

Provisional decision on changes proposed by ITV to the sale of advertising airtime

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

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1. Summary

- 1.1 ITV plc (ITV) was created in 2003 as a result of the merger of Carlton Communications plc (Carlton) and Granada plc (Granada). Following an investigation into the merger by the Competition Commission (the CC), the Secretary of State for Trade and Industry permitted the merger to proceed subject to accepting [Undertakings](#) from Carlton and Granada (the Undertakings).
- 1.2 The Undertakings put in place a number of restrictions on Carlton and Granada including obligations in relation to the sale of airtime for advertising. These obligations are referred to as contract rights renewal (CRR) obligations, as they give existing advertisers and media buyers the option to maintain certain contractual terms from before the merger took place in new contracts with ITV.^{1 2}
- 1.3 The CRR remedy requires ITV to obtain the CMA's consent before it changes its airtime sales systems in a way that materially alters how it sells commercial airtime.
- 1.4 ITV requested to change the time length factors that it uses for its advertisements,³ with the intention of harmonising these across the different ITV regions and using the same time length factors as those used on Channel 4 airtime advertisements.
- 1.5 The CMA consulted on this proposed change from 29 June to 29 July 2022. Having assessed the response provided by ISBA to this consultation, being the only response, the CMA agrees with ISBA that the proposed changes may result in some marginal gains and losses for advertisers depending on the range of advertisements they place. Overall, the CMA does not consider that the proposed changes will undermine the effectiveness of the CRR obligations, as time length factors are a small part of the advertising system operated.
- 1.6 The CMA's provisional decision is to give consent to ITV to make the proposed changes to its advertising time length factors.

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

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

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

2. Introduction and background

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

CRR obligations in the undertakings

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

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

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

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

Consent for material changes

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

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

- 2.12 Consequently, the CMA’s provisional decision to give consent to ITV is provided pursuant to Paragraph 10 of the Undertakings.

⁵ Paragraph 10 (h) of the Undertakings.

3. ITV's request

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

Time length factors

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

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

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

- 3.6 ITV highlighted that the effect of these changes will depend on the length of advertisements that particular customers use, and explained that many of its customers use a variety of time lengths for their advertisements. ITV therefore expects customers to experience both marginal gains and losses across their portfolio of advertising, for example noting a tendency to use shorter (sub 30 second) advertisements together with a longer 30 second plus advertisement.

4. Assessment

- 4.1 ITV requires the consent of the CMA to change its time length factors in the way it proposed. The CMA has consulted on this proposal and received one response from the Incorporated Society of British Advertisers (ISBA). The CMA has liaised with Ofcom and the CRR Adjudicator and carried out its own assessment of the changes proposed by ITV.
- 4.2 ITV set out that the changes proposed will have a marginal effect on advertisers overall. Some advertisers may gain, where they have a particular portfolio of advertisements and where, on average, the time length factors that apply are lower than before, while others may lose out where these have increased on average. For many advertisers that use a range of different advertisement lengths, there may be little change in total.
- 4.3 ISBA similarly took the view that these changes would not adversely affect advertisers ability to negotiate a contractual outcome with ITV that was considered fair and reasonable, *'provided that the necessary percentage increases are factored into the ratecard discounts and fix pricing agreed'*.⁶
- 4.4 The Office of the Adjudicator for the CRR obligations informed the CMA that it, *'is supportive of ITV's proposal to streamline time length factors across their regions. We are confident that these marginal changes will not adversely affect advertisers, who at the same time continue to be protected by the CRR remedy on ITV1.'*
- 4.5 Overall, the CMA considers that the limited nature of these changes, as well as the consideration of stakeholders that some advertisers may gain while others might lose on a marginal basis means that this change appears unlikely to affect the overall balance of negotiating power between ITV1 and its advertisers and media buyers.
- 4.6 In relation to the impact of the changes on individual advertisers, as noted above, we are aware that on a marginal basis, some advertisers will gain and others will lose from these changes, but we consider any such changes are likely to be small for individual advertisers for the following reasons:
- (a) while the time length factors for some advertisement lengths have increased, others have decreased which would leave many customers unaffected; and

⁶ ISBA response, paragraph 4.1.

- (b) customers that use purely the advertisement length with an increased time length factor could either consider alternative advertisement lengths, or a combination of alternative advertisement lengths, could seek to negotiate with ITV, or could seek to make greater use of alternative advertising options, which are now easier, given ITV's share of advertising impacts is lower than at the time of the merger in 2003.
- 4.7 For example, ISBA provided more detail on the possible impacts, including that the reduction in 10 second advertisement time length factors would make such advertisements more attractive, noting that '*this is not a significant difference*' as part of an overall plan.
- 4.8 In relation to the proposed increase in the time length factor for 20 second advertisements, ISBA noted that, '*Of all adult ratings delivered to date in 2022, 27.4% are from 20" commercials, therefore it is reasonable to suggest that all sectors of the economy will be impacted.*'⁷ It also noted that those brands using this length advertisement may be required to either pay more, change their advertising length or seek to negotiate over a different outcome.
- 4.9 The CMA notes that these options apply to all advertising regions and advertisement length where the time length factor has increased. The usage of the 20 second advertisement shows that the impact of the changes to time length factors will be relatively widespread as this is a widely used advertisement length, and the impact is likely to be, as ISBA recognised, spread across a range of sectors and advertisers. For these reasons, the CMA is content that the increased time length factors will be spread across a range of sectors of the economy and a range of advertisers and concludes that this will not be borne disproportionately by a small group of advertisers.
- 4.10 In relation to whether the changes will affect the benefits to advertisers and media buyers from the CRR obligations, we note that time length factors are, in practice, a small part of the overall calculations for pricing advertisements on ITV, and the changes proposed by ITV will have differing impacts across its range of advertising and media buyer customers, depending on the nature of the advertisements they seek. In this sense, the position of advertisers and media buyers relative to ITV will not change in a consistent fashion.
- 4.11 In addition, we note that advertisers and media buyers will still be able to buy advertising time in a single region, across regions and on a national basis.

⁷ ISBA response, paragraph 3.1.

Therefore, the ability to engage with ITV as envisaged when the Undertakings were agreed will remain.

- 4.12 We have also considered whether the nature of the changes to the time length factors proposed could generate the specific adverse effects identified in the merger report from 2003:

‘In terms of advertising sales, this might manifest itself in a number of ways, including in particular the parties’ ability, post merger, to:

— insist on terms that were generally less attractive to advertisers or media buyers. This might include demanding a greater level of commitment, however expressed, of advertisers’ and/or media buyers’ television advertising budgets for a given level of discount off the SAP, or obliging the advertisers or media buyers to accept worse terms and in particular reduced discounts

— enhance the degree of price discrimination; and/or

— change the system under which television advertising airtime is sold to the advantage of the merged entity.’⁸

- 4.13 Given the nature of the changes proposed and their effects on advertising customers analysed above, and specifically the consideration that some time length factors have decreased and only one increased, and the options available to customers, we do not consider that the proposed changes would generate or lead to the adverse effect summarised above.
- 4.14 The CMA has also considered any potential effects on consumers and found that the change proposed by ITV is not anticipated to have any material direct impact on consumers, because it rearranges the way that existing advertising space is configured, not the overall balance between advertising and content.
- 4.15 Consequently, and in conclusion, we do not consider that the proposed changes would undermine the effectiveness of the CRR obligations in the Undertakings.

⁸ Paragraph 2.132 of the 2003 merger report.

5. Provisional decision and consultation

- 5.1 Based on the assessment set out above, and on the information available to the CMA, its provisional decision is to consent to ITV's proposed change to its time length factors as set out in its proposal and as summarised above.
- 5.2 The CMA is now consulting on this provisional decision until **5pm on 20 September 2022**.

How to respond to this consultation

- 5.3 All responses to this consultation should be sent to the CMA by email to the following address:

remediesmonitoringteam@cma.gov.uk
- 5.4 Emails should be sent with the title '*ITV advertising provisional decision*'. If you have evidence to support the statements and views provided in your response, please attach this to your email.
- 5.5 The deadline for the receipt of responses in the CMA is **5pm on 20 September 2022**.