

Notice of decision to release certain undertakings given by Carlton Communications Plc and Granada plc to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973

Introduction

1. In October 2003, the Competition Commission (CC)¹ published a report (the 2003 report) on the merger of Carlton Communications Plc (Carlton) and Granada plc (Granada). The CC, in its advice to the then Secretary of State for Trade and Industry, found that the merger was expected to operate against the public interest in relation to both competition for the sale of advertising airtime and the other ITV regional licensees.
2. The CC concluded that the merger should only be allowed to proceed subject to certain conditions, including that remedies be put in place to protect (1) the interests of advertisers and other commercial broadcasters (described as the contract rights renewal (CRR) remedy), and (2) the interests of the other regional Channel 3 licensees.
3. Undertakings were given by Carlton and Granada under section 88(2) of the Fair Trading Act 1973 (FTA) for the purpose of remedying or preventing the adverse effects on the public interest specified in the 2003 report (the Undertakings).
4. The Undertakings were effective from 14 October 2003 and the merger of Carlton and Granada to form ITV plc (ITV) became effective on 2 February 2004.
5. The sections of the Undertakings relating to the CRR remedy, which governs the way in which airtime on ITV1 is sold to advertisers, were varied in September 2010 following a review by the CC.²
6. The CRR remedy has not been reviewed in this current case.

¹ On 1 April 2014 the Competition and Markets Authority (CMA) took over the functions of the CC and the competition and certain consumer functions of the Office of Fair Trading (OFT).

² <http://webarchive.nationalarchives.gov.uk/20111108202701/http://competition-commission.org.uk/inquiries/ref2009/itv/index.htm>.

ITV's request for certain parts of the Undertakings to be released

7. In February 2014, ITV, supported by the remaining two other Channel 3 licensees³ (STV⁴ and UTV Limited (UTV)), requested that two provisions in paragraph 2 of the Undertakings be reviewed. Paragraph 2 of the Undertakings concerns the networking arrangements between the regional Channel 3 licensees.
8. The networking arrangements govern how licensees acquire network programmes for broadcast on each of their individual services and were designed to enable regional Channel 3 services, taken as a whole, to operate as a nationwide system of programming to the ITV network whilst ensuring that they each met their regional commitments.
9. In 2010, Ofcom reviewed the networking arrangements and, as a result, encouraged the licensees to consider the current networking arrangements and how they would develop arrangements which better reflected the current broadcasting landscape. In light of Ofcom's recommendations,⁵ the Channel 3 licensees engaged in a review of the arrangements and the licensing agreements underpinning the arrangements. New terms were agreed in March 2012 and approved by Ofcom in July 2012.
10. The new networking arrangements involve a move from a system where the regional Channel 3 licensees run the network together to a system where ITV takes the lead role for the network with STV and UTV acting as affiliates.
11. ITV considered that there had been a change of circumstances, in particular the new networking arrangements, such that parts of paragraph 2 of the Undertakings were no longer appropriate.

Change of circumstances

12. Section 88(4) of the FTA provides that the CMA has a duty to consider whether, by reason of any change of circumstances, existing undertakings are no longer appropriate and either the relevant parties can be released from the undertakings or the undertakings need to be varied or superseded.

³ See paragraphs 19 and 20.

⁴ The two Scottish licences are held by STV Central Limited and STV North Limited, both subsidiaries of STV Group plc.

⁵ Ofcom, [Review of ITV Networking Arrangements: Cost sharing between licensees](#), 16 December 2014.

13. Under the Enterprise Act 2002 (the Act), as amended, the CMA has now assumed the power to decide that the undertakings be superseded, varied or released under section 88 of the FTA.⁶
14. The power of the CMA under the FTA to decide that the undertakings be superseded, varied or released is exercisable in the same circumstances and under the same terms and conditions as the power of the Secretary of State under the FTA. Accordingly, the framework for the review of the Undertakings is governed by the provisions of the FTA relating to variation and release of undertakings.
15. ITV sent a request for a review of the Undertakings to the OFT, which was the relevant body prior to 1 April 2014. The OFT issued an invitation to comment following which the CMA (after it had assumed the OFT's powers in this regard) decided to undertake a review of paragraphs 2(c) and 2(f) of the Undertakings. The CMA appointed a group of CMA panel members in accordance with Schedule 4 of the Enterprise and Regulatory Reform Act 2013 to conduct the review.
16. The CMA published its decision to undertake a review, together with relevant information, on its website in September 2014. The CMA published a notice of intention to release certain undertakings given by Carlton Communications Plc and Granada plc to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973 on 21 October 2014 for public consultation (the Notice of intention to release certain undertakings). The Notice of intention to release certain undertakings also contained its provisional decision on change of circumstances. The CMA received no responses to its consultation.

Paragraph 2(c) (programme compliance)

17. Paragraph 2(c) of the Undertakings requires that ITV should 'not make the commissioning or broadcasting of a programme conditional on using Carlton and/or Granada for Programme Compliance for that programme'.
18. 'Programme Compliance' means procedures for the verification of the rights underlying particular programming or the availability of cash-flow finance or for production monitoring or for ensuring that a programme complies with the relevant statutory and regulatory provisions, for example the regulator's programme code. In particular, it is the process whereby broadcasters ensure

⁶ The relevant provisions are found in paragraph 16 of Schedule 24 of the Act, as amended by the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014/892 Schedule 1(1), paragraph 18(4) (1 April 2014). The Undertakings were specified for these purposes in the Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 (SI 2004/2181).

that their content meets the terms of the Ofcom Broadcasting Code before being broadcast. Programme Compliance is the responsibility of the broadcaster and is paid for by the broadcaster.

19. As a result of the merger of Carlton and Granada in 2004, 11 of the 15 regional Channel 3 licensees came under the ownership of ITV. Following Ofcom's 2010 review and recommendations, new networking arrangements were agreed between the regional Channel 3 licensees, whereby they collaborate on programme compliance matters, particularly in the form of quarterly compliance meetings attended by all Channel 3 licensees. Ofcom assessed the compliance arrangements as part of its approval of the new networking arrangements and concluded that they satisfied the competition test set out in Schedule 11 of the Communications Act.
20. In October 2011, ITV acquired Channel, leaving STV (which holds two licences) and UTV as the two other remaining regional licensees. Neither STV nor UTV seek to provide compliance services for other independent productions, and both are satisfied that ITV should be the only provider. STV has its own compliance department that it uses to provide compliance services for its own productions.
21. ITV submitted that, since it was now the only party wishing to provide programme compliance for independent productions, and given ITV's confirmation that STV may continue to provide programme compliance for its own products, paragraph 2(c) was no longer required and should be deleted from the Undertakings.
22. Ofcom told us that, in the context of its review of the network arrangements in 2012, (1) ITV, STV and UTV had agreed on collaborative arrangements for compliance, and that STV and UTV had confirmed that they were content for ITV to be the only provider of compliance services in respect of both independent and network productions (other than STV productions); (2) ITV had confirmed it was happy to continue to accord the compliance role to STV for its own productions; and (3) Ofcom had assessed the compliance arrangements as part of its approval of the new networking arrangements and concluded that they satisfied the competition test set out in Schedule 11 of the Communications Act. Ofcom confirmed that it saw no need to retain this undertaking.
23. We also spoke to both STV and UTV who confirmed that they were aware of and approved of the release of paragraph 2(c) of the Undertakings.
24. No responses were received in response to the Notice of intention to release certain undertakings of 21 October 2014.

Decision in relation to paragraph 2(c) of the Undertakings

25. We considered that there had been a change of circumstances in that (1) the networking arrangements had been updated following Ofcom's 2010 review and (2) ITV was the only party wishing to provide programme compliance for independent productions, with STV using its own compliance department for its own productions.
26. We decided that paragraph (2(c)) in the Undertakings requiring ITV not to make commissioning or broadcasting of a programme conditional on using ITV for programme compliance was no longer necessary.

Paragraph 2(f) (monthly reporting)

27. Paragraph 2(f) requires ITV to 'report to the Regulator monthly, in a form specified by the Regulator, the number and value of Network Hours by genre and supplier that they have purchased'.
28. ITV told us that under the new networking arrangements (see paragraphs 8 and 9), commissioning is undertaken by a wholly-owned subsidiary of ITV, rather than by a company in which the other licensees are minority shareholders (as was the case previously). ITV then provides the programmes and schedule to the other licensees. ITV reports to Ofcom on behalf of itself and the other licensees in respect of licence quotas, and all licensees meet formally once a quarter to ensure that progress can be effectively monitored and discussed. Ofcom retains its powers under the Communications Act 2003 to request information from the licensees.
29. ITV submitted that, in view of this change of circumstances, it was no longer appropriate for ITV to be required to provide the detailed monthly information specified by paragraph 2(f). Accordingly, ITV submitted that the requirement should be deleted from the Undertakings.
30. Ofcom told us that the original context for the monthly reports was a concern that the merged ITV might use its commercial influence to require better terms from independent producers than it obtained from in-house producers. The monthly reports were intended to provide transparency about the number and value of both independent and in-house productions, and as such, were accepted by Ofcom in lieu of the reports that could have been otherwise provided under section 285(3)(f) of the Communications Act 2003.
31. Ofcom told us that it no longer believed the reports were required as the new networking arrangements provided sufficient protection and transparency in the market. Further, it was satisfied that the annual reports it receives, coupled with its information-gathering powers under section 285(3)(f) of the

Communications Act 2003, would be sufficient for Ofcom to deal with any circumstances that may arise.

32. We also spoke to both STV and UTV who confirmed that they were aware of and approved of the release of paragraph 2(f) of the Undertakings.
33. No responses were received in response to the Notice of intention to release certain undertakings of 21 October 2014.

Decision in relation to paragraph 2(f) of the Undertakings

34. We considered that there had been a change of circumstances in that (1) Ofcom had gained new information-gathering powers under the Communications Act 2003 (which had not yet come into force at the time of the 2003 report) to request information from the licensees and (2) the networking arrangements had been updated following Ofcom's 2010 review.
35. We decided that paragraph (2(f)) in the Undertakings requiring ITV to provide detailed monthly information to Ofcom was no longer necessary.

Our decision

36. We considered that there had been a change of circumstances and that paragraphs 2(c) and 2(f) of the Undertakings were no longer necessary.
37. In reaching our decision, we have considered the advice of Ofcom and the submission from ITV as well as the views of both STV and UTV.⁷
38. One other party, ISBA (a trade association representing the interests of UK advertisers, formerly the Incorporated Society of British Advertisers), agreed that there had been changes of circumstances which meant that these provisions in paragraph 2 of the Undertakings were no longer necessary.
39. The CMA consulted on its Notice of intention to release certain undertakings from 21 October 2014 to 11 November 2014.
40. We did not receive any evidence or submissions disagreeing with either ITV's submission or the CMA's intention to release certain undertakings.
41. We therefore release Carlton and Granada from their obligations under paragraphs 2(c) and 2(f) of the Undertakings.

⁷ In addition to issuing two public invitations to comment during the course of this review, the CMA directly contacted Ofcom, STV, UTV, ISBA and Pact (a trade association representing the interests of UK independent television, film, digital, children's and animation media companies).

Notice of decision to release certain of the undertakings given by Carlton Communications plc and Granada plc to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973

42. The CMA now gives notice of its decision to release the parties from the obligations in paragraph 2(c) and 2(f) of the Undertakings for the reasons set out above. The other obligations of the Undertakings will remain in force. For ease of reference, at Annex A we have published a text showing the effect of the changes to the Undertakings.

(signed) JOHN WOTTON
Group Chairman
27 November 2014

PROPOSED AGREED MERGER OF CARLTON COMMUNICATIONS PLC AND GRANADA PLC

UNDERTAKINGS GIVEN BY CARLTON COMMUNICATIONS PLC AND GRANADA PLC TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY PURSUANT TO SECTION 88(2) OF THE FAIR TRADING ACT 1973

WHEREAS:

- (a) On 16 October 2002, Carlton Communications plc and Granada plc announced a proposed agreed merger;
- (b) On 11 March 2003 the Secretary of State for Trade and Industry referred the proposed merger to the Competition Commission under sections 64, 69(2) and 75 of the Fair Trading Act 1973 (the 'Act');
- (c) The report of the Competition Commission (the 'Report') was presented to Parliament in October (Cm 5952) and sets out such conclusions as are mentioned in section 73(1) of the Act;
- (d) Pursuant to a request by the Secretary of State, the OFT has consulted with Carlton and Granada with a view to obtaining from them undertakings to take action in accordance with section 88(1) of the Act;

NOW THEREFORE Carlton and Granada hereby give to the Secretary of State the following undertakings (the 'Undertakings') pursuant to section 88(2) of the Act for the purpose of remedying or preventing the adverse effects on the public interest specified in the Report.

Effective date of these Undertakings

- 1. These Undertakings shall take effect from the date that, having been signed by Carlton and Granada, they are accepted and dated by the Secretary of State.

Other Licensees

- 2. Carlton and Granada shall, directly or indirectly,
 - (a) convene the Network Council at least twice a year to: (i) consult the Other Licensees; and (ii) ensure that the Other Licensees are properly and fully informed of the Channel 3 Network's broadcasting and programme strategy, as presently referred to in Clause 4 of the Network Supply Contract. They shall circulate in good time the agenda and supporting

papers for such meetings, and provide minutes of such meetings to the Regulator in a form approved by it from time to time;

- (b) ensure that any Other Licensee's contribution, net of any discount, rebate or abatement currently provided in the Network Supply Contract, to the Network Programme Budget in any year does not increase from such net contribution to the 2003 Network Programme Budget (excluding the costs occasioned by Exceptional Events and excluding the discount relating to the Premier League) by more than the cumulative rate of inflation since December 2002, measured by reference to the Retail Prices Index, save to the extent necessary to meet a fair and reasonable share of the increased costs occasioned by Exceptional Events which is, at the date hereof, deemed to be the Agreed Share as defined in the Network Supply Contract;
 - ~~(c) not make the commissioning or broadcasting of a programme conditional on using Carlton and/or Granada for Programme Compliance for that programme [Released by decision of the CMA of 27 November 2014];~~
 - (d) at no extra cost provide Grampian TV, Scottish TV and Ulster TV (and any future Licensee for the respective Regional Channel 3 Services authorised by such companies' Licences at the date of entry into force of these Undertakings) with a Clean Broadcast Feed from the Channel 3 Network to the extent and on the same basis as it is provided at the date hereof (save as amended from time to time by mutual agreement);
 - (e) offer the Licensee for Ulster (currently Ulster TV) equivalent terms to those made available to Scottish TV following devolution in Scotland, if its local programming obligations set out in its Licence change as a result of devolution in Northern Ireland;
 - ~~(f) report to the Regulator monthly, in a form specified by the Regulator, the number and value of Network Hours by genre and supplier that they have purchased [Released by decision of the CMA of 27 November 2014]; and~~
 - (g) use their best endeavours to procure any changes to the Networking Arrangements required to enable them to comply with the Undertakings.
3. Carlton and/or Granada shall offer to each Other Licensee, for the duration of its Licence from time to time, terms similar to those in effect on 1 November 2003 (as amended from time to time by mutual agreement) between it and Carlton and/or Granada for the sale of Commercial Airtime and programme sponsorship.

4. Carlton and/or Granada shall offer to any future Licensee for a Regional Channel 3 Service currently supplied by any Other Licensee, for the duration of its Licence from time to time, the terms last agreed between that Other Licensee and Carlton and/or Granada for the sale of Commercial Airtime and programme sponsorship (which may be amended from time to time by mutual agreement).

The sale of Commercial Airtime

5. The conclusion of any contract for the sale of Commercial Airtime with Carlton and/or Granada is without prejudice to Clauses 12-18 below.
6. Carlton and Granada shall offer to each person that holds or has held a Protected Contract the option of contracting for the purchase of Commercial Airtime on the same terms (including duration) as those contained in such Protected Contract. Carlton and/or Granada shall make this offer to each such person at least two months before any contract with that person for the supply of Commercial Airtime expires. Each such offer shall remain open until accepted or a new agreement for the sale of Commercial Airtime with Carlton and/or Granada enters into force.
7. If a Protected Contract contains any Share of Broadcast provisions, such shares will be revised annually in direct proportion to changes in the Regional Channel 3 Services' share of Commercial Impacts (including Commercial Impacts generated on cable or satellite transmissions of the Regional Channel 3 Services), calculated against the base level of the average share of Commercial Impacts achieved by the Regional Channel 3 Services (including those generated on cable or satellite transmissions) in 2002, or the relevant Base Year defined in Annex 1. For these purposes the calculation of the Regional Channel 3 Services' share of Commercial Impacts shall include Commercial Impacts generated on any digital transmission of one or more Regional Channel 3 Services (including a transmission that covers a part of one or more Regional Channel 3 Services) simulcast in high definition or time-delayed by one hour, on condition that the services simulcast in high definition or time-delayed by one hour are exact replicas of those Regional Channel 3 Services except for:
 - any difference in programmes and advertisements transmitted at the time of such programmes caused by time-delay constraints in transmission; or
 - any difference in regional news programmes and advertisements transmitted at the time of such programmes caused by differences in regional transmission.

Furthermore, Commercial Impacts generated on any digital transmission of a version of one or more Regional Channel 3 Services simulcast in high definition or time-delayed by one hour shall only be recorded as Commercial Impacts generated in a particular Region if:

- the Commercial Impacts were purchased for that same Region on the Regional Channel 3 Service and the advertisement is an exact replica of the advertisement transmitted on the Regional Channel 3 Service in that Region; or
 - the Commercial Impacts were purchased against a narrower geographic Region on one or more Regional Channel 3 Services than on the digitally transmitted versions of those Services simulcast in high definition or time-delayed by one hour and the advertisement is an exact replica of the advertisement transmitted on the Regional Channel 3 Service in that Region.
8. Such revised shares shall not at any time exceed the Initial Share of Broadcast Commitment (as defined in Annex 1) specified in the relevant Protected Contract.
 9. The revised Share of Broadcast shall be weighted by the mix of demographic audience, regions and specific time periods contracted for. Annex 1 states how this shall be calculated.
 10. Carlton and Granada agree that:
 - (a) they must offer Commercial Airtime on fair and reasonable terms to any person, including any person seeking to vary a contract (whether a Protected Contract or not) for the sale of Commercial Airtime. Any Protected Contract existing on 1 November 2003 (or as modified in relation to any Share of Broadcast provision pursuant to Clause 7) is presumed to be fair and reasonable;
 - (b) where an Advertiser under an Umbrella Agreement switches to a new Media Buyer, that Media Buyer may apply the terms of its Protected Contract to the purchase of Commercial Airtime on behalf of that Advertiser, where the terms of the Protected Contract so provide, or otherwise with the consent of Carlton and/or Granada as the case may be. They may withhold such consent only:
 - (i) to the extent necessary to avoid Overtrading to a material extent;
 - (ii) to the extent necessary to avoid materially increasing existing Overtrading;

- (iii) to the extent that such switching would put Carlton and/or Granada as the case may be in breach of pre-existing contractual arrangements relating to the use of particular advertising slots; or
- (iv) if such switching would result in a material reduction of the Advertiser's Share of Broadcast commitment;

Should Carlton and/or Granada withhold consent in the circumstances detailed in Clause 10(b), they shall nevertheless offer fair and reasonable terms to the new Media Buyer with the aim of accommodating such Advertiser and shall offer for such terms to become part of the new Media Buyer's Protected Contract.

- (c) where an Advertiser under a Line-by-Line Agreement switches between Media Buyers, Carlton and/or Granada shall offer terms for that Advertiser to the new Media Buyer no less favourable than those that the Advertiser enjoyed with its previous Media Buyer;
- (d) a person, who has not done so since 31 December 2000, may purchase Commercial Airtime by agreement with a Media Buyer and benefit from such Media Buyer's Protected Contract with Carlton and/or Granada, subject to Carlton's and/or Granada's consent which they may only withhold:
 - (i) to the extent necessary to avoid Overtrading to a material extent;
 - (ii) to the extent necessary to avoid materially increasing existing Overtrading; or
 - (iii) to the extent that the proposed agreement would put Carlton and/or Granada in breach of pre-existing contractual arrangements relating to the use of particular advertising slots;
- (e) a person that holds or has held a Protected Contract may agree with Carlton and/or Granada that a new or replacement contract, or any variation to its Protected Contract, becomes its Protected Contract. Carlton and/or Granada shall not unreasonably withhold or delay their agreement;
- (f) Advertisers, which purchase Commercial Airtime under Line-by-Line Agreements, that cease to be distinct may:
 - (i) apply the terms for the supply of Commercial Airtime enjoyed by the larger or largest of those Advertisers with Carlton and/or Granada (calculated by reference to spend on Commercial Airtime), although

Carlton and/or Granada may decline to provide Commercial Airtime on that basis:

- (aa) to the extent necessary to avoid Overtrading to a material extent;
 - (bb) to the extent necessary to avoid materially increasing existing Overtrading; or
 - (cc) to the extent that to do so would put Carlton and/or Granada in breach of pre-existing contractual arrangements relating to the use of particular advertising slots;
- (ii) apply the weighted average (calculated by annual spend on Commercial Airtime) of those Advertisers' terms contained in their Protected Contracts, or
 - (iii) exercise their rights under Clauses 5 to 10 for each Protected Contract separately;
- (g) Media Buyers that cease to be distinct may:
- (i) apply the weighted average (calculated by annual spend on Commercial Airtime) of the terms of their Protected Contracts; or
 - (ii) exercise their rights under Clauses 5 to 10 for each Protected Contract separately; and
- (h) 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.

11. The Undertakings in Clauses 5 to 10 inclusive only apply to Commercial Airtime sales in relation to the Regional Channel 3 Services provided by Licensees.

Adjudication

12. Carlton and Granada agree to comply with and fulfil any obligations placed upon them under the CRRS Scheme and the CRRS Rules.
13. Any decision of the Adjudicator shall bind Carlton and/or Granada as the case may be. Notwithstanding any conflicting provision contained in a contract with Carlton and/or Granada, they shall offer such terms as are required to comply with the Adjudicator's decision.

14. Carlton and Granada shall at all times expressly maintain the offer (whether or not such offer has previously been rejected) to insert the following clause into all contracts with Media Buyers and Advertisers for the sale of Commercial Airtime:

‘In the event of any inconsistency between this paragraph and any other provision [*in these Terms and Conditions/of this Agreement*], the provisions of this clause shall prevail.

As regards any dispute between the parties arising out of the interpretation or exercise of the rights given to or obligations upon Advertisers, Media Buyers, Carlton and Granada in relation to contracts for the sale of Commercial Airtime pursuant to the undertakings given by Carlton Communications Plc and Granada Plc to the Secretary of State for Trade and Industry dated [*COMPLETE*] 2003 (the “Undertakings”), including any dispute relating to the interpretation, termination or enforcement of such contracts to the extent referable to such Undertakings, the interpretation of any provision of the Contracts Rights Renewal Adjudication Rules, the Contracts Rights Renewal Adjudication Scheme, or the Adjudicator’s jurisdiction to determine the dispute, [*name of Advertiser or Media Buyer*] may refer the dispute to the Contracts Rights Renewal Adjudicator for determination in accordance with the Contracts Rights Renewal Adjudication Scheme and Contracts Rights Renewal Adjudication Rules annexed to the Undertakings and as amended from time to time.’

15. If an Advertiser or Media Buyer accepts this offer and accordingly to be bound by the CRRA Scheme and CRRA Rules, it may refer disputes referred to in Clause 14 to the Adjudicator.
16. Carlton and/or Granada shall offer to persons not holding a contract with them for the sale of Commercial Airtime, for the following disputes to be referred to the Adjudicator for determination in accordance with the CRRA Scheme and CRRA Rules:
- (a) if a person considers that Carlton and/or Granada have not complied with their obligations under Clauses 10(a) and 10(d);
 - (b) if an Advertiser considers that Carlton and/or Granada have not complied with their obligations under Clause 10(b) and 10(c); and
 - (c) if an Other Licensee considers that Carlton and/or Granada have not complied with their obligations under Clause 3.

17. If a person, Advertiser or Other Licensee accepts this offer and to be bound by the CRRA Scheme and CRRA Rules, it may refer the dispute to the Adjudicator.
18. Carlton and Granada consent to the Regulator providing the Adjudicator with any documents and information received from them relevant to the operation of the CRRA Scheme and CRRA Rules.

Compliance

19. Carlton and Granada shall provide to the OFT or the Regulator such documents and/or information as they may from time to time require for the purposes of ascertaining whether Carlton and Granada have complied with these Undertakings.
20. Carlton and Granada shall deliver a report to the OFT and the Regulator annually, on, or if not a business day on the next business day following, the anniversary of these Undertakings coming into force. It shall include a detailed and accurate account of:
 - (a) steps taken during the preceding year to ensure compliance with the Undertakings;
 - (b) instances where a breach or potential breach of the Undertakings has been identified;
 - (c) how the report was compiled.
21. Carlton and Granada shall comply promptly with such written directions as the OFT may from time to time give:
 - (a) 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; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these Undertakings to do or to refrain from doing.

Transitional provision

22. In relation to any Protected Contract that expires prior to 1 February 2004, Carlton and Granada shall be regarded as having complied with the obligation to make an offer as required in Clause 6 if they make that offer as soon as reasonably practicable following the effective date of these Undertakings.

Interpretation

23. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
24. Any word or expression used in these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as it has in the Fair Trading Act 1973 or the Enterprise Act 2002, as the case may be.
25. Further, in these Undertakings:

‘Advertiser’ means a purchaser of Commercial Airtime for the purpose of broadcasting advertisements;

‘Adjudicator’ means the Adjudicator established under these Undertakings;

‘Carlton’ means Carlton Communications plc and:

- (a) any person who directly or indirectly controls Carlton Communications plc from time to time; and
- (b) any person directly or indirectly controlled by Carlton Communications plc from time to time; and
- (c) any person that from time to time is directly or indirectly controlled by any person falling within paragraph (a) above;

where such person is a Licensee or carries on any activity that involves or is related to or connected with the broadcast or sale of Commercial Airtime;

‘Channel 3 Network’ means the nationwide system of television broadcasting services to be provided by Licensees under the Networking Arrangements;

‘Clean Broadcast Feed’ means the provision of a broadcast transmission feed of the Channel 3 Network schedule of all programmes including end credits but free from all end credit promotions and end credit announcements, commercials, other promotions, interstitial material and continuity announcements not relevant to the regions served;

‘Commercial Airtime’ means the television transmission time that a television channel may sell to third parties to show advertisements in relation to the Regional Channel 3 Services provided by Licensees;

‘Commercial Impact’ means the viewing by one member of the target audience of an advertisement (including an interactive advertisement), as currently measured by BARB (the Broadcasters’ Audience Research Board);

‘CRRA Rules’ means the rules set out in Annex 2 as amended from time to time;

‘CRRA Scheme’ means the scheme set out in Annex 3 as amended from time to time;

‘control’ shall be construed in accordance with section 65 of the Act, and **‘controlled’**; and **‘controlling’** shall be construed accordingly;

‘Current Airtime Sales System’ means the features and processes currently used by Carlton and Granada in relation to the sale of Commercial Airtime. This includes: the use of SAP, the sale of Commercial Impacts in all regions by all demographic audiences, specific time periods, time length factors and day part definitions as currently sold by Carlton and Granada, and the current limited sale of 'specials' outside contracts for the sale of Commercial Airtime between Carlton or Granada and Advertisers and Media Buyers;

‘Exceptional Events’ means UK parliamentary elections, international conflicts or major international sporting events (namely the Olympics, European Athletics Championships, Football World Cup, European Football Championships, Cricket World Cup, Rugby World Cup and Commonwealth Games);

‘Grampian TV’ means Grampian Television Limited;

‘Granada’ means Granada plc and:

- (a) any person who directly or indirectly controls Granada plc from time to time; and
- (b) any person directly or indirectly controlled by Granada plc from time to time; and
- (c) any person that from time to time is directly or indirectly controlled by any person falling within paragraph (a) above;

where such person is a Licensee or carries on any activity that involves or is related to or connected with the broadcast or sale of Commercial Airtime;

‘ITV Network’ means ITV Network Limited or any successor body which is responsible for the provision of the Networking Arrangements;

‘Licence’ means a licence granted by the Regulator to provide a Regional Channel 3 Service;

‘Licensee’ means a person holding a Licence;

'Line-by-Line Agreement' means a type of agreement between a Media Buyer and a particular channel or sales house where the agreement specifies the specific Share of Broadcast commitment and the discount level received by some or all of the Advertisers on whose behalf the Media Buyer is contracting;

'Media Buyer' means a purchaser of Commercial Airtime on behalf of an Advertiser;

'Network Council' means the council of ITV Network as constituted under the ITV Network Memorandum and Articles of Association, or any successor body carrying out the same, or similar, functions;

'Network Hour' means an hour of transmission of Channel 3 Network programming, measured in terms of 'slot times' i.e., including advertising breaks, programme trailers and presentation material during and at the end of programmes;

'Network Programme Budget' means for each financial year of ITV Network the total amount of money to be raised for the purposes of the Channel 3 Network programme transmission budget for that year by the payment by each Licensee of its agreed share, as currently set out in Clauses 8 and 9 of the Network Supply Contract;

'Network Supply Contract' means the agreement between the Licensees and ITV Network entered into under the Networking Arrangements which, inter alia, authorises ITV Network, acting on behalf of the Licensees, to commission and acquire ITV Network programmes, to procure that these programmes are made available by ITV Network to each of the Licensees and to set out the financial contributions to be made by each Licensee to ITV Network in relation to such network programmes;

'Networking Arrangements' means, prior to the entry into force of section 291 of the Communications Act 2003, such networking arrangements as are for the time being approved by the Regulator under section 39 of the Broadcasting Act 1990 (as amended), and otherwise approved networking arrangements within the meaning of section 291(2) of the Communications Act 2003 or networking arrangements imposed pursuant to section 292 of the Communications Act 2003, without prejudice to the operation of paragraph 36 of Schedule 18 to that Act;

'Other Licensees' means any Licensee other than one controlled by Carlton and/or Granada;

‘Overtrading’ means a situation in which Carlton and Granada are or would become unable to meet their contractual obligations to supply Commercial Impacts. This may occur on a total national basis, or for a particular region, for a particular demographic audience, specific time period, or specific airtime slot;

‘Programme Compliance’ means procedures for the verification of the rights underlying particular programming or the availability of cash-flow finance or production monitoring or for ensuring that a programme complies with the relevant statutory and regulatory provisions, for example the Regulator’s Programme Code;

‘Protected Contract’ means a contract for the purchase of Commercial Airtime:

- (i) between an Advertiser or Media Buyer and Carlton or Granada that has been in force at any time between 1 January 2001 and 1 November 2003 inclusive. Where an Advertiser or Media Buyer has had more than one such contract, or its terms have been altered during this period, the most recent such contract or set of terms is the Protected Contract; or
- (ii) concluded between a person and Carlton and/or Granada who has not held a contract with Carlton or Granada that has been in force between 1 January 2001 and 1 November 2003 inclusive, provided that, without prejudice to Clause 10(e), where an Advertiser or Media Buyer enters into more than one such contract or varies its terms, only the first such contract, or contract as unvaried, shall be a Protected Contract.

Where Carlton and/or Granada have terminated a Protected Contract lawfully due to a breach by an Advertiser or Media Buyer, such contract shall no longer be a Protected Contract;

‘Region’ means an ITV franchise region which is available individually to Advertisers and Media Buyers for purchase of commercial airtime;

‘Regional Channel 3 Service’ has the meaning ascribed to it in section 14(6) of the Broadcasting Act 1990 (as amended) being a service provided pursuant to a licence granted under Section 215 of the Communications Act 2003;

‘Regulator’ means the Office of Communications (‘Ofcom’);

‘Scottish TV’ means Scottish Television Limited;

‘Share of Broadcast’ means the proportion of an Advertiser’s or Media Buyer’s total TV advertising spend that it has committed, as part of its

contract, to a particular channel or sales house in return for a given discount and which may be specified by reference to any one or more of a total share on a national basis, or for a particular region or regions, or for a particular demographic audience or audiences or for a particular time period or periods;

‘Station Average Price’ or ‘SAP’ means a benchmark price for delivery of a specific target audience. It is defined for each target audience and for each region sold. It is calculated as:

$$\text{SAP Demographic A} = \frac{\text{Total Revenue committed to that station (all audiences)}}{\text{Total number demographic A impacts}}$$

‘Ulster TV’ means Ulster Television Limited;

‘Umbrella Agreement’ means a type of agreement between a Media Buyer and a particular channel or sales house, where the agreement specifies the Media Buyer’s Share of Broadcast commitment and the discount level it will receive in aggregate; and

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

SIGNED FOR AND ON BEHALF OF CARLTON COMMUNICATIONS PLC

..... Signature

..... Signature

..... Name

..... Name

..... Title

..... Title

..... Date

..... Date

AND GRANADA PLC

..... Signature

..... Signature

..... Name

..... Name

..... Title

..... Title

..... Date

..... Date

Calculation of Revised Share of Broadcast Commitment

Under a given Initial Share of Broadcast Commitment within a Protected Contract a Media Buyer or Advertiser will have purchased Commercial Airtime in the Current Year against n different demographic audiences with Carlton and Granada, where $n \geq 1$. For audience a let S_a be the share of the total revenue committed by the Media Buyer or Advertiser against a given audience under that Initial Share of Broadcast Commitment in the Current Year, calculated as follows:

$$S_a = \frac{\text{Sum of all REVENUES bought against Audience } a \text{ committed in the Current Year by the Advertiser or Media Buyer under the Protected Contract in the Regions and, where relevant, in the Time Periods to which the Initial Share of Broadcast Commitment relates.}}{\text{Sum of all REVENUES bought against all } n \text{ Audiences committed in the Current Year by the Advertiser or Media Buyer under the Protected Contract in the Regions and, where relevant, in the Time Periods to which the Initial Share of Broadcast Commitment relates.}}$$

Such that

$$\sum_{a=1}^n S_a = S_1 + S_2 + S_3 + \dots + S_n = 100\%$$

of the total spend committed by the Advertiser or Media Buyer under the Initial Share of Broadcast Commitment(s) within the Protected Contract in the Current Year

For these same n audiences, the relevant share of Commercial Impacts, or SOC1% across year y (where y may be the Current Year, the Base Year or Year 2002, as explained below), is calculated from BARB data (subject to note 1 below) as follows:

$$I_a^y = \frac{\text{Sum of all Commercial Impacts for Audience } a \text{ generated by Commercial Airtime in Year } y \text{ in the Regions, in the months and, where relevant, in the Time Periods to which the Initial Share of Broadcast Commitment relates.}}{\text{Sum of all Commercial Impacts for Audience } a \text{ generated by all television channels in the Year } y \text{ in the Regions, in the months and, where relevant, in the Time Periods to which the Initial Share of Broadcast Commitment relates.}}$$

The CRR Ratchet

The ratchet R is to be applied to the Initial Share of Broadcast Commitment(s) (SOB_{Initial}) to determine the Revised SOB Commitment(s) pursuant to Clause 7 of the undertakings, as shown in the calculation below.

For the given Protected Contract across n demographic audiences given and S_a (as I_a^y defined above) and *Current Year* and *Base Year* (as defined below):

$$R = S_1 \cdot \left(\frac{I_1^{\text{Current}}}{I_1^{\text{Base}}} \right) + S_2 \cdot \left(\frac{I_2^{\text{Current}}}{I_2^{\text{Base}}} \right) + S_3 \cdot \left(\frac{I_3^{\text{Current}}}{I_3^{\text{Base}}} \right) + \dots + S_n \cdot \left(\frac{I_n^{\text{Current}}}{I_n^{\text{Base}}} \right)$$

Unless R is greater than one in which case R is capped at one i.e.

If $R \leq 1$ then $R = R$, however, if $R > 1$ then $R = 1$

Calculation of Revised SOB Commitment

The Revised SOB Commitment(s) shall be calculated annually as soon as reasonably practicable after the relevant data becomes available and shall take effect on the same day of the year the Protected Contract came into force, for each Initial Share of Broadcast Commitment as follows:

Revised SOB Commitment = $R \times \text{SOB}_{\text{Initial}}$

Definitions

Base Year means the following:

Where a Protected Contract came into force prior to 1 January 2004, Base Year is the calendar year 2002 if the Protected Contract runs on a calendar year basis, or, if the Protected Contract runs on any other basis, 2002-2003 on that same basis;

Where a Protected Contract came into force on or after 1 January 2004, Base Year is the 12 month period prior to the Protected Contract coming into force.

Current Year means the 12 month period prior to the date on which the Revised SOB Commitment takes effect pursuant to clause 7 of the Undertakings.

Initial Share of Broadcast Commitment(s) ($\text{SOB}_{\text{Initial}}$) means the following:

Where a Protected Contract came into force prior to 1 January 2004, $\text{SOB}_{\text{Initial}}$ is the Share of Broadcast committed by the Media Buyer or Advertiser to Carlton and Granada (including to individual regions) under that Protected Contract in the final 12 months of that Protected Contract;

Where a Protected Contract came into force on or after 1 January 2004, $\text{SOB}_{\text{Initial}}$ is the Share of Broadcast committed by the Media Buyer or Advertiser to Carlton and Granada (including to individual regions) in the first 12 months of that Protected Contract;

Region means an ITV franchise region which is available individually to Advertisers and Media Buyers for purchase of Commercial Airtime.

Revised SOB Commitment means the Share of Broadcast Commitment(s) which will apply pursuant to clause 7 of the Undertakings.

Time Period means any period of time of less than a week which is specified in the Protected Contract as the sole time period for which the Advertiser or Media Buyer will purchase Commercial Airtime against a given audience (including without limitation peak, off-peak, weekend, weekday, children's airtime).

Explanatory Notes

Note 1:

BARB does not report multichannel impacts by region. The data processing organisation, DDS, uses a series of factors to impute impacts at a regional level and, in the future, other organisations may provide such a service.

Note 2:

Where the Protected Contract contains a Share of Broadcast Commitment specific to a particular Region or Time Period, then the Ratchet shall be calculated at the level at which that Share of Broadcast Commitment is contracted. Where the Protected Contract contains any other form of specific quantified commitment to a particular Region or Time Period, the Ratchet will be weighted to reflect the form of this commitment.

Note 3:

Carlton and Granada undertake to provide Media Buyers and Advertisers with the most accurate forecasts of Commercial Impacts available to them and the estimated Revised SOB Commitment at least two months prior to calculation of the Revised SOB Commitment and updates upon request of the Media Buyer or Advertiser throughout the negotiations. Where the Revised SOB Commitment is calculated on the basis of an estimated level of Commercial Impacts, the Revised Share of Broadcast Commitment shall be subsequently adjusted once the Commercial Impacts figures are finalised.

Contracts Rights Renewal Adjudication Rules under the undertakings given by Carlton Communications Plc (“Carlton”) and Granada Plc (“Granada”) to the Secretary of State for Trade and Industry pursuant to Section 88 (2) of the Fair Trading Act 1973 (the “CRRA Rules”)

(6 November 2003, Edition v.1)

Definitions

1. Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this document shall have the same meaning as in the undertakings given by Carlton and Granada to the Secretary of State for Trade and Industry (the “Undertakings”).

Authority

2. In relation to the exercise of its powers and fulfilling its obligations under the CRRA Rules, in this document references to the Office of Communications (“Ofcom”) shall mean Ofcom after any consultation which Ofcom deems appropriate with the Independent Television Commission (the “ITC”).

Application

3. The following Rules as amended from time to time with the consent of the Office of Fair Trading may be incorporated by reference into any contract for the sale of Commercial Airtime between Carlton and/or Granada and any Advertiser or Media Buyer and any reference to the “Contracts Rights Renewal Adjudication Rules” in such contract shall mean, in relation to any adjudication, the most recent edition hereof as at the date of the Notice of Adjudication. These Rules may also apply in the circumstances set out in Clause 16 of the Undertakings.

The Adjudicator

4. The Adjudicator shall be appointed and exercise his functions in accordance with the Undertakings, the CRRA Scheme and the CRRA Rules annexed to the Undertakings as each may be amended from time to time. In the case of any inconsistency or conflict between the provisions of the CRRA Scheme and the CRRA Rules, the provisions of the CRRA Scheme will prevail; and, in the case of any inconsistency or conflict between the provisions of either or both of the CRRA Scheme and the CRRA Rules and the Undertakings, the provisions of the Undertakings shall prevail.

Notice of Adjudication

5. Any Advertiser or Media Buyer who is a party to a contract with Granada and/or Carlton concerning the sale of Commercial Airtime in the United Kingdom and who has agreed to be bound by the CRRA Scheme and the CRRA Rules, or any other person who has agreed to be bound by the CRRA Scheme and the CRRA Rules under paragraph 16 of the Undertakings (the “Referring Party”) may apply to the Adjudicator, by giving written notice (the “Notice of Adjudication”). The Notice of Adjudication shall request the Adjudicator to determine any dispute arising out of the interpretation or exercise of the rights given to, or obligations upon, Advertisers,

Media Buyers, Carlton and Granada or any such other person in relation to contracts for the sale of Commercial Airtime pursuant to the Undertakings, including any dispute relating to the interpretation, termination or enforcement of such contracts to the extent referable to such Undertakings, the interpretation of any provision of these Rules or the CRRRA Scheme, or his jurisdiction to determine the dispute (a "Dispute").

6. The Notice of Adjudication and all accompanying documents shall at the same time be given by the Referring Party to every other party to the contract or Dispute.
7. The Notice of Adjudication shall set out briefly:
 - (a) the nature and a brief description of the Dispute, details of the contract under which it arises, if any (and of any related contract) and of the parties involved, and shall be accompanied by copies of the relevant television advertising airtime sales contract or contracts and such other documents as the Referring Party intends to rely upon. Although the Referring Party must send copies of all such documents to the Adjudicator with the Notice of Adjudication, in sending the Notice of Adjudication to the other parties to the Dispute only, it may omit any such copies or redact them (and the Notice of Adjudication) for reasons of commercial confidentiality, subject to the right of the Adjudicator to direct disclosure of any such material to the other parties if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations on this issue. The fact that redacted copies of any documents have been served on other parties to the Dispute shall be drawn to the attention of the Adjudicator when the Notice of Adjudication is given to him, together with copies of any such redacted documents;
 - (b) details of where and when the Dispute has arisen;
 - (c) the nature of the redress which is sought; and
 - (d) the names and addresses of the parties to the Dispute (including, where appropriate, the addresses which the parties have specified in any contract for the giving of notices).
8. The Adjudicator shall confirm in writing within two working days of receiving a Notice of Adjudication whether or not:
 - (a) he is able to act; or
 - (b) he considers the Notice of Adjudication discloses no reasonable grounds for him to act and/or it is an abuse of the CRRRA Scheme and/or the CRRRA Rules for him to proceed to determine the Dispute. If he so considers, the Adjudicator shall issue a written, reasoned decision to the parties.
9. Where in relation to a particular Dispute the Adjudicator indicates to the parties that he is unable to act, or where he resigns pursuant to paragraph 12, or fails to respond in accordance with paragraph 8(1), the Referring Party may request Ofcom to, or Ofcom may on its own initiative, select a person to act as substitute Adjudicator.
10.
 - (1) The Adjudicator may adjudicate at the same time on one or more Disputes under the same contract.
 - (2) The Adjudicator may, with the consent of all the parties to any related Disputes, adjudicate at the same time on such related Disputes under different contracts, and shall do so where different contracts provide for joinder of Disputes.

Notice of Reply

11. Unless the Adjudicator otherwise directs, within five working days of receiving the Notice of Adjudication, the other party or parties shall give a Notice of Reply. This shall contain their response to the Notice of Adjudication and be accompanied by copies of any documents upon which the other party or parties intend to rely. Although the other party or parties must send copies of all such documents to the Adjudicator with the Notice of Reply, in sending the Notice of Reply to the Referring Party and any other party to the Dispute, it or they may omit any such copies or redact them (and the Notice of Reply) for reasons of commercial confidentiality, subject to the right of the Adjudicator to direct disclosure of any such material to the Referring Party and any other party to the Dispute if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations on this issue. The fact that redacted copies of any documents have been served shall be drawn to the attention of the Adjudicator when the Notice of Reply is given to him together with copies of any such redacted documents. The Notice of Reply shall be served by the relevant party on the Adjudicator, the Referring Party and any other party to the Dispute simultaneously.
12. The Adjudicator shall resign from determining any particular Dispute or Disputes as soon as:
 - (a) he becomes aware of a conflict of interest; or
 - (b) he is not competent to decide the dispute; or
 - (c) he becomes aware that a dispute varies significantly from the dispute referred to him in the Notice of Adjudication and for that reason he is not competent to decide it.

Powers of the Adjudicator

13. (1) The Adjudicator shall act fairly and impartially in carrying out his duties and shall do so in accordance with the CRRA Rules, the CRRA Scheme, the Undertakings and any relevant terms of any contract, having regard to the relevant Budget, and shall reach any decision concerning a Dispute as expeditiously as possible in accordance with the applicable law in relation to the contract or Dispute.
- (2) The Adjudicator shall take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed. In particular he may:
 - (a) request any party to the Dispute to supply him with such documents and information as he may reasonably require (other than documents that would be privileged from production to a court) including, if he so directs, any written statement from any party to the Dispute supporting or supplementing the Notice of Adjudication or Notice of Reply and any other documents given under paragraphs 7(a) and 11, and to draw such inference as may seem proper from any imbalance in such documentation that may become apparent;
 - (b) meet and question any of the parties to the Dispute and their representatives;
 - (c) obtain and consider such representations and submissions as he requires, and appoint experts, assessors or legal advisers;
 - (d) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and

- (e) issue other directions relating to the procedure and timetable for the adjudication and the conduct of the adjudication generally.
14. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
 15. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the Adjudicator made in accordance with his powers, fails to produce any document, information or written statement requested by the Adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication the Adjudicator may:
 - (a) continue the adjudication in the absence of that party or of the document, information or written statement requested;
 - (b) draw such adverse inferences from that failure to comply as may, in the Adjudicator's opinion, be justified;
 - (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed; and
 - (d) refuse to determine the matter or matters in dispute.
 16. Subject to any agreement between the parties to the contrary, any party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as it considers appropriate.
 17. The Adjudicator shall consider all documents and information submitted to him by any of the parties to the Dispute and shall make available to them any documents and information to be taken into account in reaching his decision (subject to any omissions or redactions he considers appropriate for reasons of commercial confidentiality).
 18. (1) Subject to paragraph 18(2), the Adjudicator and any party to the Dispute shall:
 - (a) keep any information other than that a Dispute has been commenced before the Adjudicator on a specific date and that Carlton and/or Granada is a party to such dispute confidential; and
 - (b) not disclose to any other person, including the ITC and Ofcom, any information or document provided to it or him in connection with the Dispute which is confidential, except to the extent that disclosure by the Adjudicator is necessary for the purposes of, or in connection with, any decisions the Adjudicator takes in relation to the Dispute and any review thereof in accordance with paragraph 23 of these Rules or in order for the Adjudicator to fulfil his reporting functions set out in paragraph 22 of the CRR Scheme.(2) The Adjudicator has the authority to disclose the nature of the Dispute and his determination, although he shall not disclose confidential information.
 19. (1) Subject to the power of the Adjudicator alone to make a direction otherwise in exceptional circumstances, the Adjudicator shall give his decision not later than:
 - (a) fifteen working days after the date of the Notice of Adjudication; or

- (b) twenty working days after the date of the Notice of Adjudication, if the Referring Party consents to such an extension of time; or
 - (c) such period exceeding twenty working days after the date of the Notice of Adjudication as all the parties to the Dispute and the Adjudicator may agree; or
 - (d) in the case of joinder of Disputes, a date agreed between the Adjudicator and all the parties.
- (2) Where the Adjudicator fails, for any reason, to deliver his decision in accordance with paragraph 19(1):
 - (a) any of the parties to the Dispute may serve a fresh Notice of Adjudication under paragraph 5 and shall request Ofcom to name a substitute Adjudicator to determine the Dispute in accordance with these Rules; and
 - (b) if requested by the substitute Adjudicator, and in so far as it is reasonably practicable, the parties shall supply him with copies of all documents and information which they had made available to the previous Adjudicator.
 - (3) As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of that decision to each of the parties.

Adjudicator's Decision

- 20. In the adjudication of a Dispute, the Adjudicator shall decide all the matters in dispute as identified in the Notice of Adjudication. He may take into account any other matters which the parties to the Dispute agree should be within the scope of the adjudication, or which are matters which he considers are necessarily connected with the Dispute, but only insofar as such matters relate to the subject matter of the Dispute as identified in the Notice of Adjudication.
- 21. (1) In the absence of any directions by the Adjudicator relating to the time for performance of his decision, Carlton and/or Granada as the case may be shall be required to comply with any decision of the Adjudicator immediately on delivery of the decision to the parties, subject to any outstanding review brought under paragraph 23 below, and the other parties to the adjudication (the "Other Parties") shall be required to comply with any decision of the Adjudicator in accordance with paragraph 21(2).
 - (2) The Other Parties shall be required to comply with any decision of the Adjudicator *either*:
 - (a) within five working days of the delivery of the decision to such parties, if a Review Notice has not been lodged in compliance with paragraph 23(2) or;
 - (b) immediately upon Ofcom, in accordance with paragraph 23(2), informing the parties that it has decided not to review the relevant determination of the Adjudicator; or immediately upon Ofcom issuing a final determination of the Dispute after reviewing the relevant decision of the Adjudicator.
- 22. The Adjudicator shall provide a written decision including reasons for his decision.

Effects of Decision

23. (1) The decision of the Adjudicator shall be final and binding on Granada and/or Carlton as the case may be. The decision of the Adjudicator shall be binding (but not final) on the Other Parties, any one or more of whom shall have the right if dissatisfied to request Ofcom to review the decision of the Adjudicator in accordance with paragraph 23(2) provided that where the context permits, any one or more of such Other Parties may elect to revert to the terms of its or their previous Protected Contract or to keep to the terms of its or their existing Protected Contract, as appropriate, by giving notice to Carlton and/or Granada as the case may be within five working days of receipt of the Adjudicator's decision.
- (2) The Other Parties' right to ask Ofcom to review a decision of the Adjudicator must be exercised within five working days of receipt of the decision, otherwise it lapses. To exercise this right the Other Party or Parties must send a request in writing to Ofcom (the "Review Notice"), copied to Carlton and/or Granada as the case may be, attaching a copy of the decision, together with any other relevant documents, and a summary of the reasons as to why that Party considers that Ofcom should review the decision. Ofcom shall review such decision and rehear the Dispute on its merits, with Ofcom acting as expert and not arbitrator, unless Ofcom considers that the review would not have a real prospect of success; or there is no other compelling reason why they should hear the review. Within five working days of receipt of the Review Notice (provided all the necessary documents have been provided), Ofcom shall inform the parties in writing whether it shall proceed with the review. If it decides not to proceed with the review, Ofcom shall issue a written reasoned decision. If it decides to proceed, Ofcom shall give appropriate directions in order for it to do so. For the purposes of any such review, Ofcom will have the power to open up, revise and review any decision taken by the Adjudicator. Ofcom will issue a written decision including reasons for its determination which shall be final and binding on all parties subject, where the context permits, to the relevant Other Party's or Other Parties' right to revert to the terms of its or their previous Protected Contract or to keep to the terms of its or their existing Protected Contract, as appropriate, by giving notice to Carlton and/or Granada as the case may be within five working days of receipt of Ofcom's decision. Any such review shall be carried out by the full Board of Ofcom or a committee or body to whom they delegate the necessary powers.
- (3) When, in accordance with this paragraph 23, the Adjudicator's (or Ofcom's) decision becomes final and binding upon all the parties, it shall be final and binding except in the case of fraud, or where a decision is made in bad faith or is so clearly and manifestly erroneous on its face that it would be unconscionable for it to stand.
24. (1) An award or decision of the Adjudicator or Ofcom may, by leave of the court, be enforced in a summary manner.
- (2) Where leave is so given, judgement may be entered in terms of the award or decision.
- (3) In certain circumstances a failure to comply with an award or decision of the Adjudicator or Ofcom may also constitute a breach of a relevant licence granted under the Broadcasting Act 1990 (as amended) or the Communications Act 2003, and the ITC and Ofcom reserve their rights to take enforcement action by these means as appropriate.
25. (1) The fees and expenses of the Adjudicator shall be paid directly and in the first instance by Ofcom, but Carlton and Granada shall be responsible for all such fees and expenses (giving credit for any fee paid by the Referring Party) in accordance

with the CRRA Scheme and shall reimburse Ofcom for all such costs on demand as directed by Ofcom without prejudice to paragraph 25(2) below.

- (2) The Adjudicator may in his discretion decide that it is appropriate that: (a) Carlton and Granada should bear all or a proportion of the legal costs and expenses relating to the adjudication incurred by any one or more of parties to the dispute other than Carlton or Granada; or (b) in exceptional circumstances, it is appropriate for any one or more of the parties to the Dispute other than Carlton and Granada to bear the costs of the adjudication, or for such party or parties to bear a proportion of such costs. Such costs shall include the fees and expenses of the Adjudicator and the fees and expenses of any witnesses in relation to the Dispute, and the legal costs and expenses properly incurred by the parties relating to the adjudication.

Immunity

26. The Adjudicator and his staff, employees and agents (including any advisers appointed by him) shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as the Adjudicator unless the act or omission is in bad faith.

Contracts Rights Renewal Adjudication Scheme under the undertakings given by Carlton Communications Plc (“Carlton”) and Granada Plc (“Granada”) to the Secretary of State for Trade and Industry pursuant to Section 88 (2) of the Fair Trading Act 1973 (the “CRRA Scheme”)

Definitions

1. Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this document shall have the same meaning as in the undertakings given by Carlton and Granada to the Secretary of State for Trade and Industry (the “Undertakings”).

Authority

2. In relation to the exercise of its powers and fulfilling its obligations under the CRRA Scheme, in this document references to the Office of Communications (“Ofcom”) shall mean Ofcom after any consultation which Ofcom deems appropriate with the Independent Television Commission (“ITC”).

Application

3. This Scheme as amended from time to time may be incorporated by reference into any contract for the sale of Commercial Airtime between Carlton and/or Granada and any Advertiser or Media Buyer and any reference to the “Contracts Rights Renewal Adjudication Scheme” in such contract shall mean, in relation to any adjudication, the most recent edition hereof as at the date of submission of the Notice of Adjudication under the CRRA Rules. This Scheme may also apply in the circumstances set out in Clause 16 of the Undertakings.

Appointment

4. Ofcom shall appoint one or more persons to an office known as the Contracts Rights Renewal Adjudicator (the “Adjudicator”).
5. The Adjudicator shall be independent, and in particular from the ITC, Ofcom, any commercial television broadcaster in the United Kingdom and all other parties to any dispute he is asked to decide upon. A person requested or selected to act as the Adjudicator shall not be an employee of or consultant to any commercial television broadcaster or any Advertiser or Media Buyer in the United Kingdom, or an employee of Ofcom or the ITC for the duration of his appointment. He shall be under an obligation to declare immediately any interest, financial or otherwise, in any matter relating to any dispute he is asked to determine.
6. The Adjudicator shall be appointed for any period or periods specified by Ofcom provided that his appointment shall terminate when all the relevant provisions of the Undertakings cease to be in force. Without prejudice to paragraphs 9 and 19(2) of the CRRA Rules and paragraph 14 of this CRRA Scheme, Ofcom shall appoint a substitute Adjudicator to take account of the situation arising from the death, retirement, incapacity or resignation (whether permanent or in relation to one or more particular Disputes) of the Adjudicator after appointment.

7. Following the termination of his appointment, the Adjudicator shall: (a) not without Ofcom's consent (which shall not be unreasonably withheld) be employed by or act as consultant or adviser to any commercial television broadcaster or any Advertiser or Media Buyer in the United Kingdom for a period which will expire on the later of (i) 31 January following the termination of the Adjudicator's appointment, and (ii) the date 6 months after the date of such termination; and (b) not disclose to any person any confidential information or confidential document provided to him in connection with his appointment as Adjudicator.

Functions

8. The Adjudicator shall have the function of determining any dispute between (a) Carlton and/or Granada, whether as separate or merged companies, and (b) any Media Buyers and Advertisers or any other person, arising out of the interpretation or exercise of the rights given to, or obligations upon, Advertisers, Media Buyers, Carlton and Granada or any such other person in relation to contracts for the sale of Commercial Airtime pursuant to the Undertakings, including any dispute relating to the interpretation, termination or enforcement of such contracts to the extent referable to such Undertakings, the interpretation of any provision of the CRRA Scheme or the CRRA Rules, or his jurisdiction to determine the dispute (a "Dispute"). The Adjudicator shall reach his decision and deliver it in accordance with the Undertakings, the CRRA Rules attached to the Undertakings and this CRRA Scheme. In addition the Adjudicator shall be under a duty to make reports to Ofcom and the Office of Fair Trading as set out in paragraph 22.
9. In the event that a substitute Adjudicator is appointed as a result of the original Adjudicator ceasing to be independent as described in paragraph 5 or for any other reason, any directions or decisions made by the original Adjudicator shall remain effective unless reviewed by the substitute Adjudicator in which case all time scales shall be recalculated from the date of the substitution.

Remuneration and Budget

10. There must be paid to the Adjudicator such remuneration, travelling and other allowances, pension or gratuity, or such contributions or payments towards provision for such a pension, allowance or gratuity, as Ofcom may determine.
11. The Adjudicator may incur such other costs as may be required for the fulfilment of his functions, including for office accommodation, staff, legal advice and any other requirements, up to but not exceeding the amount of the Budget set in accordance with paragraph 12 below.
12. Ofcom will set a budget for the total costs of the Adjudicator and his office for each calendar year in advance, having consulted with Carlton and Granada (the "Budget"). Such Budget will be for an amount sufficient in the view of Ofcom alone to enable the Adjudicator properly to discharge his functions and will also cover the costs of recruitment of the Adjudicator (and any substitute Adjudicator) and any staff or advisers that he may appoint. Any Budget may be increased by Ofcom on one or more occasions during any year, after having consulted with Carlton and Granada, where Ofcom considers this necessary in order to enable the Adjudicator properly to discharge his functions.
13. Ofcom shall pay all such remuneration, travelling and other allowances, pension, gratuities, contributions or payments and costs of the Adjudicator and his office as set out in paragraphs 10 to 12 inclusive in the first instance. Ofcom shall invoice

Carlton and Granada quarterly for the actual costs incurred up to the maximum of the relevant Budget. Carlton and Granada agree to reimburse Ofcom for all such costs on demand as directed by Ofcom without prejudice to paragraph 25 of the CRRA Rules.

Resignation or removal from office

14. A person may resign from office as the Adjudicator at any time by giving three months' notice in writing to Ofcom. Ofcom may remove a person from office as the Adjudicator on the grounds of incapacity or misbehaviour, or where Ofcom considers there has been unreasonable delay in the discharge of the functions of the Adjudicator. Where the Adjudicator has a conflict of interest, Ofcom may remove a person from office as the Adjudicator or may appoint a substitute Adjudicator in relation to a particular Dispute.

Immunity

15. Neither the Adjudicator, nor his staff, employees and agents (including advisors) are to be liable for anything done or omitted in the discharge or purported discharge of his functions as the Adjudicator unless the act or omission is in bad faith.

Adjudicator: staff

16. The Adjudicator may appoint such staff as he may determine, subject to any restrictions contained in the terms of his appointment. The staff of the Adjudicator are to be appointed on such terms and conditions as he may determine, subject to any restrictions contained in the terms of his appointment and subject to the Budget for the relevant period set in accordance with paragraph 12.
17. Any function of the Adjudicator, other than making a final determination in relation to any Dispute, may be exercised by any member of his staff authorised for the purpose by him, whether specially or generally.

Status of decision of Adjudicator

18. The Adjudicator shall act as an expert, and neither as arbitrator, mediator, conciliator nor any similar role and shall determine the Dispute in accordance with the Undertakings, the CRRA Rules and, insofar as relevant, this CRRA Scheme.
19. The effects of a decision of the Adjudicator in relation to any Dispute shall be as set out in the CRRA Rules.

Review of CRRA Scheme and CRRA Rules and provision of information

20. The Adjudicator shall keep this CRRA Scheme and the CRRA Rules under review and report to Ofcom and the Office of Fair Trading on them periodically (but at least annually) in accordance with this CRRA Scheme and his terms of appointment. He may in any such report recommend at any time to Ofcom and the Office of Fair Trading amendments to the CRRA Scheme and the CRRA Rules. Changes to the CRRA Scheme and CRRA Rules may be made with the consent of the Office of Fair Trading.
21. Carlton and Granada shall promptly provide all the information and documents about their advertising and trading as requested by the Adjudicator as deemed necessary

by him to fulfil his functions, and in as much detail as he may require, including information as to their monthly trading position in each region, demographic group and time period that they identify separately in any contract for the sale of Commercial Airtime. In order to fulfil his reporting functions, the Adjudicator may disclose any such information to Ofcom and the Office of Fair Trading. Any person who agrees to be bound by this CRRRA Scheme and the CRRRA Rules agrees that the ITC and Ofcom may disclose to the Adjudicator any information or documents supplied by such person to either of them (whether pursuant to the Undertakings or otherwise) which they consider may be relevant to, and assist the Adjudicator in, the carrying out of his duties.

Adjudicator Reports

22. The Adjudicator shall make a written report to Ofcom and the Office of Fair Trading every three months or as otherwise agreed with Ofcom (the "Periodic Reports"), setting out his determinations in relation to any Dispute, his views about the operation of the Undertakings, the CRRRA Scheme and CRRRA Rules together with any recommendations, his views about the performance of Carlton and Granada in complying with the Undertakings, his opinion about the evolution of the advertising airtime sales market and any other relevant matters and information that he may think appropriate. The Adjudicator shall bring to Ofcom's and the Office of Fair Trading's immediate attention any matter that gives rise to a reasonable suspicion on his part that Carlton and/or Granada are not complying with the Undertakings. The amount of detail included in such Periodic Reports will be at the discretion of the Adjudicator but should be such as to inform Ofcom and the Office of Fair Trading adequately. After consultation with Ofcom as to date and contents, one Periodic Report each year shall be designated the Adjudicator's Annual Report and this will consider all the matters above and any others the Adjudicator considers relevant and appropriate in greater detail.
23. Ofcom and the Office of Fair Trading may publish or disclose all or any parts of the Periodic Reports or the Adjudicator's Annual Report as either considers appropriate.