
Anticipated acquisition by ITV Plc of 25 per cent of GMTV Limited

The OFT's Decision on reference under section 33 given on 17 September 2004

Please note square brackets indicate a business secret excised at the request of the parties.

PARTIES

1. **ITV plc** (ITV) was formed in February 2004 as a result of the merger between Granada plc (Granada) and Carlton Communications plc (Carlton), and currently owns eleven of the fifteen regional Channel 3 licences. ITV's principal activities include: the sale of television advertising and sponsorship; UK programme production and distribution; international programme production and distribution; and screen advertising. In addition to its 50 per cent interest in the target company, GMTV, ITV has interests in the following entities: 100 per cent of ITV2; 16.89 per cent of SMG plc (SMG); 40 per cent of ITN; 100 per cent of ITV News; 50.5 per cent of Granada Sky Broadcasting and 33.33 per cent of MUTV. In the 15 months ended 31 December 2003, ITV generated UK turnover of approximately £3,000 million.
2. **GMTV Limited** holds a national Channel 3 licence (GMTV) and owns the satellite and cable channel GMTV2. Both channels broadcast daily from 06:00 to 09:25 on weekdays, GMTV offers an hour of news programming between 06.00 and 07.00 followed by magazine-style programming, incorporating news, weather, and lifestyle interests. At weekends, most of GMTV's programming is aimed at children. In the year to 31 December 2003, GMTV had UK turnover of £76m.

TRANSACTION

3. ITV currently has a 50 per cent interest in GMTV, with SMG and The Walt Disney Company Limited (Disney) holding 25 per cent each. On 10 May 2004, ITV announced that it had agreed to acquire SMG's shareholding. This triggers an option for Disney to bid for all or some of SMG's holdings, or to sell its own holdings. This process will not be resolved within the timetable of this inquiry. The structure of the final transaction and ITV's ultimate level of shareholding is therefore unknown, although ITV had asked the OFT to assume that it will increase its shareholding to either 66.7 per cent or 75 per cent on the grounds that the difference to the assessment between these levels is immaterial. As any increase in ITV's level of shareholding beyond 50 per cent (up to 100 per cent) amounts to the acquisition of a controlling interest in GMTV the OFT has in this case examined the proposed transaction, on the basis that ITV will exercise control over GMTV, enabling it, for example, to merge the ITV and GMTV

advertising sales houses should it wish do so. The administrative deadline expires on 17 September 2004.

JURISDICTION

4. As a result of this transaction, ITV and GMTV will cease to be distinct. The UK turnover of GMTV exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

RELEVANT MARKET

5. The parties overlap in the supply of airtime for TV advertising and programme production.

Programme acquisition and supply

6. Broadcasters need programmes and therefore compete for their acquisition. Many broadcasters, including the parties, also produce their own programmes. The ITC Review of Programme Supply concluded that different genres of programme production may form distinct relevant markets in the UK.¹ The regulation of the mix of content on terrestrial channels allows some leeway to switch between genres, although the extent of this is unclear. On the supply side, several production companies operate over several genres. The merger will therefore be considered under a frame of reference for the supply and acquisition of programmes for UK TV.

TV advertising

7. TV can be distinguished from other advertising media because of its ability to reach a mass audience quickly, the use of audio and visual elements together to achieve a higher impact than other advertising media, and the ability to target particular audiences through specific television programmes. Some advertisers distinguish between ITV and other channels because of ITV's greater ability to reach a large audience quickly and the importance of high audience rated shows.
8. Although most easily understood as airtime, what advertisers buy is denominated not in terms of airtime per se but 'impacts'. That is, the number of viewers from one of the 15 main target demographic groups (such as housewives, housewives with children and children) watching a particular advert. An impact is one viewer actually watching an advert once.
9. Third parties suggest the impact on individual demographics should be examined as GMTV's audience means it mainly reaches the following demographics (as defined by the TV advertising industry): housewives, housewives with children, and children. In contrast, ITV reaches a much wider range of demographics. On the demand side, it may be expected that those advertisers wishing to reach children would not buy impacts from other demographic groups if the relative price of children's impacts increased. On the supply side the question is, if the relative

¹ Such broad categories would include Children's, Drama, Entertainment and Factual.

price of children's advertising increased, would other channels be able to offer more commercial impacts for children through changing their programming or dedicating more slots to children's adverts? Changing programming is unlikely to be achievable in the short term at minimal cost. Reallocating slots is feasible but would only occur if such a strategy maximised the profits of the sales house, a strategy for which no supporting evidence on ability or incentive has been identified. As such, a cautious view is taken and the impact of the transaction is examined in relation to the main individual demographics for which GMTV sells impacts.

10. National media buyers purchase airtime on behalf of advertisers across the UK and GMTV broadcasts on a national basis, suggesting frames of reference for the supply of airtime for advertising to (i) housewives, (ii) housewives with children and (iii) children each on a UK-wide basis.

COMPETITION ANALYSIS

Programme acquisition and supply

11. After the BBC, ITV is the second largest supplier of programmes in the UK, with the Freemantle Media Group and Endemol as significant competitors. In addition, there are some 50 medium-sized independent producers and 500 active small companies, whose existence suggests that barriers to entry are low. GMTV's production business provides programming for itself, up to its licence requirement that 50 per cent of its programming is purchased from independent producers. The value of GMTV's third party sales of programming amounted to [less than 1 per cent] in 2003 of the £2.9 billion for the total network budgets for the five terrestrial channels and represents only a trivial increment to ITV's existing position. Given the safeguards of the licence on programme acquisition, the very limited scale of GMTV's programme sales and the absence of third party concerns, it is not believed that the transaction is likely to raise any competition concerns in this area, which is consequently not considered further.

TV advertising

12. GMTV and ITV do not compete, in the sense of offering concurrent broadcast programming in precisely the same daily/weekly time slots, as both use the same frequency. However, as GMTV has a national licence and ITV a collection of regional licenses that cover England and Wales their programming does reach the same households. As such, for example, GMTV's children's programming would appear to compete as a substitute for advertisers with Children's ITV, broadcast later in the day. Third parties had mixed views as to how closely they actually compete. Some described them as complements, needing the unique niche appeal of GMTV and the broad base of the TV audience in any campaign to reach demographics such as housewives, while others thought that there was direct competition between the two channels. ITV does accept that it competes with GMTV to a certain extent, but not as a close competitor. It saw itself as a provider of mass audiences, across all demographics, whereas GMTV aimed at a narrower group of demographics and competes most closely with specialist non-terrestrial channels also aimed at those demographics.

13. In the consideration of the merger of Carlton and Granada,² third parties identified two main concerns in relation to TV advertising, which have been raised again in relation to the current transaction by those third parties who believe the parties do compete for advertisers.

Price discrimination

14. The first concern related to the finding by the Competition Commission (CC) that increased price discrimination among customers could enable the parties to raise the Station Average Price (SAP)³ for impacts in a particular demographic and that this was constrained by both the relatively inelastic supply of impacts and customers' ability to play the parties' sales houses off against one another. Third parties were concerned that ITV could similarly engage in such price discrimination once it controlled both ITV's and GMTV's sales houses, particularly in relation to the media buyers or advertisers specialising in the key demographics offered by GMTV, whose airtime sales are not covered by the Contract Renewal Rights (CRR) remedy accepted by the Secretary of State in relation to the merger of Carlton and Granada.⁴ They were also concerned that as [a substantial proportion] of GMTV customers have fixed-price, fixed-volume contracts - as opposed to ITV's share deal contracts based on a discount in return for committing a proportion of advertising spend to ITV - those customers would be obliged to switch to share deals on worse terms than their fixed price contracts and accordingly would be more exposed to price discrimination in so doing.

Share of impacts

15. While ITV and GMTV compete to some extent, the merged entity would not be able to raise average prices through increased price discrimination if customers could switch to alternative channels to avoid price increases. The parties' share of supply of impacts in each key demographic suggests that this would be relatively easy, with the share increment in each of the children, housewives with children and housewives demographics being a relatively modest 3-4 per cent on top of ITV's share of around 35-45 per cent (35 per cent, 43 per cent and 48 per cent respectively). Both parties' share of supply in these demographics has consistently fallen since 2000 (around 20 per cent in each demographic for ITV and 40 per cent, 12 per cent and 6 per cent for GMTV respectively). This share has apparently been lost to Channel 5 (growing from 15 to 25 per cent in each demographic) and non-terrestrial (growing from 40 to 70 per cent in each demographic). The strength of non-terrestrial⁵ as a constraint for these key

² See the OFT advice to Secretary of State on the proposed merger of Carlton Communications plc and Granada plc, 11/2/03 and the report of the Competition Commission on the same, Cm 5952, 21/8/03.

³ In brief, SAP is a price based on the total advertising revenue divided by the number of impacts of the desired demographic groups. A price based on predicted SAP is paid by the advertiser in advance and, once the actual viewing figures are available, a precise SAP is calculated. Any difference between the predicted and actual SAP will be used to make an appropriate adjustment to the number of impacts to be delivered to the media buyer the following month.

⁴ See Advice to the Secretary of State following the report by the CC on the proposed merger of Carlton Communications plc and Granada plc, 7/11/03.

⁵ Non-terrestrial channels is used here to mean channels other than ITV, Channel 4 and Channel 5; BBC 1 and 2 do not sell airtime.

demographics may be reflected in third party comment that penetration levels achieved by these channels for housewives, housewives with children and children demographics were, at around a two-thirds share, significantly higher than the average of 50 per cent.

16. Some third parties suggested that such share figures do not reflect how customers for children's impacts buy airtime. Both they and ITV agree that a significant number of impacts are derived from programming for the family, such as Coronation Street, but it would be inefficient to advertise children's products in such a high value slot, for which advertisers targeting a different demographic are prepared to pay a premium. As such, the share of children's impacts derived from slots where a high proportion of the viewers are children may be a more representative of a channel's position in the supply of children's impacts. The selection of such slots ('kids time') is clearly a subjective matter, but one of the concerned third parties provided documentation on calculating of shares of commercial impacts using just such assumptions. However, this showed that GMTV's share of children's impacts was almost the same as its share of all impacts. Significantly, it also listed a number of children's non-terrestrial channels which had much higher shares than GMTV.

Coverage

17. Some third parties also argued that customers required both ITV and GMTV together to achieve sufficient coverage – the percentage of the target demographic that views an advert a certain number of times (each time being an impact) – for a given level of expenditure. If this were the case, coverage data should show a significant difference between coverage achieved for a given cost using ITV and GMTV as against other combinations of channels.
18. No independently audited coverage data exist. However, BARB figures (which are audited) on the average children's audience size by channel demonstrate that CITV and GMTV have the two largest children's audiences. Channel 5 has half the audience size of GMTV and a combination of children's non-terrestrial channels would reach the same audience size as GMTV, suggesting a combination of alternative channels could provide an effective substitute. Similarly, levels of expenditure by the top toy advertisers, supplied by a concerned third party, also suggest that other channels can form a constraint, with Channel 5 accounting for approximately the equivalent of the expenditure on GMTV, and non-terrestrial twice that figure.
19. Share of impacts and expenditure data can be combined to indicate whether price differentials between channels may enable a customer to spend the same amount of money with a combination of alternative channels and achieve the same percentage of a demographic group viewing an advert (calculated separately for viewing once (1x) and viewing four times (4x)) over a four week period. Such coverage data supplied by the parties show that [other channels] offer greater levels of coverage for children, housewives and housewives with children than GMTV, or GMTV and ITV combined.⁶ Taking into account only coverage derived

⁶ In our consideration of Carlton and Granada we took a cautious view on being able to substitute ITV with non-terrestrial channel because of concerns that a large scale switch of advertisers seeking a broad audience might exceed the available capacity of those alternative

from kids-time and including only child orientated non-terrestrial channels,⁷ the data show that [other channels] provide half as much coverage again as GMTV for viewing an advert once. [Further channels] each provide about two-thirds of GMTV's coverage.⁸ [Other channels] fall to approximately the same level of coverage when achieving four viewings of the same advert, with [another channel] at about half that level. These coverage data further support the proposition that other channels are an effective substitute for GMTV.

20. One third party generated alternative coverage data for a hypothetical four week advertising campaign aimed at children. In one case it used GMTV and in the other the same non-terrestrial children's channels as used in ITV's figures. Although the figures differed from those supplied by the parties and showed that GMTV gave greater coverage, the loss from using the non-terrestrial alternative was marginal: for both 1x and 4x coverage the difference was less than three percentage points.
21. Taking into account the other indicators - audited and third party produced share of impacts figures, audited share of audience figures, expenditure figures produced by a concerned third party, the parties' coverage figures – the weight of evidence supports the proposition that the merger will not substantially lessen competition. The evidence that customers would not be able to substitute to channels other than the merging parties is limited to coverage data from a hypothetical campaign produced in response to our enquiries. Even on those data the achieved coverage differs only marginally from other data from other sources suggesting a small share increment and the presence of competitive alternatives for coverage and impacts.

Conditional selling

22. The second main concern voiced by third parties was that customers cannot switch to alternative channels if the purchase of airtime on ITV was made conditional on buying airtime on GMTV and that this transaction increased the parties' incentives to behave in such a manner.
23. Conditional selling is prohibited by Ofcom's airtime sales rules. The parties also believe that the CRR undertakings mean that ITV1 airtime can be purchased by any customer on fair and reasonable terms, irrespective of whether that customer purchases GMTV airtime. In the absence of any evidence from third parties in relation to conditional selling of ITV with any of the other channels which it controls, such as ITV2, these concerns remain speculative.

Buyer power

24. Customers are, in the main, media buyers acting on behalf of advertisers. Some advertisers contract directly with sales houses. These buyers are sophisticated and use media auditors to monitor the value for money. Nevertheless, with one

channels. Given the comparatively small volume of advertisers and the narrow audience they are seeking from specialist channels, the same doubts do not arise here.

⁷ These were taken from a list of channels that would be the most attractive to advertisers seeking children's impacts according to third parties.

⁸ These data do not take into account discounts from SAP but it is anticipated that these would not significantly raise GMTV's coverage figures as the channel targets children. Similarly non-terrestrial children's channels would not be expected to discount, whereas ITV discounts its children's impacts heavily.

exception, all the buyers and advertisers that responded to our invitation to comment appeared concerned by the merger as they feared it would reduce their leverage in negotiations.

THIRD PARTY VIEWS

25. The Office contacted media agencies, advertisers, trade bodies and broadcasters. The majority were concerned, mostly in relation to conditional selling and the parties position in children's advertising.
26. Ofcom expressed no concerns about the merger.

ASSESSMENT

27. The parties overlap in programme acquisition and supply, and in the supply of TV advertising, in particular for housewives, housewives with children and children. The former raises no issues due to the small scale of GMTV's acquisition and production.
28. As to the supply of TV advertising, the overall evidence as to the degree to which GMTV and ITV offer customers competing or complementary advertising time is mixed. Two concerns were raised. The first alleged that the transaction would increase ITV's ability and incentive to conditionally sell. As no supporting evidence was produced that ITV currently breaches Ofcom regulations or that the merger would facilitate or incentivise such conduct, this concern was dismissed.
29. The second concern related to the merged firm's (increased) ability to price discriminate, as established by the CC in relation to the sale of ITV airtime, against those customers with a less elastic demand for GMTV's three demographics, in particular children.
30. On the face of it, GMTV has a small (3-4 per cent) share of children's impacts, suggesting it would be easy to substitute other channels in the event of a price increase. Indeed, non-terrestrial TV channels appear to have a particularly high penetration for children. Even adjusting for impacts derived from slots where mostly children are watching and for child orientated channels, using internal documents supplied by a concerned third party, the difference was very small. This position is further supported by audited figures and third party evidence on expenditure by relevant advertisers.
31. Price differences between channels may affect the efficiency of substitution if reaching the same coverage is significantly more expensive. ITV's coverage data suggests that is not the case. Although third party data, also produced for this enquiry, suggest GMTV is a cheaper option than others, it is so only marginally. Balancing these conflicting data against the weight of other evidence suggests that other channels are substitutes that effectively constrain ITV post-merger. This, together with GMTV's modest position in the demographics in question on all bases considered, renders it unrealistic to suggest that the merger may lessen competition substantially in respect of TV advertising.

32. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

33. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.