a) UKVOD has complied with the undertakings;
- (b) No action has been taken by UKVOD that will impede the taking of any action by the CC which may be justified by its decision on the reference, other than as provided for in paragraph 4(c) of the Undertakings;
- (c) UKVOD remains in full compliance with the Undertakings and will continue actively to keep the CC informed of any material developments relating to the UKVOD business in accordance with paragraph 8 of the Undertakings;
- (d) UKVOD has not commenced supplying VOD services;
- (e) The UKVOD business' customer/supplier lists have been operated and updated purely for the purposes of the UKVOD business without any involvement of BBC, BBCW, ITV or C4;
- (f) All customer/supplier negotiations for the UKVOD business have been carried out independently of BBC, BBCW, ITV and C4;

Material developments

- (g) Except as listed in paragraph (h) below there have been no material developments in the UKVOD business in the period from [date] to [date], including:
 - (i) substantial customer volumes won or lost for the UKVOD business and no substantial changes to the UKVOD business' customer contracts; or
 - (ii) [redacted]
- (h) See attached spreadsheet [list of material developments—[redacted]].

Confidential information

- (i) No business secrets, confidential know-how, commercially sensitive information (including in relation to licensing of VOD content rights), confidential intellectual property or any other information of a confidential or proprietary nature relating to UKVOD or the VOD businesses, has passed, directly or indirectly, from UKVOD (or any of its employees, directors, agents or affiliates) to BBC, BBCW, ITV or C4 (or any of their employees, directors, agents or affiliates), or *vice versa*, other than as provided for in paragraph 4(i) of the Undertakings.

FOR AND ON BEHALF OF UKVOD

Signature

Name

Title

Date