The reference by Alistair Darling, the Secretary of State for Trade and Industry, of the British Sky Broadcasting Group’s acquisition of a 17.9% shareholding in ITV plc to the Competition Commission under Section 45(2) of the Enterprise Act 2002 dated 24 May 2007.

PARTIES

1. British Sky Broadcasting plc (BSkyB) is a holding company for subsidiaries whose principal activities relate to television broadcasting and retailing in the UK and Ireland. BSkyB operates the direct-to-home satellite platform and over digital subscriber line networks and mobile networks. BSkyB also distributes a number of its channels on a wholesale basis to cable (and other) operators who act as retailers to its UK and Irish customers.

2. News Corporation (News Corp) holds 39.02% of the shares and several directorships in BSkyB.

3. ITV plc (ITV) was formed in 2004 by the merger of Carlton Communications plc and Granada plc and it is active in a number of sectors primarily related to television production and broadcasting. ITV’s in house content arm (Granada Productions, renamed ITV Productions) principally produces a range of light entertainment and drama TV programming with mainstream audience appeal in the UK.

4. ITV distributes its own third party content via a wide range of wholly owned free to air television channels broadcast on a range of platforms, and sells advertising on behalf of all 15 Channel 3 regional licences in the UK, 11 of which it controls. ITV also holds a controlling 75 per cent share in GMTV, (which holds the national Channel 3 licence for breakfast television); a 40% stake in the news provider Independent Television News (ITN) and interests in two of the six digital terrestrial television multiplex platforms.

5. ITV’s annual turnover was close to £2.2 billion in each of the calendar years 2005 and 2006.

TRANSACTION

6. On 17 November 2006, BSkyB announced that it had acquired 696 million shares in ITV plc representing 17.9% of ITV plc shares at a cost of £940 million (“the merger situation”). In its statement BSkyB stated that it wanted to “explore options to create value in the interests of both BSkyB’s and ITV’s shareholders. BSkyB believes that ITV’s content arm is one of Europe’s premier broadcasting assets and production businesses, and holds substantial potential for long-term value creation”.

7. The Secretary of State issued a notice to the OFT ("the intervention notice"), pursuant to section 42 of the Enterprise Act 2002 ("the Act") and dated 26 February 2007, stating that he believed that 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. The intervention notice also required the Office of Fair Trading ("OFT") and Office of Communications ("OFCOM") each to provide a report to the Secretary of State pursuant to section 44 and section 44A respectively of the Act.

JURISDICTION

8. The Secretary of State may make a reference to the Competition Commission, pursuant to section 45(2) of the Act, if he believes that it is or may be the case that –

(a) a relevant merger situation has been created;

(b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services;

(c) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(d) taking account only of the substantial lessening of competition and the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

ADVICE FROM THE OFT AND OFCOM AND OTHER REPRESENTATIONS

9. The OFT have produced a report under section 44 of the Act, and dated 27 April 2007 ("the OFT Report"), advising the Secretary of State in relation to the merger situation. The OFT Report includes advice in relation to issues (a) and (b). In deciding whether to make a reference under section 45, the Secretary of State is required, under section 46(2) of the Act, to accept the decisions of the OFT included in its report on these issues.

10. OFCOM, in their report, dated 27 April 2007 and produced under section 44A of the Act (the "OFCOM Report"), have advised on the relevance and effect of the public interest consideration set out in section 58(2C)(a) on this merger situation.

11. Both the OFT and the OFCOM Reports have been published by the Secretary of State in accordance with sections 107(3)(b) and (ba) and 107(9)(a) of the Act.

12. In coming to his decision, the Secretary of State has taken into account the reports provided to him by the OFT and OFCOM, now published by the Secretary of State. Further, the information and range of views contained in the detailed summaries of representations made by the parties and third
parties and included in the OFT and OFCOM reports have been taken fully into account. In making his decision, the Secretary of State has asked OFCOM for further advice in response to specific questions, the answers to which the Secretary of State has also taken into account. The Secretary of State has also considered representations made to him by BSkyB, through its solicitors, both in writing and orally.

SECRETARY OF STATE'S DECISION

13. The Secretary of State accepts the decision of the OFT that it is or may be the case that a relevant merger situation has been created.

14. The OFT has also decided that it is or may be the case that the creation of the merger situation has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom. The Secretary of State accepts this decision.

15. The Secretary of State has decided that the public interest consideration set out in section 58(2C)(a) of the Act, that is, the need, in relation to every different audience in the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience, is relevant to this case. In arriving at this decision, the Secretary of State has taken into account advice to this effect in the OFCOM Report, the reasons contained in that Report, the detailed summaries of representations made by the parties and third parties and the representations made in writing and orally by BSkyB. Further, the Secretary of State has taken into account the OFT's determination that it is or may be the case that BSkyB and ITV have come under common control for the purposes of section 26 of the Act and that BSkyB has, or at least may have, acquired material influence over ITV.

16. Taking account only of the substantial lessening of competition and the relevant public interest consideration, the Secretary of State believes that the creation of that situation operates or may be expected to operate against the public interest. In particular, the Secretary of State has accepted the OFT's decision that the merger situation may result in an anti-competitive outcome. Further, the Secretary of State has decided that, as a result of the merger situation, there may not be a sufficient plurality of persons with control of the media enterprises serving the UK cross-media audience for national news and the UK TV audience for national news. OFCOM advised the Secretary of State in its Report that the creation of the relevant merger situation may be expected to operate against the public interest, and, in particular, that there may not be a sufficient plurality of persons with control of the media enterprises serving the relevant audiences.

17. In arriving at the decision that the merger situation does or may be expected to operate against the public interest, the Secretary of State has taken into account in particular the significance of ITV and BSkyB in supplying the UK audience for TV news, and OFCOM's determination that if it is assumed the two enterprises have ceased to be distinct and have come under common control for the purposes of Section 26 of the Act, the merger situation brings together the second and third largest providers of TV news with a combined
audience share of 30.6%. In addition, as set out by OFCOM in its Report, the transaction creates an ownership link between ITV – the second largest provider of TV news – and News International, the largest UK supplier of national newspapers who are both influential sources of news to the UK cross-media audience for national news. A further effect on the UK cross-media audience for national news arises from the creation of an ownership link between BSkyB and ITN, both important providers of news services to both TV channels and radio stations.

18. In light of the conclusions reached by the OFT and OFCOM in their Reports, together with the detailed summaries of the submissions received from the parties and third parties, the Secretary of State has decided that it is appropriate to refer the merger situation to the Competition Commission for a full investigation.

UNDERTAKINGS IN LIEU

19. The Secretary of State has considered whether or not to accept undertakings in lieu of a reference to the Competition Commission pursuant to paragraph 3 of Schedule 7 to the Act. That paragraph provides that where the Secretary of State has the power to make a reference to the Competition Commission and otherwise intends to make such a reference, he may, instead of doing so, and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which may result from the relevant merger situation, accept such undertakings from the parties as he may consider appropriate.

20. In deciding whether or not to accept undertakings in lieu of a reference, the Secretary of State is bound to accept the decision of the OFT included in its Report under section 44 in relation to whether the OFT believes it is or may be the case that it would be appropriate to deal with the matter (disregarding any public interest considerations mentioned in the intervention notice concerned) by way of undertakings. The OFT have decided that it would not be appropriate to deal with the matter by way of undertakings.

21. In light of the OFT's decision, which he accepts, and taking into account the public interest consideration, the Secretary of State does not consider that it is appropriate to deal with the matter by way of undertakings in lieu of a reference. Having considered the matter carefully and having sought advice from OFCOM pursuant to section 106B of the Act, the Secretary of State has concluded that undertakings would not be appropriate to deal with the non-competition public interest concerns raised in this case and that there are no public interest considerations which would warrant overriding the OFT's decision that undertakings are not appropriate in this case.
DECISION

22. The Secretary of State, therefore, refers this merger to the Competition Commission under Section 45(2) of the Act and in accordance with the Terms of Reference to be published separately.