[GB] Minister Orders BSkyB to Divest Most of Shareholding in ITV Plc

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The UK's major competition authority, the Competition Commission, decided in December that BSkyB's 17.9% holding in ITV Plc, the UK's major commercial broadcaster, amounted to a merger situation and had resulted in a substantial lessening of competition within the UK market for all television services. As a result the Secretary of State for Business and Enterprise has ordered the shareholding to be reduced to a level below 7.5%.

In November 2006, BSkyB announced that it had acquired a 17.9% shareholding in ITV Plc, which at the time was facing a possible takeover by Virgin Media. The minister referred the matter to the competition authority (the Office of Fair Trading) and to the communications regulator, Ofcom, to consider issues of the public interest. The OFT decided that there had been a merger situation, which might be expected to result in a substantial lessening of competition; the minister considered that the issue of media plurality was also relevant. The issue was then referred to the Competition Commission, whose provisional report (see IRIS 2007-10: 14) and its final report, published in December 2007, both found that the transaction had resulted in a substantial lessening of competition. However, the Commission rejected the argument based on media plurality as it considered that the strong culture of editorial independence within ITV made it unlikely that the views and interests of BSkyB would influence issues of editorial policy. News was provided by a separate enterprise with its own board, and was subject to regulatory mechanisms in order to maintain standards. Thus there was insufficient evidence to suggest that the shareholding would give BSkyB the ability or incentive to exert editorial influence over ITV's news output. The minister agreed with this finding.

Thus the minister's decision was based only on the substantial lessening of competition as a result of the shareholding. The Competition Commission had considered either full divestment or partial divestment as potential remedies, favouring the latter as more proportionate. BSkyB's proposed action of placing the shares in an independent voting trust would require continued monitoring of the trust's independence and would not address the competition issue as future transactions could still be affected by a threat to sell the shares. The minister decided to impose the remedies recommended by the Competition Commission of partial divestment to reduce the shareholding below 7.5% and to require behavioural undertakings from BSkyB, which included not disposing of the shares

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to an associated person, not seeking or accepting representation on the ITV board and not reacquiring shares in ITV. BSkyB now has the right to appeal the decision before the Competition Appeal Tribunal.

Department for Business, Enterprise and Regulatory Reform, "Final Decision on BSKYB's Stake in ITV", Press Release 29 January 2008

http://www.gnn.gov.uk/environment/fullDetail.asp?ReleaseID=348334&NewsAreaID=2&NavigatedFromDepartment=True

Final Decision by the Secretary of State for Business, Enterprise and Regulatory Reform on British Sky Broadcasting Group's Acquisition of a 17.9% Shareholding in ITV plc Dated 29 January 2008

http://www.berr.gov.uk/files/file44136.pdf

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