

COMPETITION COMMISSION ACCEPTANCE OF INTERIM UNDERTAKINGS

In the matter of a reference to the Competition Commission dated 2 November 2009 concerning the anticipated acquisition by Brightsolid Limited of FriendsReunited Holdings Ltd from ITV plc

On 2 November 2009, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 33 of the Enterprise Act (the Act) concerning the anticipated acquisition by Brightsolid Limited of FriendsReunited Holdings Ltd, a wholly-owned subsidiary of ITV plc.

Brightsolid Limited and ITV plc have agreed to give Undertakings to the CC under section 80 of the Act for the purpose of preventing pre-emptive action, to ensure that no action is taken which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act which may be justified by the CC's decisions on the reference.

Pursuant to section 80(2) of the Act the CC accepted Undertakings on 18 December 2009.

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

Paragraph 2(d) of the Undertakings requires that negotiations between the parties in the ordinary course of business be conducted at arm's length by and involving only the individuals named in the Appendix C and subject to the conditions set out in that paragraph. ITV plc has requested that an additional person be permitted to be involved with these negotiations.

Brightsolid Limited and ITV plc have agreed to give Undertakings in the form attached to this notice which are varied from those accepted on 18 December 2009 to include in Appendix C the name of the individual in respect of whom ITV plc has sought the CC's consent and to facilitate amendment to the list of names in Appendix C from time to time, if the CC gives consent under paragraph 2.

The CC hereby accepts the Undertakings and gives notice pursuant to section 107(2)(q) of the Act.

Signed by authority of the CC.

Christopher Clarke
Deputy Chairman
11 March 2010

Interim Undertakings

Anticipated Acquisition by Brightsolid Limited of FriendsReunited Holdings Ltd from ITV plc

Undertakings given by Brightsolid Limited and ITV plc to the Competition Commission pursuant to section 80 of the Enterprise Act 2002

On 2 November 2009, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 33 of the Enterprise Act (the Act) concerning the anticipated acquisition by Brightsolid Limited (Brightsolid) of FriendsReunited Holdings Ltd (FriendsReunited), a wholly-owned subsidiary of ITV plc (ITV).

Brightsolid entered into a Sale and Purchase Agreement (SPA) with ITV dated 6 August 2009 which provided that completion of the sale and transfer of shares in FriendsReunited was subject to final determination of any reference to the CC but this condition may be waived. Schedule 7 of the SPA provides for certain matters to be undertaken by ITV and Brightsolid pre-completion.

On 3 November the CC advised Brightsolid and ITV that pursuant to section 78 of the Act the completion of the sale and transfer of shares was prohibited without the consent of the CC.

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

The CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice 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.

Now for the purpose of preventing pre-emptive action Brightsolid and ITV hereby give to the CC the following Undertakings pursuant to section 80(2) of the Act.

Management of the Brightsolid and FriendsReunited businesses until determination of proceedings

1. Except with the prior written consent of the CC, Brightsolid and ITV each undertakes that it will not during the specified period take any action which might prejudice the reference to the CC or impede the taking of any action under the Act by the CC or by any party which may be justified by the CC's decisions on the reference other than for the purposes of negotiations between the parties in the ordinary course of business as provided for in paragraph 2(d) below, including any action which would:
 - (a) lead to the integration of the FriendsReunited business with all or any part of the Brightsolid business;
 - (b) transfer the ownership or control of the FriendsReunited business;
 - (c) otherwise impair the ability of the FriendsReunited business to compete independently in any markets affected by the acquisition.
2. Without prejudice to the generality of paragraph 1 and except with the prior written consent of the CC, Brightsolid and ITV each undertakes, during the specified period to release the other from any obligations arising under Schedule 7 of the SPA and

not to fulfil its own obligations arising under Schedule 7 of the SPA and to procure that:

- (a) the supplier lists of each of the FriendsReunited business and the Brightsolid business shall be operated and updated separately and any negotiations with suppliers other than those provided for under paragraph 2(d) in relation to the FriendsReunited business will be carried out by FriendsReunited without any involvement on the part of Brightsolid;
 - (b) all existing contracts will continue to be serviced by the business to which they were awarded save to the extent that, in the ordinary course of business, any such contract may expire in accordance with its terms;
 - (c) no Confidential Information relating to the FriendsReunited business shall pass, directly or indirectly from the FriendsReunited business (or any of its employees, directors, agents or affiliates) to the Brightsolid business or vice versa except as provided for under paragraphs 2(d) and 3(f) below;
 - (d) any negotiations between the parties in the ordinary course of business will be conducted at arm's length by or involving only those individuals named in [Appendix C](#) or such other persons in respect of whom the CC gives consent under this paragraph 2 from time to time and subject to the following conditions:
 - (i) the negotiations shall take the nature of discussions and no binding agreement whether formalized or in principle shall be reached;
 - (ii) no Confidential Information shall be disclosed other than strictly for the purpose of conducting the negotiations and the disclosure of any such information will be limited to those individuals named in [Appendix C](#); and
 - (iii) a report of the nature of the discussions shall be provided to the CC by the parties as soon as reasonably practicable after each discussion; and
 - (e) 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 C](#) and such other persons in respect of whom the CC gives consent under this paragraph 2 from time to time and copies of those agreements are provided to the CC.
3. In addition except with the prior written consent of the CC, ITV undertakes that during the specified period it will procure that:
- (a) the FriendsReunited business is carried on separately from the Brightsolid business and is maintained as a going concern in the ordinary and usual course and notwithstanding the undertaking given in paragraph 2:
 - (i) no alterations are made to its share capital, no options are offered or granted, no agreements to allot securities convertible into its share capital are entered into and no dividends or other distributions are declared, made or paid;
 - (ii) no changes are made to the accounting practices or policies or to the memorandum and articles of association;
 - (iii) any capital expenditure that is reasonably necessary for the FriendsReunited business in connection with data storage capacity shall be made, subject to a maximum aggregate amount of £[~~5~~];

- (iv) marketing spend is incurred at the rate and the times set out in the FriendsReunited business plan annexed hereto as [Appendix E](#);
- (v) [✂];
- (b) in relation to the assets of the FriendsReunited business procure that except in the ordinary course of business:
 - (i) the assets are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets are disposed of; and
 - (iii) no interest in the assets is created or disposed of;
- (c) the nature, description, range and quality of services supplied in the UK by the FriendsReunited business are maintained and preserved;
- (d) no significant changes to the existing contractual arrangements or relationships with key suppliers of the FriendsReunited business are procured or initiated;
- (e) notification is made and details provided to the CC immediately on the occurrence of any material developments concerning the FriendsReunited business including proposals for significant changes in contractual arrangements or relationships with key suppliers including but not limited to the occurrence of events contemplated by paragraphs 9 and 11 of Schedule 7 of the SPA; and
- (f) Brightsolid is provided with financial information concerning the FriendsReunited business in the form set out in [Appendix D](#) commencing on a date to be agreed between ITV and Brightsolid and then on a monthly basis thereafter and a copy of the information provided to Brightsolid is provided to the CC at the same time.

Compliance

- 4. Brightsolid and ITV shall procure that each of their respective subsidiaries complies with these Undertakings as if it had given them.
- 5. Brightsolid and ITV shall each commence forthwith to provide to the CC such information or statement of compliance as the CC may from time to time require for the purposes of monitoring compliance by Brightsolid and ITV and their subsidiaries with these Undertakings. In particular, on giving of these Undertakings 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 Brightsolid and ITV 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 A](#) and [B](#)).
- 6. Brightsolid and ITV shall comply 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

- 7. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.

8. For the purposes of these Undertakings:

'the Act' means the Enterprise Act 2002;

'the Brightsolid business' means the business carried on by Brightsolid and its subsidiaries as at 6 August 2009;

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

'the CC' means the Competition Commission;

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

'control' shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall 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 36 of the Act;

'in the ordinary course of business' means the usual and necessary activities connected to the day-to-day conduct and maintenance of the business as a going concern and, for the avoidance of doubt, does not include one-off or infrequent transactions;

'the FriendsReunited business' means the business carried on by FriendsReunited and its subsidiaries as at 6 August 2009;

'the OFT' means the Office of Fair Trading;

'the specified period' means the period beginning on the date of these Undertakings and terminating at the end of the period specified in section 80(7) or (8) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

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

FOR AND ON BEHALF OF ITV

..... Signature

..... Name

..... Title

..... Date

(Director)

..... Signature

..... Name

..... Title

..... Date

(Director/Company Secretary)

FOR AND ON BEHALF OF BRIGHTSOLID

..... Signature

..... Name

..... Title

..... Date

(Director)

..... Signature

..... Name

..... Title

..... Date

(Director/Company Secretary)

Compliance Statement

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

- (a) ITV and FriendsReunited have both complied with the Undertakings;
- (b) no action has been taken by ITV or FriendsReunited that will impede the taking of any action by the CC which may be justified by its decision on the reference;
- (c) ITV and FriendsReunited remain in full compliance with the Undertakings and neither has procured or initiated significant changes in existing contractual arrangements or relationships with key suppliers and will continue actively to keep the CC informed of any material developments relating to the FriendsReunited business in accordance with paragraph 3(e) of these Undertakings;
- (d) ITV has released Brightsolid from its obligations and not fulfilled any of ITV's obligations arising pursuant to Schedule 7 of the SPA;
- (e) the FriendsReunited business has been maintained as a going concern in accordance with paragraph 3(a) and in particular sufficient data storage capacity has been maintained for maintenance and preservation of the business;
- (f) the FriendsReunited business's supplier lists have been operated and updated purely for the purposes of the FriendsReunited business without any involvement of Brightsolid;
- (g) all supplier negotiations other than those between the parties for the FriendsReunited business have been carried out independently of Brightsolid and those between the parties have been carried out in accordance with paragraph 2(d) of these Undertakings; and
- (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 FriendsReunited business.

Assets—including facilities and goodwill

- (i) except in the ordinary course of business, none of the assets of the FriendsReunited business have been disposed of;
- (j) except in the ordinary course of business, no interest in the assets of the FriendsReunited business has been created or disposed of;
- (k) except in the ordinary course of business, all of the assets of the FriendsReunited business have been maintained and preserved;

Contracts

- (l) all existing contracts awarded to the FriendsReunited business continue to be serviced by the FriendsReunited business save for those which have in the ordinary course of business expired in accordance with its terms;

Material developments

(m) except as listed in paragraph (n) below there have been no material developments in the FriendsReunited business in the period from [date] to [date], including substantial changes in the FriendsReunited business contractual arrangements with key suppliers;

(n) the CC has been notified immediately on the occurrence of significant changes in contractual arrangements or relationships with key suppliers and description has been provided at the same time in accordance with paragraph 3(e);

Confidential Information

(o) no business secrets, confidential know-how, commercially-sensitive information, confidential intellectual property or any other information of a confidential or proprietary nature relating to the FriendsReunited business, has passed, directly or indirectly, from FriendsReunited to Brightsolid (or any of their employees, directors, agents or affiliates), or vice versa except as permitted by paragraphs 2(d) and 3(f);

Interpretation

(p) words used in this Compliance Statement have the meaning given by the Undertakings.

FOR AND ON BEHALF OF ITV

..... Signature

..... Name

..... Title

..... Date

Compliance Statement

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

- (a) Brightsolid has complied with the Undertakings;
- (b) no action has been taken by Brightsolid that will impede the taking of any action by the CC which may be justified by its decision on the reference;
- (c) Brightsolid remains in full compliance with the Undertakings;
- (d) Brightsolid has released ITV from its obligations and has not fulfilled any of Brightsolid's obligations arising pursuant to Schedule 7 of the SPA;
- (e) the FriendsReunited business's supplier lists have been operated without any involvement of Brightsolid;
- (f) all supplier negotiations other than those between the parties for the FriendsReunited business have been carried out independently of Brightsolid and those between the parties have been carried out in accordance with paragraph 2(d) of these Undertakings;

Contracts

- (g) all existing contracts awarded to the Brightsolid business continue to be serviced by the Brightsolid business save for those which have in the ordinary course of business expired in accordance with its terms;

Confidential Information

- (h) no business secrets, confidential know-how, commercially-sensitive information, confidential intellectual property or any other information of a confidential or proprietary nature relating to the FriendsReunited business, has passed, directly or indirectly, from FriendsReunited to Brightsolid (or any of their employees, directors, agents or affiliates), or vice versa except as permitted by paragraphs 2(d) and 3(f);

Interpretation

- (i) words used in this Compliance Statement have the meaning given by the Undertakings.

FOR AND ON BEHALF OF BRIGHTSOLID

..... Signature

..... Name

..... Title

..... Date

**List of individuals involved in carrying out negotiations in relation to
future commercial transactions**

Brightsolid

[REDACTED]

ITV/FriendsReunited

[REDACTED]

Financial Reporting

	Actual	Budget
Summary profit & loss		
Income		
[✂]		
[✂]		
[✂]		
[✂]		
[✂]		
Total Income		
Direct Costs		
[✂]		
[✂]		
[✂]		
[✂]		
[✂]		
Total Costs		
Net Contribution by Area		
[✂]		
[✂]		
[✂]		
[✂]		
[✂]		
Total contribution		
EBITDA		
EBIT		
Net Interest paid/(received)		
Pre-Tax profit		
Taxation		
Profit after Tax		

Consolidated group balance sheet

Fixed Assets

Current Assets

Cash

Liabilities

Net assets/(Liabilities)

Marketing Spend

'Summary of
Marketing & TV'

				[X]	[X]	[X]	[X]
[X]	[X]			[X]	[X]	[X]	[X]
	[X]			[X]	[X]		
	[X]			[X]	[X]		
	[X]			[X]	[X]	[X]	[X]
	[X]			[X]	[X]	[X]	[X]
[X]	[X]			[X]	[X]	[X]	[X]
	[X]			[X]	[X]		
	[X]			[X]	[X]		
	[X]			[X]	[X]	[X]	[X]
	[X]			[X]	[X]	[X]	[X]
[X]	[X]			[X]	[X]	[X]	[X]
	[X]			[X]	[X]		
	[X]			[X]	[X]	[X]	[X]
	[X]			[X]	[X]	[X]	[X]
[X]	[X]			[X]	[X]	[X]	[X]
[X]	[X]			[X]	[X]		
[X]	[X]			[X]	[X]		
[X]	[X]			[X]	[X]		
[X]	[X]			[X]	[X]		