

Consultation on changes proposed by ITV to the sale of its advertising time

Consultation on proposed changes
pursuant to the merger undertakings given
to the Secretary of State for Trade and
Industry in 2003 by Carlton
Communications plc and Granada plc

29 June 2022

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Summary

1. ITV plc (ITV) was created in 2003 as a result of the merger of Carlton Communications plc (Carlton) and Granada plc (Granada). Following an investigation into the merger by the Competition Commission (the CC), the Secretary of State for Trade and Industry permitted the merger to proceed subject to accepting undertakings from Carlton and Granada.
2. The undertakings put in place a number of restrictions on Carlton and Granada including obligations in relation to the sale of airtime for advertising. These obligations are referred to as contract rights renewal (CRR) obligations, as they give existing advertisers and media buyers the option to maintain certain contractual terms from before the merger took place in new contracts with ITV.^{1 2}
3. The CRR remedy requires ITV to obtain the CMA's consent before it changes its airtime sales systems in a way that materially alters how it sells commercial airtime.
4. ITV has now requested to change the time length factors that it uses for its advertisements,³ with the intention of harmonising these across the different ITV regions and using the same time length factors as those used on Channel 4 airtime advertisements. ITV considers that equalising these time length factors will make it easier for advertisers to buy airtime on a consistent national basis. At present, there are different time length factors across the different ITV regions, with these differences dating from before the Carlton and Granada merger in 2003. The change is explained in greater detail at paragraph 2.4 below.
5. The CMA agrees with ITV that the impact of this proposed change will depend on the nature of the advertisement particular advertisers and media buyers place with ITV, with scope for gains and losses across these.
6. Given that these time length factors have not changed since before the undertakings came into force, the CMA is also considering whether this

¹ A more detailed description of the undertakings is in paragraphs 1.7 to 1.11 below.

² The CC carried out a review of the CRR remedy in 2009 and 2010 given the changes television and advertising since the merger. Following its review, the CC retained the main CRR obligations, but updated them to address changes ITV had made to its programming, including +1 and further channels it offered, with the undertakings applying to ITV1 and the equivalent +1 channel.

³ These adjust the cost of different advertising slots of different duration around the standard slot of 30 seconds which has a time length factor of 1.0.

proposed change will affect the benefits to advertisers and media buyers of the CRR obligations in the undertakings.

7. The CMA is therefore consulting publicly on ITV's proposal to understand the views of all relevant stakeholders before reaching a decision on whether to consent to the proposed change. The CMA is seeking comments generally from all relevant stakeholders about whether it should accept these proposals, as well as to the following specific consultation questions set out at the end of this document.

1. Introduction and Background

- 1.1 On 14 November 2003, the Secretary of State for Trade and Industry announced that she had accepted undertakings from Carlton and Granada in relation to their proposed merger, which was then allowed to complete.
- 1.2 The merger of Carlton and Granada led to the formation of ITV. As a result of the merger, 11 of the 15 regional Channel 3 licensees came under the ownership of ITV. In October 2011, ITV acquired Channel, and in 2015 acquired UTV, leaving STV (holding two licences) as the other remaining regional licensee.
- 1.3 The undertakings were given by Carlton and Granada under Section 88(2) of the Fair Trading Act 1973 for the purpose of remedying or preventing the adverse effects on the public interest which were identified in the CC's report into the merger ([the merger report](#)).
- 1.4 The undertakings were designed to protect the interests of advertisers, through the CRR obligations, and other commercial broadcasters including the other regional channel three licensees at the time.⁴

CRR obligations in the undertakings

- 1.5 The CRR obligations for advertisers and media buyers in the undertakings give them certain rights to renew their pre-merger 2003 contracts with Carlton and Granada with no increase in the share of their spend that they commit to ITV1 and no reduction in the discounts they receive. These contracts are known as 'protected contracts' in the undertakings.
- 1.6 The undertakings ensure that the share of revenue committed by advertisers and/or media buyers on television advertising to Carlton/Granada need not increase above pre-merger levels.
- 1.7 Advertisers and media buyers can negotiate a change to this contract or indeed negotiate an entirely new contract. If advertisers and media buyers do negotiate a change or a new contract, Carlton and Granada must offer them fair and reasonable terms and this becomes the new 'protected contract'.

⁴ In September 2010, the undertakings were varied, following the CC's review of the contract rights renewal obligations in the undertakings.⁴ This variation took account of changes in television broadcasting by ITV and others since the undertakings came into force, including the then new additional ITV channels HD and +1 channel options.

The channel programme compliance and reporting requirements in the undertakings (but not the contract rights renewal obligations) were reviewed and [varied by the CMA in November 2014](#).

- 1.8 The undertakings also link advertising terms to audience performance, and give advertisers and media buyers the right to automatically reduce the proportion of their spend they give to ITV1 if the ITV1 audiences shrink.
- 1.9 Advertisers and media buyers also have the right to bring contractual disputes to the contract rights renewal adjudicator (the CRR Adjudicator). The role of the CRR Adjudicator is to ensure that Carlton and Granada respond fairly when the demands of advertisers or buyers change from time to time. The CRR Adjudicator acts as an expert to determine the outcome of disputes between the broadcaster and its advertising customers.
- 1.10 In addition, the CRR obligations also give advertisers and media buyers a number of additional rights to cover certain situations:
- (a) the rights of an advertiser to move between media buyers;
 - (b) how advertisers who previously held contracts with ITV should be treated;
 - (c) how new advertisers should be treated; and
 - (d) what happens when advertisers or media buyers merge.

Consent for material changes

- 1.11 The Undertakings include a mechanism by which ITV can seek to make changes to its sales of advertising airtime, with it needing to seek the consent of the OFT (now the CMA) for any material changes:

‘Carlton and Granada agree that...they shall not change their Current Airtime Sales System without the consent of the OFT in a way that materially alters the basis on and the way in which they offer Commercial Airtime for sale’⁵

- 1.12 Consequently, the CMA is now consulting on the change proposed by ITV concerning time length factors and whether it should provide its consent. This process does not constitute a formal review of the Undertakings.

⁵ Paragraph 10 (h) of the Undertakings.

2. ITV's request

- 2.1 ITV has proposed to make a change to its television advertising sales process. Specifically, it proposes to move to a single set of time length factors which apply across the ITV main channel licence regions, which are ITV1, ITV1HD, and ITV1+1. ITV considers that this change would simplify the process of buying advertising across all the ITV main channel licence regions for its advertising customers.
- 2.2 ITV highlighted that under the terms of the undertakings it cannot, for example, offer a network ITV main channel advertising spot or a single campaign combining certain different ITV regions because of the different time length factors that apply across the two licence regions that were previously separately held as Carlton and Granada. Instead, ITV noted that, to achieve coverage across the whole UK or covering the two London regions, customers have to buy multiple spots across the regions which it considers to involve considerable effort both for the customer and for ITV. It also noted that in practice it is not possible on all occasions to purchase a common spot across all regions at the same time. Under its current proposal, ITV highlighted that purchasing a network spot would involve one buying process to cover the whole UK or to purchase a slot covering both London regions.
- 2.3 ITV stated that the proposal would not involve any change to the regionalisation of ITV advertising sales and that customers will continue to be able to purchase airtime on a regional and macro-regional basis.

Time length factors

- 2.4 In considering an appropriate single set of time length factors to adopt, ITV stated that it has had regard to the following principles:
- (a) that ITV should not gain financially from the change through an increased price or commercial impacts;
 - (b) the approach should allow for ease of comparison with other advertising sales providers; and
 - (c) the approach should be, as far as possible, fair as between customers.
- 2.5 ITV has proposed to adopt the same time length factors used for advertising on Channel 4. The changes that this would impose on a regional basis are set out in the table below:

Table 2.1: Current and proposed time length factors across ITV regions

Advertising spot duration (seconds)	Current time length factors by region		Proposed consistent time length factors
	Carlton / Central / Wales & West / West Country / STV regions	Granada / LWT / Meridian / Anglia / Border / UTV / Yorkshire / Tyne Tees	
5	0.400	0.350	0.300
10	0.500	0.600	0.500
20	0.830	0.800	0.850
30	1.000	1.000	1.000
40	1.333	1.333	1.333
50	1.660	1.667	1.667
60	2.000	2.000	2.000
70	2.333	2.275	2.333

- 2.7 ITV highlighted that the effect of these changes will depend on the length of advertisements that particular customers use, and explained that many of its customers use a variety of time lengths for their advertisements. ITV therefore expects customers to experience both marginal gains and losses across their portfolio of advertising, for example noting a tendency to use shorter (sub 30 second) advertisements together with a longer 30 second plus advertisement.
- 2.8 ITV explained that its proposal does not involve changes to the regional nature of ITV advertising and customers will still be able to purchase airtime on a regional and macro-regional basis.

3. Assessment

- 3.1 ITV requires the consent of the CMA to change its time length factors in the way it proposes. The CMA is seeking the views of all stakeholders on the proposed changes to the time length factors set out above.
- 3.2 In reaching a provisional decision on the proposed changes, the CMA will carry out its own analysis of the impact of these proposed changes, as well as seeking the views of Ofcom, the CRR Adjudicator, and all stakeholders that may be affected by the proposed change through a public consultation. The CMA will give consideration to the following factors, among other evidence:
 - (a) whether, how and by how much the proposed change will affect the balance of negotiating power between ITV1 and the advertisers and media buyers that place advertisements on the channel;
 - (b) the impact of the changes collectively and individually across ITV1 advertisers and media buying groups; and
 - (c) whether the changes will affect the benefits to advertisers and media buyers from the CRR obligations in the undertakings.
- 3.3 Following the public consultation, the CMA will analyse all responses and evidence submitted in support of them and provisionally determine whether it should give consent to ITV making the proposed changes. The CMA will consult publicly on this provisional decision, before considering all responses to this consultation and then reaching a final decision.

4. Consultation and questions for stakeholders

Consultation

- 4.1 The CMA is now seeking the views of stakeholders on the impact of the changes to the time length factors proposed by ITV and set out in this document.
- 4.2 The CMA is keen to receive responses to the questions set out below from a wide range of stakeholders involved in or with an understanding of the advertising sector, and specifically those that have or continue to use advertising on ITV1 as part of their marketing. This includes advertisers, media buyers and agencies, and any other businesses with knowledge of this sector.
- 4.3 The CMA will use the responses to this consultation to help inform its view on whether or not to consent to the changes that ITV has proposed.

Questions for stakeholders

- 4.4 The CMA is keen to understand the views of all relevant stakeholders to the change proposed by ITV, and specifically to the following questions:

Question one:

Do you consider that there are advertisers, or groups/types of advertiser that will gain from these proposed changes, if so, please explain.

Question two:

Do you consider that there are advertisers, or groups/types of advertiser that will lose out from these proposed changes, if so, please explain.

Question three:

Do you consider that these changes will affect your ability to negotiate a contractual outcome with ITV that you consider to be fair and reasonable?

Question four:

Do you consider that these proposals, by reducing one part of the difference between Carlton and Granada advertising areas, will affect the benefits of the contract right renewal undertakings for the advertising industry. If so, please explain whether you consider this proposed change should be permitted.

Question five:

Are there other considerations that the CMA should be aware of in reaching a decision on this issue.

How to respond to this consultation

- 4.5 The CMA published this consultation on 29 June 2022, and all responses to this consultation should be sent to the CMA by email to the following address:
- remediesmonitoringteam@cma.gov.uk
- 4.6 Please use this [Microsoft Word document](#) as a template for responses and attach it to your email response. Emails should be sent with the title '*ITV advertising proposal*'. If you have evidence to support the statements and views provided in your response, please attach this to your email.
- 4.7 The deadline for the receipt of responses in the CMA is **5pm on 29 July 2022**.