

**COMPLETED ACQUISITION BY BRITISH SKY BROADCASTING GROUP  
plc OF 17.9 PER CENT OF THE SHARES IN ITV plc**

**UNDERTAKINGS GIVEN BY BRITISH SKY BROADCASTING GROUP plc  
TO THE SECRETARY OF STATE PURSUANT TO SECTION 55 OF THE  
ENTERPRISE ACT 2002**

**WHEREAS:**

- (a) On 17 November 2006, BSkyB announced that it had acquired 696 million shares in ITV, representing 17.9 per cent of ITV shares.
- (b) On 26 February 2007, the Secretary of State issued an intervention notice to the OFT, pursuant to section 42 of the Act, stating that he believed it was or may have been the case that the public interest consideration contained in section 58(2C)(a) of the Act was relevant to a consideration of the merger situation. On the same date the Secretary of State requested the Office of Communications to prepare an initial report pursuant to section 44A of the Act on the effect of the merger situation on the identified public interest consideration.
- (c) The Secretary of State announced on 24 May 2007 his decision to refer the transaction to the CC under section 45(2) of the Act.
- (d) The Secretary of State received the final report of the CC, prepared in accordance with section 50 of the Act, on 14 December 2007 (the "Report"). The Report was published on 20 December 2007.
- (e) On 29 January 2008 the Secretary of State decided, under section 54 of the Act, to make an adverse public interest finding.
- (f) The Secretary of State considers that the undertakings given below by BSkyB are reasonable and practicable to remedy, mitigate or prevent the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the merger situation, as identified in the Report.
- (g) To the extent that the Secretary of State considers that the undertakings given below have not been, are not being or will not be fulfilled, he may make an order for the purposes of section 55(2) of the Act pursuant to paragraph 10(2) of Schedule 7 of the Act.

NOW THEREFORE BSkyB hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which have resulted from, or may be expected to result from, the creation of the relevant merger situation concerned.

## **Effective date of the undertakings**

1. These undertakings shall take effect from the date that, having been signed by B Sky B, they are accepted by the Secretary of State.

## **Divestment of the Divestment Shares**

- 2.1 B Sky B shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, and in any event by the end of the Divestment Period, effect to the satisfaction of the Secretary of State the divestment of the Divestment Shares in a manner approved by the Secretary of State in advance and in writing in accordance with the provisions of these undertakings.

## **Approval of manner of divestment**

- 3.1 For the purposes of the Secretary of State approving the manner of divestment of the Divestment Shares in accordance with these undertakings, B Sky B shall submit to the Secretary of State one or more proposed schemes for the divestment of the Divestment Shares (each a "Proposed Methodology").
- 3.2 A Proposed Methodology shall include details of:
  - (a) whether B Sky B proposes to sell the Divestment Shares as a whole or in separate parts;
  - (b) whether B Sky B proposes to sell the Divestment Shares directly, that is through a direct sale contract entered into between B Sky B and a third party, or indirectly, that is through a third party broker or other financial intermediary;
  - (c) to the extent that B Sky B proposes to sell some or all of the Divestment Shares indirectly, that is through a third party broker or other financial intermediary, the mandate or instructions that would be provided by B Sky B to that third party; and
  - (d) the expected time frame within the Divestment Period over which B Sky B proposes to divest the Divestment Shares.
- 3.3 B Sky B shall prior to divestment of the Divestment Shares in the manner contemplated by a Proposed Methodology satisfy the Secretary of State that such divestment:
  - (a) will be to a purchaser, or purchasers, independent of and unconnected to all B Sky B Bodies and all NewsCorp Bodies, and in particular that, to the extent that B Sky B proposes to divest some or all of the Divestment Shares in the manner contemplated by paragraph 3.2(c) above, B Sky B shall require the third party broker or other financial intermediary to use its

best endeavours to ensure the Divestment Shares are sold to a purchaser, or purchasers, independent of and unconnected to all BSkyB Bodies and all NewsCorp Bodies;

- (b) will be to a purchaser, or purchasers, which is not restricted from holding the shares purchased in the execution of such divestment by virtue of Schedule 2 to the Broadcasting Act 1990;
  - (c) will not itself be expected to result in a substantial lessening of competition within any market or markets in the UK.
- 3.4 The Secretary of State may require BSkyB to provide him with such information and documentation, including any proposed terms of sale or any sale contract itself, as he may require to satisfy the Secretary of State that each Proposed Methodology will fulfil the requirements in paragraphs 3.1, 3.2 and 3.3 above.
- 3.5 Any subsequent amendment or variation of the terms of a Proposed Methodology requested by BSkyB shall require the approval in writing, and in advance, of the Secretary of State. Paragraphs 3.2, 3.3 and 3.4 shall apply also to any request by BSkyB to the Secretary of State for approval of any amendment or variation of the terms of a Proposed Methodology. Following approval by the Secretary of State of a Proposed Methodology, no amendments or variation shall be made to the terms of such Proposed Methodology other than in accordance with this paragraph.

#### **Interim action**

- 4.1 Pending the divestment of the Divestment Shares to the satisfaction of the Secretary of State in accordance with the provisions of these undertakings, BSkyB:
- (a) shall not:
    - (i) propose any person for election or appointment as a director of ITV nor accept an invitation to nominate a person for such election, and shall ensure that no employee or director of BSkyB or of any member of the Group of Interconnected Bodies Corporate to which BSkyB belongs holds any directorship or senior managerial employment in ITV or accepts any nomination to any directorship or senior managerial employment in ITV without promptly, and in any event before taking up such an appointment, resigning as an employee or director of BSkyB or any member of such Group; or
    - (ii) exercise the voting rights attached to the Divestment Shares; and

- (b) shall provide the Secretary of State and the OFT promptly with such information as they may require to enable them to perform their functions under the Act.

### **Continued separation**

- 5.1 Except with the prior written consent of the Secretary of State, following the divestment of the Divestment Shares pursuant to paragraph 2.1, neither BSKyB nor any member of the Group of Interconnected Bodies Corporate to which BSKyB belongs shall, directly or indirectly, hold, acquire or re-acquire any Interest in the shares in ITV plc, other than a holding of less than 7.5% of the ordinary shares in ITV, where the ordinary shares in ITV held by all BSKyB Bodies and all NewsCorp Bodies shall be added together for these purposes.
- 5.2 Except with the prior written consent of the Secretary of State, following the divestment of the Divestment Shares pursuant to paragraph 2.1, BSKyB shall procure that no employee or director of BSKyB or of any member of the Group of Interconnected Bodies Corporate to which BSKyB belongs holds any directorship or senior managerial employment in ITV or accepts any nomination to any directorship or senior managerial employment in ITV without promptly, and in any event before taking up such an appointment, resigning as an employee or director of BSKyB or any member of such Group.

### **Compliance**

- 6.1 BSKyB shall comply promptly with such written directions as the Secretary of State may from time to time give:
  - (a) 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; or
  - (b) to do or refrain from doing anything so specified or described which BSKyB is required by these undertakings to do or to refrain from doing.
- 6.2 BSKyB shall procure that any member of the same Group of Interconnected Bodies Corporate as BSKyB complies with these undertakings as if such member had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as BSKyB shall be attributed to BSKyB for the purposes of these undertakings.
- 6.3 Where any Affiliate of BSKyB is not a member of the same Group of Interconnected Bodies Corporate as BSKyB, BSKyB shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them and as if references to BSKyB in

these undertakings, save for the reference to ‘the ordinary shares in ITV held by all BSkyB Bodies and all NewsCorp Bodies’ in paragraph 5.1 which shall continue to read as ‘the ordinary shares in ITV held by all BSkyB Bodies and all NewsCorp Bodies’, were references to any such Affiliate. NewsCorp shall be treated as an Affiliate of BSkyB for the purposes of this paragraph 6.3.

### **Provision of Information**

- 7.1 BSkyB shall furnish promptly to the Secretary of State and the OFT such information as the Secretary of State and/or the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt any Confidential Information.

### **Interpretation**

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word “include” and its derivatives shall be construed accordingly.
- 8.4 For the purposes of these undertakings:

“Act” means the Enterprise Act 2002;

“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 and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

“Associated Person” means a person or persons associated with BSkyB or, as the case may be, NewsCorp, within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons, but excludes any person who would be treated as associated with BSkyB or, as the case may be, NewsCorp, by reason only of such person acting together with BSkyB or, as the case may be, NewsCorp to secure or exercise control of any body of persons corporate or unincorporated, other than ITV, or to secure control of any enterprise or assets other than ITV;

“BSkyB” means British Sky Broadcasting Group plc;

“BSkyB Body” means BSKyB and/or any member of the Group of Interconnected Bodies Corporate to which BSKyB belongs and/or any Associated Person or Affiliate of BSKyB or such Group of Interconnected Bodies Corporate;

“CC” means the Competition Commission;

“Confidential Information” means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"divestment" means completion of the transfer of all ownership of and rights in the Divestment Shares;

“Divestment Shares” means all ordinary shares held by BSKyB in ITV above a shareholding equal to 7.5% less one share of the ordinary shares of ITV where the ordinary shares in ITV held by all BSKyB Bodies and all NewsCorp Bodies shall be added together for this purpose;

“Divestment Period” means the period ending [information redacted for reasons of commercial confidentiality] from the Effective Date;

“Effective Date” means the date on which these undertakings were accepted by the Secretary of State;

“Group of Interconnected Bodies Corporate” has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

“Interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders’ meetings; and for this purpose “an interest in shares” includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to control the exercise of such right;

“ITV” means ITV plc;

“NewsCorp” means News Corporation;

“NewsCorp Body” means NewsCorp and/or any member of the Group of Interconnected Bodies Corporate to which NewsCorp belongs and/or any Associated Person or Affiliate of NewsCorp or such Group of Interconnected Bodies Corporate, but shall exclude any BSKyB Body;

“OFT” means the Office of Fair Trading;

“Subsidiary” shall be construed in accordance with section 736 of the

Companies Act 1985 (as amended), unless otherwise stated;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

**FOR AND ON BEHALF OF BRITISH SKY BROADCASTING GROUP PLC**

.....Signature

.....Name

.....Title

.....Date

Authorised Signatory

.....Signature

.....Name

.....Title

.....Date

Authorised Signatory