

## Terms of reference and conduct of the inquiry

### Terms of reference

1. On 30 June 2008 the OFT sent the following reference to the CC:
  1. In exercise of its duty under section 33(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to an anticipated merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—
    - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:
      - (i) the BBC, through BBC Worldwide Limited, Channel 4 Television Corporation and ITV PLC will establish a joint venture, VodLLP,<sup>1</sup> from which each of the parties will cease to be distinct; and
      - (ii) as a result, the condition specified in section 23(4) of the Act will prevail or will prevail to a greater extent with respect to the provision of UK catch-up television content available within 0–7 or 8–30 days following its broadcast on a television channel available online on a video-on-demand basis in the United Kingdom; and
    - (b) the creation of that situation 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 syndication of content rights for video-on demand services in the UK.
  2. Therefore, in exercise of its duty under section 33(1) of the Act, the OFT hereby refers to the CC, for investigation and report within a period ending on 14 December 2008, the following questions in accordance with section 36(1) of the Act—
    - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
    - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
  3. In relation to the question whether a relevant merger situation will be created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

*(signed)* Simon Pritchard  
Senior Director, Mergers, Office of Fair Trading  
30 June 2008

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<sup>1</sup>CC note: The JV vehicle was originally incorporated as a limited company VODCO Ltd, owned by BBCW, but is now incorporated as a limited liability partnership, UKVOD LLP.

## **Inquiry extension**

2. On 8 August 2008 we extended the period of the reference because the parties had been unable to supply information and documents specified by us in notices issued under section 109 of the Act.
3. Upon receiving the required information to our satisfaction, we ended the period of extension on 3 October 2008. The period within which the report on the reference was to be prepared and published was therefore revised and ended on 8 February 2009. A revised administrative timetable for the inquiry was published on 8 October 2008.

## **Conduct of inquiry**

4. A notice inviting written views was posted on the CC website on 30 June 2008. We also requested evidence individually from competitors, potential competitors, production companies, media agencies, trade associations, government departments and other interested parties. Oral hearings were held with some third parties. Non-sensitive versions of the initial 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, received a briefing on the project from the parties at the offices of ITV in London on 29 July 2008.
6. We published an Issues Statement on 8 August 2008.
7. On 22 August 2008 we accepted interim undertakings from UKVOD and the parties for the purpose of preventing pre-emptive action. A non-confidential version of the interim undertakings was published on the CC website.
8. We received written evidence from UKVOD and the parties. Non-confidential versions of their main submissions can be found on the CC website. We also held hearings with them, as well as with the BBC Executive and the BBC Trust.
9. A Notice of provisional findings, together with a summary of the provisional findings report, was published on 3 December 2008. A Notice of possible remedies was also published at that time. The main text of the report was published on 5 December 2008, and the appendices to the report were published on 9 December 2008.
10. The main and third parties' responses to the provisional findings and the Notice of possible remedies were published and a remedies hearing with UKVOD and the parties held. Several third parties provided comments on the parties' response and these too were published.
11. Throughout the inquiry we sent to UKVOD and the parties, and some third parties, extracts from working papers on various subjects and received their comments on them.
12. Our final report has been placed on the CC website.
13. We would like to thank all those who assisted in our inquiry.