

## Review of CRR undertakings: statement of issues

13 February 2008

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### Introduction

On 30 January 2008, the OFT announced that it had started a review of the Contract Rights Renewal undertakings (the 'CRR undertakings') in partnership with Ofcom.<sup>1</sup>

The CRR undertakings were put in place following the Competition Commission's assessment of the proposed merger between Carlton and Granada in 2003 ('the 2003 merger').<sup>2</sup> The Competition Commission (CC) concluded that Carlton and Granada competed in the sale of advertising airtime and the merger could be expected to operate against the public interest because it would potentially result in:

- less attractive terms to advertisers or media buyers
- a greater degree of price discrimination, and/or
- changes to the system of selling TV advertising airtime to the advantage of the merged entity.

The CRR undertakings were put in place to remedy these concerns.

This review will consider whether the CRR undertakings remain appropriate or whether there has been any change of circumstances since the 2003 merger, which - bearing in mind the CC's concerns - mean that the CRR undertakings should be varied, released or superseded.

The review will focus on the following parts of the CRR undertakings:<sup>3</sup>

- clauses 5-11 and Annex 1 which relate to the sale of commercial airtime
- clauses 12-18 and Annexes 2 and 3 which relate to adjudication, and
- clauses 23-25 which relate to the interpretation of words and expressions used in the CRR undertakings.

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<sup>1</sup> See <http://www.offt.gov.uk/news/press/2008/13-08>

<sup>2</sup> Carlton Communications Plc and Granada Plc: A report on the proposed merger, October 2003. These parties subsequently merged to form ITV plc.

<sup>3</sup> The text of the CRR undertakings is available from the CRR Adjudicator's website: <http://www.adjudicator-crr.org.uk/undertakings.htm>

The purpose of this statement is to highlight the issues that will be considered as part of the review and invite stakeholders who wish to submit evidence to respond to these issues in writing and raise any other points which they consider relevant to the review. We will also contact some stakeholders to request meetings and/or more detailed information in due course.

Further information on the review, including information on confidentiality and the legal framework, is available on the OFT's website.<sup>4</sup>

### **Developments in the market for TV advertising**

We would like to understand the background to the TV advertising sector and the commercial dealings between broadcasters, sales houses, media buyers and advertisers. We are particularly interested in any market developments that have occurred since the 2003 merger, or are expected to occur in the future, in relation to:

- the length of contracts
- the timing of negotiations
- what exactly is negotiated in contracts between broadcasters and media buyers (e.g. the characteristics of umbrella deals, line by line deals, burst deals in terms of target audience, break position, time of day, coverage and frequency)
- the pattern of advertising spend on different sources of advertising (e.g. TV, radio, newspaper, internet)
- the pattern of advertising spend on different TV channels, and
- the pattern of advertising spend on different demographic groups on TV as a whole or on ITV alone.

If there have been changes in the above areas since 2003 (or there are likely to be changes in the future), we would like to understand the nature of, and rationale for, the changes (for example increased digital penetration, the greater number of available channels, changes in the demand for different types of audience, better information on viewer demographics, greater use of market research prior to product launches, or changes in regulation). Please supply any evidence which may support your views on these issues.

### **Market definition**

In order to inform the review of the CRR undertakings, we will explore an appropriate definition of the economic market affected by the CRR undertakings (the relevant market).<sup>5</sup> We note that at the time of the 2003 merger the CC

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<sup>4</sup> [http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/register-orders-undertakings/reviews/CRR-review](http://www.offt.gov.uk/advice_and_resources/resource_base/register-orders-undertakings/reviews/CRR-review)

<sup>5</sup> A relevant market is a competition law concept which provides a framework within which to conduct any competitive assessment. For further information see, 'Market Definition', OFT, December 2004 available on: [http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/ca98\\_guidelines/oft403.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/ca98_guidelines/oft403.pdf)

defined the relevant economic product and geographic market as 'television advertising in the UK'.<sup>6</sup> The CC considered a number of possible market definitions, namely a market for total media advertising, a market for television advertising and a market for ITV advertising. It concluded that there were significant differences between advertising on television and in other media and that TV advertising should therefore be considered distinct from other media. Advertising on ITV, however, was considered sufficiently substitutable with advertising on other channels to be included in the same relevant market.

We would like to understand whether the CC's conclusions on market definition from the 2003 merger inquiry are still appropriate. It would be helpful to receive views on whether there have been, or will be, any changes in the extent to which:

- TV advertising prices are constrained by the pricing of advertising on the internet or advertising on other media
- other channels are now more or less substitutable with ITV1
- advertisers regard different target demographics (e.g. women, housewives, adults, ABC1s) as substitutable for a particular campaign
- broadcasters can switch between supplying different demographic groups
- advertisers can switch between different regions in the UK
- advertisers buy advertising across the country
- the geographic and product market for TV advertising has changed, or will change, for any other reasons.

Please supply any evidence which may support your views on these issues.

### **Competition between broadcasters**

In the 2003 merger, the CC concluded that there was limited competition between ITV and other commercial channels in the supply of advertising airtime. In particular, the CC did not accept the argument that advertisers and media buyers could fully respond to a price increase by ITV by switching spending to other channels.

We will explore whether competition for the supply of advertising airtime between ITV and the other commercial channels has changed since the 2003 merger. For example, we will consider changes in competition between broadcasters, changes in ITV's market power, and changes in the buyer power of media buyers and advertisers. To do so, we would like to understand whether there have been, or will be, changes in the extent to which:

- ITV1, and ITV's other channels (i.e. ITV2, ITV3, ITV4, CITV and Men&Motors), are critical to meeting advertisers' objectives

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<sup>6</sup> Carlton Communications Plc and Granada Plc: A report on the proposed merger, October 2003 (paragraph 5.35).

- any single channel or portfolio of channels offers an equivalent service (in terms of meeting advertising objectives) to that of ITV1, or ITV as a whole
- there are any other limitations to pursuing an alternative strategy to advertising on ITV1, or on ITV as a whole
- broadcasters are able to bundle airtime across all or a selection of the channels dealt with by their sales house
- media buyers and/or advertisers are able to offset the negotiating strength of ITV by, for example threatening to shift advertising revenue away from ITV to other sources of TV advertising or to alternative sources of advertising
- the negotiating strength of media buyers/advertisers has changed for other reasons such as consolidation amongst media buyers or the bundling of airtime across sales house channels
- media buyers/advertisers have experienced difficulties accessing the target audience desired for their campaign
- broadcasters can offer different media buyers/advertisers discriminatory terms.

If there have been changes in the above areas since 2003, we would like to understand the reason behind these changes (for example, the increased digital penetration, the consolidation of media buyers, the increased fragmentation of TV viewing, or changes of broadcasters' efficiency at targeting certain demographics). Please supply any evidence which may support your views on these issues.

### **Barriers to entry/expansion by competing broadcasters**

The review will consider the extent to which other broadcasters can expand their supply of impacts<sup>7</sup> to increase competition with ITV, and the extent to which new broadcasters can enter the market for TV advertising in competition with ITV.

At the time of the 2003 merger, the CC noted that opportunities for launching new television channels had increased, and that viewers' demand for these newer channels was also growing.<sup>8</sup> It also noted that new broadcasters had taken considerable strides to attract viewers away from the older channels, although ITV was still the only commercial channel which regularly attracted very large audiences, and that, in an increasingly fragmented world, the importance of these large audiences to advertisers should not be understated.<sup>9</sup> We are interested in views and evidence on the extent to which broadcasters' ability to enter or expand have changed or are likely to change in the future.

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<sup>7</sup> An impact is an industry term for one viewing of an advertisement by a member of the target audience (i.e. the demographic group at which an advertisement is aimed), measured in thousands.

<sup>8</sup> Carlton Communications Plc and Granada Plc: A report on the proposed merger, October 2003 (paragraph 2.37).

<sup>9</sup> Carlton Communications Plc and Granada Plc: A report on the proposed merger, October 2003 (paragraph 2.46).

## The CRR remedy

We are also interested in how well the CRR undertakings work to address the competition concerns identified by the CC and would welcome stakeholders' views about:

- whether in practice the remedy adequately addresses the CC's concerns and if not, why not, and
- whether there has been compliance with the CRR undertakings.

We are also interested in the effects that the CRR undertakings may have had on the market in terms of the relationship between media buyers and broadcasters, the relationship between advertisers and media buyers, and broadcasters programme schedules. Particular questions on which we would welcome views are listed below under each of these headings.

Relationship between media buyers and broadcasters/sales houses:

- To what extent do contracts rely on the protection of the CRR undertakings?
- Have media buyers reduced their share of broadcast commitments with ITV to the full amount permitted by the Audience Ratchet Mechanism?
- Have contracts which fall outside of the CRR undertakings been developed? If so, how have these been varied?
- Have attempts to negotiate contracts outside of the CRR undertakings failed? If so, why?
- To what extent has the CRR undertakings affected contracts with broadcasters other than ITV?

Relationship between advertisers and media buyers:

- Are the protected terms provided for by the CRR undertakings a critical factor for advertisers when choosing a media buyer?
- Have advertisers which have changed media buyer been protected by the CRR undertakings?
- Have the CRR undertakings affected advertisers' incentives to switch media buyers?

Broadcasters:

- Have the CRR undertakings affected the programming which ITV or other broadcasters show?
- Have the CRR undertakings affected the incentives of ITV or other broadcasters to invest in new channels?

Finally, we would also welcome views on the most appropriate outcome of the review and, in particular, views on whether the undertakings should be retained,

varied, superseded, or removed given market developments and any changes, or likely changes, since the 2003 merger.

**Responding to this statement**

Responses to this statement are requested by 29 February 2008.

Please send your responses to:

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