

The Undertakings

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;
 - (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; 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, calculated against the base level of the average share of Commercial Impacts achieved by the Regional Channel 3 Services in 2002, or the relevant Base Year defined in Annex 1.
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 CRRRA Scheme and the CRRRA 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 CRRRA Scheme and CRRRA 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 CRRRA Scheme and CRRRA 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 CRRRA Scheme and CRRRA 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);

'CRRRA Rules' means the rules set out in Annex 2 as amended from time to time;

'CRRRA 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 or 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;

'Regional Channel 3 Service' has the meaning ascribed to it in section 14(6) of the Broadcasting Act 1990 (as amended);

'Regulator' means the Independent Television Commission ('ITC') and/or the Office of Communications ('Ofcom'), as the context requires and their statutory powers and duties require and/or permit;

'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;

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 SOCI% 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 CRRA 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 CRRRA 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 CRR 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 CRRR Rules and, insofar as relevant, this CRRR Scheme.
19. The effects of a decision of the Adjudicator in relation to any Dispute shall be as set out in the CRRR Rules.

Review of CRRR Scheme and CRRR Rules and provision of information

20. The Adjudicator shall keep this CRRR Scheme and the CRRR Rules under review and report to Ofcom and the Office of Fair Trading on them periodically (but at least annually) in accordance with this CRRR 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 CRRR Scheme and the CRRR Rules. Changes to the CRRR Scheme and CRRR 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 CRRR Scheme and the CRRR 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.

Explanation of advertising campaign terms

1. This appendix provides further explanation of advertising campaign terms: including impacts, television ratings, coverage and frequency, and station average price (SAP).

Impacts and ratings

2. Sales houses¹ sell impacts against specific traded demographics to reflect broadly the target audiences of media buyers.² ITV1 trades 15 demographics, for example ABC1 Men.
3. A commercial impact (or impact) is a single viewing of an advertisement by a member of the traded demographic.
4. Whilst media buyers purchase the impacts of a particular demographic, their advertisement will actually be seen by a wider variety of demographics, and therefore media buyers may receive impacts which are not those relating to the traded demographic. For example, media buyers whose advertisement is aired during a soap are likely to be targeting the Housewives demographic, however, Men ABC1 impacts will also be delivered as some men will also be watching the programme.
5. Television ratings are the number of impacts achieved (by an individual spot, or aggregated over a specified time period or an entire advertising campaign) expressed as a percentage of the target demographic group. For a particular campaign, one TVR equates to reaching 1 per cent of the target demographic group

¹Television advertising airtime is generally sold on behalf of broadcasters by broadcasting sales houses. Sales houses are responsible for managing the media buyer relationship, negotiating contracts and terms and conditions. The larger broadcasters have their own sales houses ie, ITV, GMTV, Channel 4, Five, BSkyB, Interactive Digital Services (ids) and Viacom Business Solutions (VBS). Smaller broadcasters often contract to sell some or all of their airtime through these sales houses.

²The term media buyers includes media agencies acting on behalf of advertisers as well as advertisers acting on their own behalf.

with one 30-second advertisement.³ Thus, an advertisement in a programme that reaches 25 per cent of a particular demographic group delivers 25 TVRs.

6. The actual ratings achieved against each demographic, by each advertising spot are measured by the Broadcasters' Audience Research Board Ltd (BARB).⁴
7. These commercial impacts or TVRs from a particular demographic group provide the 'currency' in which sales houses and media buyers contract with one another.

Campaign coverage and frequency

8. A campaign's performance is often expressed in terms of coverage and frequency. Advertisers commonly employ 'media auditors' to check that the required coverage is achieved by their media agency as accurately and efficiently as possible.

Campaign coverage

9. A campaign's coverage is the proportion of the target demographic audience viewing the advertisement at least once over the campaign period.
10. *Example calculation:* if a campaign's Adult coverage is said to be 80 per cent then the advertisement was seen at least once by 37.7 million of the 47.1 million Adults in the UK television viewing population: $37.7 \div 47.1 = 80$ per cent.
11. Coverage is also sometimes known as 'reach', ie the percentage of the target demographic audience that the campaign has been able to reach.

³While a 30-second advertisement is the general standard, advertisements can often range in time length (for example 10 or 60 seconds). These will be converted into a 30-second equivalent TVR for the purposes of measurement.

⁴BARB covers all channels broadcasting across all platforms—terrestrial, satellite and cable in both analogue and digital. BARB is jointly owned by ITV, the BBC, Channel 4, Five, BSkyB, and the IPA. More detail is available on BARB's website at www.barb.co.uk.

Campaign frequency

12. A campaign's frequency is the proportion of the target demographic audience that has seen the advertisement at least a particular number of times over the campaign period. For example, '4+' refers to an audience that has seen an advertisement in a campaign four or more times.

13. *Example calculation:* if a campaign's 4+ cover is said to be 40 per cent then the advertisement was seen four or more times by 18.8 million of the 47.1 million Adults in the UK television viewing population: $18.8 \div 47.1 = 40$ per cent.

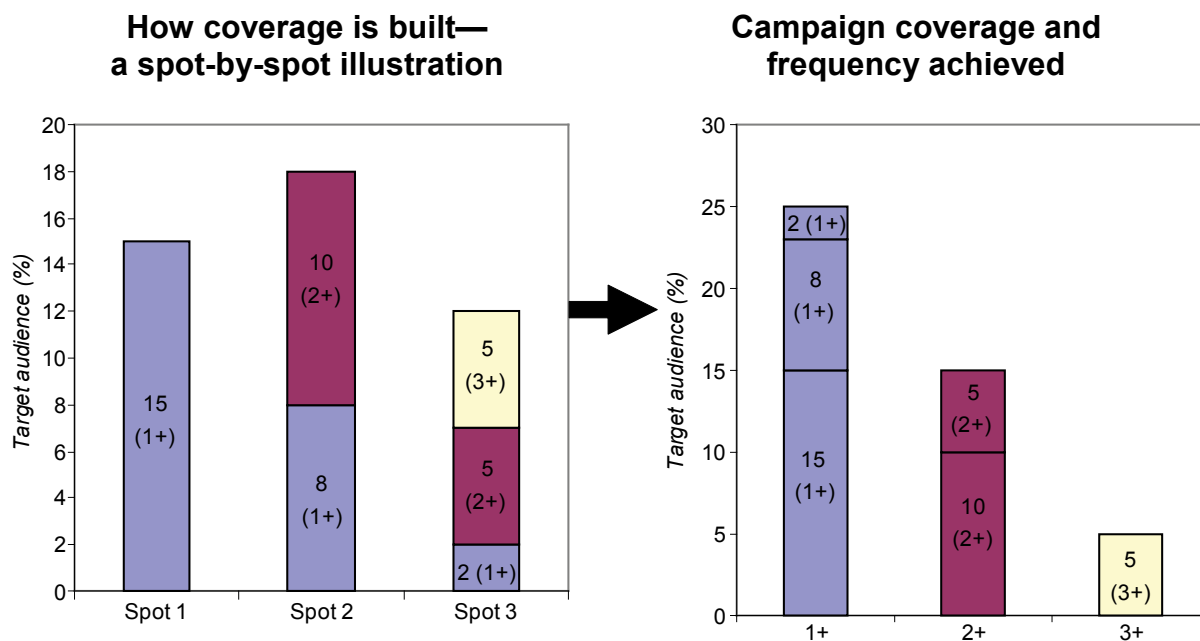
14. Note that '1+ cover' is the same as the simple measure of reach or coverage defined above.

How coverage and frequency are achieved—a spot-by-spot illustration

15. The example in Figure 1 illustrates how coverage and frequency are achieved. Consider a typical campaign: when the advertisement, spot 1, is first aired some people will be exposed to it for the first time (1+). In the example in Figure 1, 15 TVRs are achieved in spot 1 equating to 15 per cent of the target audience seeing the first spot, ie 15 per cent at 1+ cover. When the advertisement is next aired, spot 2, some of the people exposed to it previously will see it again and some new people will be exposed to it for the first time. In spot 2, 18 TVRs are achieved, 8 per cent of the target audience have seen it for the first time (8 TVRs at 1+) and 10 per cent of the target audience have seen the advertisement twice (10 TVRs at 2+). This process then continues, ie spot 3 achieves 12 TVRs broken down by 2 TVRs (1+), 5 TVRs (2+) and 5 TVRs (3+).

16. The overall effectiveness of the campaign is expressed in terms of TVRs, coverage and frequency.⁵ This is the sum of the TVRs for every spot in the campaign. In the campaign example in Figure 1 the following are achieved:
- (a) 45 TVRs comprising 15 TVRs (spot 1) + 18 TVRs (spot 2) + 12 TVRs (spot 3);
 - (b) 25 per cent 1+ cover = 15 TVRs (spot 1)+ 8 TVRs (spot 2) + 2 TVRs (spot 3);
 - (c) 15 per cent 2+ cover = 10 TVRs (spot 2) + 5 TVRs (spot 3); and
 - (d) 5 per cent 3+ cover = 5 TVRs (spot 3).

FIGURE 1



Source: ITV.

Pricing of television advertising

17. Media buyers and sales houses do not usually agree an absolute price per impact during negotiations as neither party can be sure of the future demand and supply of impacts. Although sales houses will, in some cases, offer fixed price deals or sell specific spots, the most common bargaining concept is discount off the broadcaster's SAP. Discount off SAP is negotiated at the annual deal round in return for SOB and essentially means that media buyers are trading share of future broadcast revenue spend for a share of future impacts from the channel.

⁵For example, a 400 ABC1 Adult TVR campaign.

18. The SAP is a notional ex-post benchmark price at which the market clears and will differ according to the traded audience demographic groups.

Calculation of SAP

19. The SAP for a target demographic audience, for example, ABC1 Men is calculated as:

$$\text{SAP (ABC1 Men)} = \frac{\text{Total revenue committed to station by all advertisers/media buyers for all audiences}}{\text{Total ABC1 Men impacts delivered}}$$

20. A key feature of SAP is that it is calculated *ex-post*, ie the SAP varies on a month-to-month basis depending on the impacts delivered by the sales house against each traded demographic, and the amount of overall revenue received by the sales house from media buyers. However, advertising expenditure commitments are influenced in turn by media buyers' expectations of what the SAP will be, as this will determine how much they need to spend to achieve their target level of ratings.
21. The SAP for a given demographic is not a true average price: it is the price that would apply if all advertising expenditure, by every media buyer, were made against that audience, and each spot was valued by its ability to deliver that audience and no other. Rather than entitling media buyers to a given number of impacts, the SAP mechanism entitles media buyers to a share of the impacts actually delivered.

Discounts from SAP

22. Media agencies and sales houses may agree a range of different discounts from SAP, including:
- a single discount which applies to all demographics for the whole portfolio of advertisers;
 - different discounts for each demographic for the whole portfolio of advertisers;

- a single discount which applies to all demographics for most of the portfolio of advertisers;
 - individual discounts for specific advertisers across all demographics; and/or
 - individual discounts for specific advertisers for each demographic.
23. A discount from SAP equates to a bigger proportion of impacts than the proportion of expenditure (for example, a discount of 15 per cent results in 15 per cent more impacts being delivered, therefore if an advertiser buys 100 impacts, after the discount it receives 115 impacts). The process of optimization allows broadcasters to allocate discounts in this way. However, given that there are a fixed number of impacts, any increase in discount to one media agency must be offset by another media agency receiving a smaller share.
24. Sales houses are able to offer discounts from SAP because SAP for each demographic is calculated based on revenue received against all demographics, and sales houses are able to practise airtime optimization. If advertisements were broadcast randomly throughout the day, without considering when these advertisements were most likely to be seen by the target audience, then broadcasters would not be in a position to offer a discount from SAP. However, by matching the advertisements with an appropriate performance slot and appropriate demographic sales houses are able to maximize the number of impacts for a particular demographic than would occur if the advertisement were broadcast randomly. It is, therefore, possible for all impacts to be sold at a discount from SAP.
25. If a media agency operates an 'umbrella contract', once the overall discounts are negotiated with the sales house, the media agency will need to consider how these

are distributed across its advertising clients.⁶ This distribution may be influenced by the contracts agreed between the media agency and its advertisers and other commercial factors such as: the size of the advertiser's contract with the media agency, whether it is likely to commit a larger budget in the future (for example, the media agency may wish to retain the custom of a large client; the client may have a global or international business with potential for growth in the UK market); if the client is high-profile and likely to bring more business to the media agency in the future; and whether the contract with the media agency is up for renewal in the near future etc.

⁶This is in contrast to a 'line-by-line' deal whereby agencies agree specific terms with sales houses in relation to specific clients.

Assessment of substitutability analysis

Introduction

1. This appendix summarizes the findings and assumptions of the different substitutability analyses that were conducted by ITV and third parties.
2. We consider first the different methodological approaches taken by ITV and how the assumptions of many third parties differ. Second, we evaluate the approaches taken. Third, we review and summarize the analyses conducted by ITV and third parties. Fourth, we consider ITV's comparison of 2008 and pre-merger simulations.

Methodology

3. In 2003 Carlton and Granada provided the CC with an analysis, based on media planning software, which demonstrated that a campaign which did not use ITV1 could in most cases achieve at least the same level of cover in the same time period, as one that used ITV1—the main exceptions were the demographics for ABC1 Adults, Adults and Housewives.¹ The ability to obtain equivalent coverage and frequency (ie how many people in an advertiser's target demographic audience they reach and how many times the target demographic audience sees the advertisement),² with or without ITV1 was due to the lower price of advertising on other channels which meant that a greater number of TVRs³ could be bought despite ITV1's more efficient delivery. The CC report noted that, although this analysis

¹CC 2003 report paragraphs 5.109–5.141.

²Coverage is the proportion of the target demographic audience viewing the advertisement at least once over the campaign period. Reach is always expressed in terms of 1+ coverage. A campaign's frequency is the proportion of the campaign's target audience that has seen the advertisement at least a particular number of times over the campaign period. For example, 4+ coverage of 50 implies that 50 per cent of the target audience has seen the advertisement four or more times during the campaign.

³The effectiveness of advertising in reaching a target demographic group is measured in television ratings, or TVRs. For a particular campaign, one TVR represents 1 per cent of the target group. Thus, a 30-second advertisement in a programme that reaches 25 per cent of a particular demographic group delivers 25 TVRs. For further details see Appendix B.

appeared to be technically correct, there were barriers to switching and other 'must have' features of ITV1 that limited this substitutability.⁴

4. ITV argued that the situation had changed substantially since 2003. Its new evidence was based on two different approaches:

(a) First, ITV looked at the substitutability of ITV1 using media planning software ('software-based' substitutability). In each scenario, ITV took a hypothetical campaign and distributed ratings according to natural delivery, ie ITV generated the outcome of a typical campaign by apportioning the TVRs according to each channel's existing share of commercial impacts, in the way that the market would naturally deliver them absent any other constraints. It then calculated the cost of this campaign. To assess the effect of removing ITV1 from the schedule, ITV reallocated TVRs away from ITV1 according to natural delivery and based on the same budget and same price of impacts. In relation to these scenarios with and without ITV1 it compared the resulting changes in coverage and frequency. This approach was the same as in 2003 and allowed direct comparisons to be drawn between substitutability in 2003 and in 2008/09.

(b) Second, ITV looked at substitutability of ITV1 using manual reallocation of advertising slots ('manual' substitutability) incorporating expert judgement rather than following a software algorithm. ITV commissioned a media auditor, [X] to examine a number of actual campaigns and to reallocate the slots without ITV1 in the schedule but for the same budget. The auditor used media planning best practice to reallocate the slots to other commercial channels.⁵ As with the software-based substitutability methodology, the auditor examined the resulting changes in coverage and frequency for scenarios with and without ITV1. This

⁴CC 2003 report, paragraphs 1.9 & 5.111.

⁵ITV stated that this was to avoid too many advertisements on the same channel, avoid using rarely-used channels and be consistent with channels' sales policies.

manual substitutability analysis was not conducted in 2003 so no comparisons can be drawn between 2003 and 2008.

5. A number of third parties also undertook both software-based and manual substitutability analyses. Below we provide further detail on the campaigns tested by ITV and outline how third-party analyses adopted different assumptions to ITV.

Software-based substitutability—methodology

6. In relation to the software-based substitutability methodology, ITV tested campaigns of different ratings and length (and at different times of the year).⁶ In this appendix we consider the main scenarios tested but do not summarize evidence on 300 and 400 TVR campaigns in one week. All the evidence (ITV and others) suggested that campaigns are never of this size in a week. ITV also conducted the software-based approach assuming that a large number of campaigns had already been switched away from ITV1. ITV then examined the switching of an individual campaign after taking into account the effect on the price of impacts on ITV1 and other commercial channels of switching either (i) £30 million⁷ ('£30 million scenario') or (ii) £205 million⁸ ('£205 million scenario') away from ITV1.⁹ ITV submitted that £30 million was the correct benchmark for any assessment of switching behaviour.

⁶For example, ITV examined the substitutability of a four-week 400 TVR campaign, a one-week 100 TVR campaign, a one-week 150 TVR campaign and also provided the breakdown by week of a four-week campaign on a week-by-week basis (ie showing 200 TVRs after two weeks, 300 TVRs after a three-week campaign).

⁷£30 million was chosen as ITV's survey of buyers (see Appendix E) suggested that, if the price of ITV1 rose by 5 per cent, only around £[redacted] million would have to switch to other channels for the price rise to be unprofitable. ITV [redacted] to ensure that the conditions of sufficient switching were more than met.

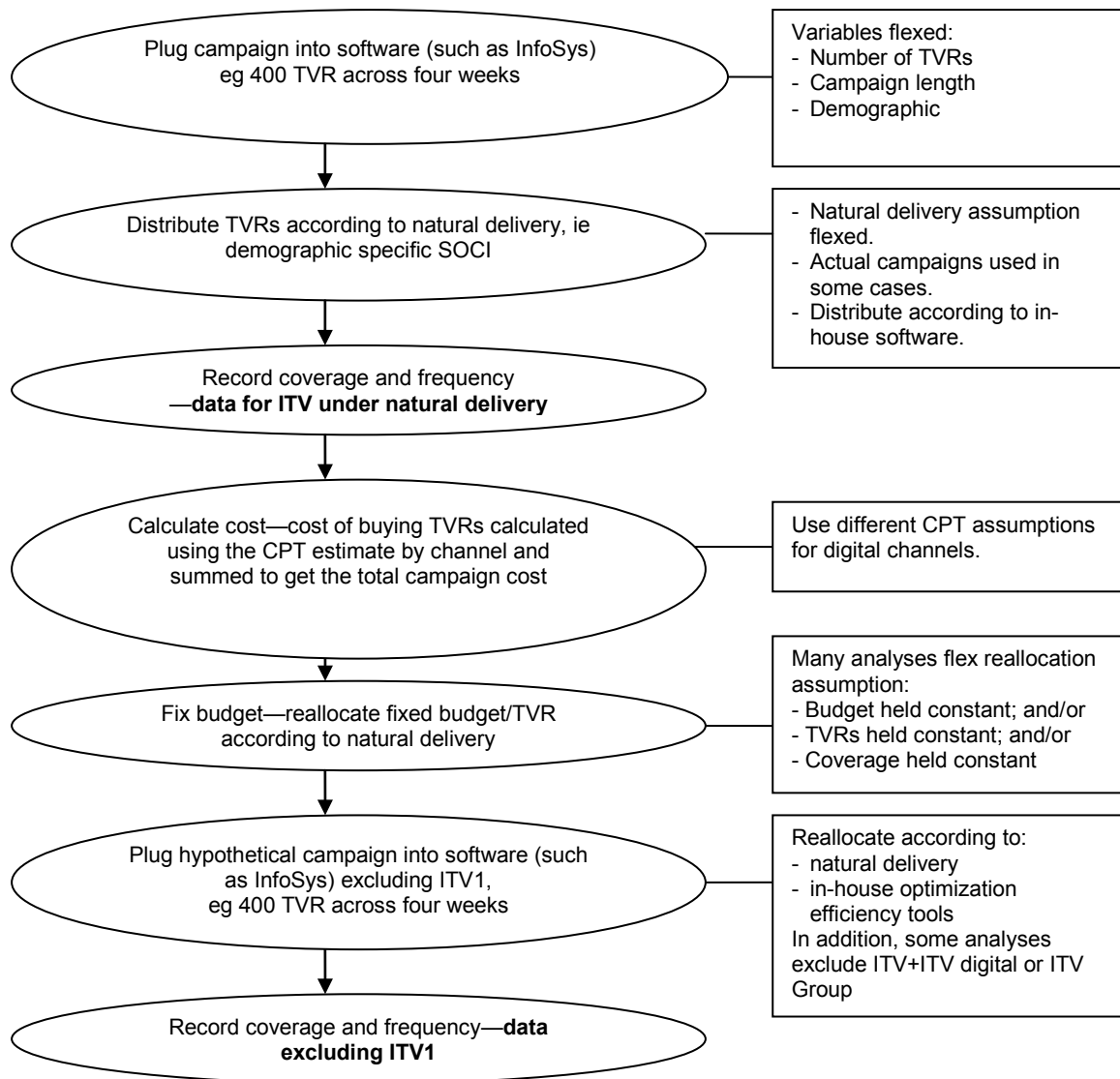
⁸ITV submitted that the figure of £205 million was appropriate for a number of reasons. First, based on ITV's survey results it represented [redacted]. Second, it represented 15 per cent of ITV's total revenue for 2007, or approximately 200 campaigns, or 40 billion impacts. Third, it was nearly seven times the level of switching from ITV1 to other channels needed to constrain ITV1 from demanding an increased spend commitment. Finally, it was also greater than the amount that most agencies spent in total on ITV1 in 2007.

⁹The OFT noted that the methodology adopted appears to assume that the inflated CPTs on other channels apply only to the spend that is substituted away from ITV1. ITV argued that InfoSys analysis assumed that this was applied to all airtime. ITV only considered the inflated CPTs for the switching campaigns for the manual substitutability analysis. Further, we note that movement of spend away from ITV on to other channels will alter the reach and frequency of existing campaigns.

7. Diagram 1 outlines the basic ITV framework for testing substitutability whilst capturing how third-party analyses have adopted different assumptions.

FIGURE 1

Methodological approach for software-based substitutability analysis



Source: CC.

8. The key features of this methodological approach include:

(a) *In-house software*: the analyses use software programmes, such as InfoSys, to allocate TVRs between channels.¹⁰ Such programmes are probability-based systems that calculate the coverage and frequency of campaigns depending on various criteria, for example the date, share by channel, dayparts and weight of campaign.

(b) *Natural delivery*: ITV and some third-party evidence allocated TVRs according to the natural delivery of each channel.

9. As noted above, a number of third parties also undertook software-based substitutability analyses. These analyses in some cases adopted different assumptions to ITV, the key variables flexed are as follows:

(a) Reallocation mechanism: when ITV1 is excluded from the channel mix the reallocation process can vary from a simple reallocation on the basis of natural delivery to reallocating using in-house client objective efficiency optimization software (see [Agency A] analyses).

(b) Type of campaign: ITV use theoretical campaigns allocating TVRs according to natural delivery. Many third parties use actual campaigns therefore affecting the initial allocation of TVRs between commercial channels.

(c) Campaign dynamics: analyses vary according to the demographic considered, campaign coverage objective (eg 1+ coverage, 4+ coverage), and the length of campaign.

We provide further detail on the different assumptions used when reviewing the evidence.

Manual substitutability—methodology

10. ITV investigated whether ‘real’ campaigns could have used slots on non-ITV1 channels to deliver the same levels of cover and frequency as were achieved

¹⁰Alternative software packages include DDS Craft, Advantage, Xpert.

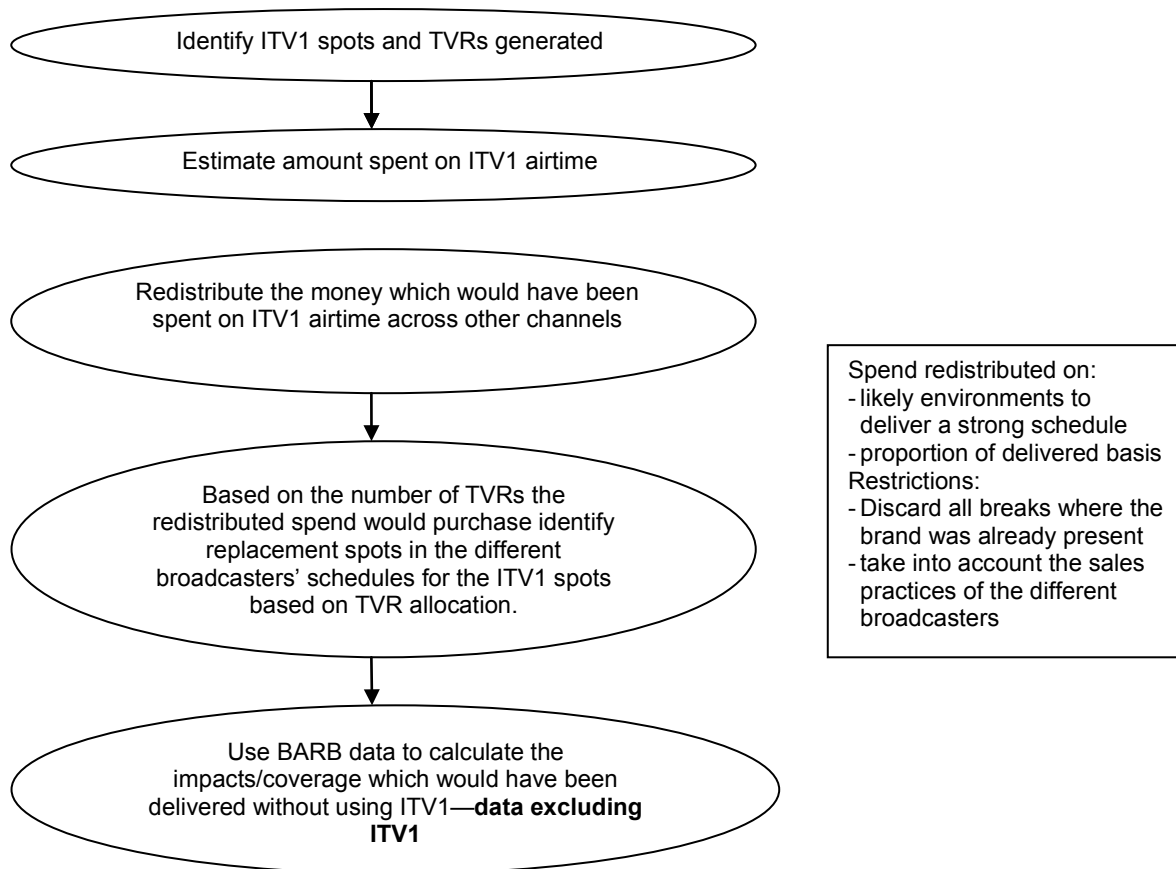
including ITV1. An auditor (on behalf of ITV) tested six campaigns from March 2007 and six campaigns in April 2008.¹¹ The auditor's broad approach was to replace ITV1 slots used in each campaign while taking into account the sales practices of the different broadcasters. This approach relies on the inspection of television schedules and ratings. As with the software-based method, ITV also revised the manual substitutability approach to consider the effect of replicating an individual campaign without ITV1 if either £30 million or £205 million worth of campaigns had already been moved from ITV1 to other channels and the price of the non-ITV channels had consequently increased.

11. [Agency B] and [another party] also undertook some manual substitutability analyses. Figure 2 outlines the basic ITV framework whilst capturing how third-party analyses have adopted different assumptions.

¹¹The auditor also extended its analysis to fast-build campaigns. These were defined as campaigns running at 100/150/200/250 TVRs over a single week in 2008. The results followed a similar pattern to the standard results. In all cases, except for the Housewives demographic, the same 1+ and 4+ coverage levels could be achieved without ITV1 but the auditor noted that on several occasions they clearly ended up with a revised schedule with over 50 TVRs on Channel 4 in a single week, which is against the channel's normal sales policy. The auditor had significantly to exceed this threshold for all campaigns above 200 TVRs, and twice (out of a sample of five campaigns) above 150 TVRs. We further observe that the revised schedule made use of ITV's digital channels.

FIGURE 2

Methodological approach using manual reallocation



Source: CC.

12. [Another party] and [Agency B] applied a similar approach to ITV adhering to original daypart and strike weight allocation analysis.
- (a) [Another party] manually reallocated ITV1's share of TVRs for a 16–34 Adults campaign. Reallocation was based on using similar dayparts and strike weightings although there was discretion over the choice of alternative slots. [Another party] argued that it was possible to manipulate the results of any manual exercise, highlighting the flaws in ITV's analysis.
- (b) [Agency B] provided a manual reallocation analysis for [Client A's] campaign (ABC1 Women), [Client B's] campaign (HWs) and [Client C's] campaign (ABC1 Adults). [Agency B's] analysis assumed that the ITV1 budget was reallocated on

to other channels on a re-weighted 'as delivered' basis for each audience.¹²

[Agency B] stated that 'peak delivery was maintained throughout the schedule'.

Evaluation of methodological approaches

13. In this section we evaluate both the software-based and manual substitutability approaches. There are strengths and weaknesses to both simulation approaches. Both techniques are informative in assessing substitutability (in terms of coverage and frequency only) in relative terms over time and across demographics.

Software-based substitutability

14. The strengths and weaknesses of this approach identified during this review follow almost identically those raised in the 2003 CC report. Although the substitution approach appears to be technically correct the analysis has a number of limitations. For example, not considering:
- (a) differences in qualitative aspects of impacts on ITV1 compared with other channels;
 - (b) clashes of the same type of advertisements within breaks;
 - (c) other important campaign parameters or contractual requirements, including daypart splits and positions in the break;
 - (d) the number of spots required on other commercial channels in order to deliver the same number of ratings;
 - (e) the availability of inventory on other commercial channels; and
 - (f) the nature of the annual negotiations for airtime (agency and client-specific agreements rather than campaign-by-campaign trading).

¹²This means that if Channel 4 represented 25 per cent of the market excluding ITV1 impacts for a given audience, then the replacement schedule would be calculated to deliver 25 per cent of the replacement impacts on Channel 4 for all other channels. In reality, a media buyer is more likely to plan a campaign on what it considers to be the most efficient channel mix rather than on an 'as delivered' basis.

15. Overall, such limitations mean that the analysis is most likely to overestimate substitutability to some extent.

Manual substitutability

16. The manual substitutability analysis attempts to address the practical issues raised in relation to the software-based substitutability methodology. However, the main limitation to this approach is the degree of discretion and subjectivity involved in the reallocation of ITV1 slots on to other commercial channels. As noted above, ITV and third parties reallocated ITV1 slots used in each campaign while taking into account the sales practices of the different broadcasters. This approach relies on the manual inspection of television schedules and ratings, which requires a degree of discretion.
17. There are a number of other issues raised in relation to ITV's manual substitutability analysis which cast further doubt on the weight of this evidence:
 - (a) *The asymmetric nature of the analysis:* the manual substitutability analysis is 'asymmetric.' Advertisement slots are reallocated from ITV1 on to other commercial channels with the benefit of hindsight, in which the most effective slots are able to be chosen. However, results are then compared with ITV1 performance based on actual campaign slots. The auditor argued that the methodological approach was to compare the effect on real campaigns of ITV1 exclusion where it was required to use actual campaigns and allocate different spots in this manner.
 - (b) *Impact on ITV1 residual prices:* although the manual substitutability analysis considered the effect on the price of airtime of channels to which campaigns were hypothetically switched (for those campaigns that switched and not existing

campaigns¹³), it did not consider the impact of this switching on the price of residual ITV1 airtime. If ITV1's residual prices increased as a result of any reduction in SOB commitment this would affect existing campaigns. The auditor argued that it would not be appropriate to factor in a presumed outcome, as this assumption required that ITV1 airtime was not substitutable, and if ITV1 were substitutable then it was not the case that such a negotiation increased prices.

(c) *The nature of replacement slots:* the manual substitutability analysis did not fully take into account constraints on slots which would be imposed by the scarcity of slots and entitlements and demands of other media buyers. These impacts may not be attainable at 'average' prices. ITV1 advertisements can be reallocated to other channels effectively only where the advertisements are reallocated to some of the better slots available on those other channels (ie to slots in peak-time programmes or with mass audiences, of which only relatively few such slots exist). ITV argued that the auditor selected slots that would have been open to agencies based on the budget for that campaign and these slots were not chosen with any foreknowledge as to how they would perform on a coverage basis.

These limitations are likely to overestimate the degree of substitution to some extent.

18. Issues also arise with third-party analyses. [Agency B's] analysis assumed that ITV1's budget was reallocated on to other channels on a re-weighted 'as-delivered' basis for each audience¹⁴ which may tend to underestimate the extent to which ITV1

¹³The auditor's analysis considered the impact of large volumes of campaigns being moved off ITV1 to other channels and the price of the non-ITV channels assumes that the inflated prices on other channels apply only to the spend that is substituted away from ITV1 and therefore does not take account of the spend already on other channels. The auditor argued, and ITV supported, that to make assumptions about removing individual spots from all other channels based on variations on revised CPTs would have resulted effectively in 'guesswork' which would have made the methodology less robust. However, ITV stated that the auditor did quantify the effect of applying inflated CPTs only to the switched revenues from ITV1 and not to the pre-existing campaign revenues on the other channels to ensure that it would not materially impact its results. In the case of £30 million being removed from ITV, the auditor calculated the effect of applying the inflated CPTs to both the switched revenues from ITV1 and the pre-existing campaign revenues on other channels and found that across the full 400 TVR/4 weeks of the campaign this would have resulted in only approximately 1.5 TVRs fewer in total. This would have had no material effect on the auditor's findings. For £205 million it would have resulted in approximately 25 TVRs fewer in total, which again would not have materially affected the auditor's findings.

¹⁴This means that if Channel 4 represented 25 per cent of the market excluding ITV1 impacts for a given audience, then the replacement schedule would be calculated to deliver 25 per cent of the replacement impacts on Channel 4 for all other channels. In reality, a media buyer is more likely to plan a campaign on what it considers to be the most efficient channel mix rather than on an 'as delivered' basis.

airtime is substitutable. Further we have some reservations about [Agency B's] [Client B] analysis as the replacement schedule has multiple spots appearing in the same breaks on certain channels. [Another party's analysis] appeared to choose some of the worst spots on other channels which would underestimate the degree of substitution.

Review of evidence

19. In this section we first review the OFT findings on the substitutability analyses. We then review and summarize analyses (both software-based and manual substitutability analysis) conducted by ITV and third parties before summarizing the analyses that draw direct comparisons between substitutability in 2003 and in 2008/09.

OFT views

20. The OFT did not come to definitive conclusions on the substitution analysis, but acknowledged weaknesses in the process whilst accepting that substitutability had increased since 2003.
21. To summarize, the OFT stated that the analyses of reach and coverage using media buyers' optimization software suffered from some disadvantages and the OFT was cautious in its reliance on it. Even though the results tended to overestimate the extent of coverage attainable on other channels, the results appeared to show that it is not possible to attain the same coverage without ITV1 for at least some campaigns/ demographics. More generally, the analysis seemed to confirm that ITV1's comparative advantage lies in fast delivery of the broad demographics, but this advantage had declined since 2003, ie the degree of substitutability had increased. The OFT found that, although the results from third parties were mixed, and the methodology was not always provided, the majority of those simulations

indicated that it would still be more expensive to obtain similar cover levels without ITV1. However, some results suggested that it would be now possible to obtain similar levels of cover without ITV1 at the same budget. Some suggested that substitutability had improved since 2003, and others that there had been no discernible pattern of change.

22. In terms of the manual reallocation analysis, the OFT found that ITV's media auditor's analysis seemed to suggest that although some campaigns could be substituted, there were difficulties in substituting fast campaigns¹⁵ as this might require large numbers of slots on other channels. The OFT noted that the results were also subject to the criticism that slots on channels other than ITV1 were picked with the benefit of hindsight.

Our evaluation

23. We have validated on the evidence presented to the OFT by clarifying methodological approaches with third parties.
24. ITV sells television airtime across 15 demographics,¹⁶ as shown in Figure 3, and provided substitution analyses (both software-based and manual substitution analysis) for the six largest demographics (in revenue terms).

FIGURE 3

ITV1 2008 revenue by demographic



Source: CC based on ITV data.

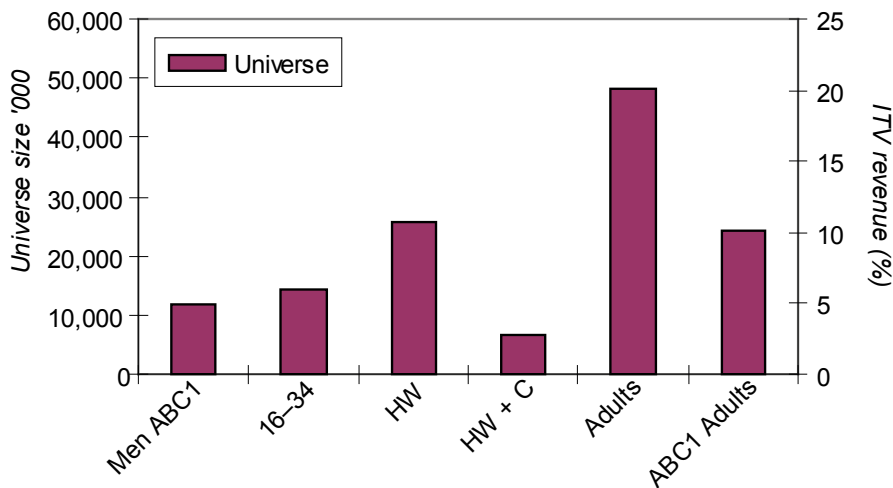
¹⁵These were defined as campaigns running at 100/150/200/250 TVRs over a single week in 2008.

¹⁶Audiences are conventionally divided into some 15 different demographic groups: Adults, ABC1 Adults, 16–24 Adults, 16–34 Adults, Men, ABC1 Men, 16–34 Men, Women, ABC1 Women, 16–34 Women, ABC1 Housewives, 16–54 Housewives, Housewives, Housewives with Children and Children.

25. The revenue data does not correspond with the population/universe sizes of the demographics, as shown in Figure 4. [✂]

FIGURE 4

Demographic universe size



Source: ITV.

26. We have considered both software-based and manual substitution analysis together and have grouped these demographics into four categories which are discussed in detail below:
- (a) Group A—16–24 Adults, Children, 16–54 Housewives (16–54 HW), Men;
 - (b) Group B—16—34 Men, Women, 16–34 Women, ABC1 Women;
 - (c) Group C—ABC1 Housewives (ABC1 HW) ABC1 Men, 16–34 Adults and Housewives + Children (HW + C); and
 - (d) Group D (wider demographics) Housewives (HW), Adults and ABC1 Adults.
27. We have considered and summarized ITV’s analyses for campaigns of different ratings and length (and at different times of the year) in addition to the approaches

assuming a large number of campaigns had already been switched away from ITV1.

We also consider third-party evidence, focusing on the main scenarios.¹⁷

Group A—16–24 Adults, Children, 16–54 HW, Men

28. ITV1's revenue share for these demographics is low (less than 5 per cent) and it did not therefore undertake substitution analyses. Third parties have provided little,¹⁸ if any, evidence to suggest it is possible to substitute campaigns bought against these demographics.

Group B—16–34 Men, Women, 16–34 Women and ABC1 Women

29. ITV1's revenue share for these demographics is low (less than 5 per cent) and it did not therefore undertake substitution analyses. Some third parties have provided some examples.

30. *16–34 Men*: share of ITV1's revenue is [X] per cent. [Agency A] analysed two relatively long actual campaigns ([Brand A]¹⁹ and [Brand B]). [Agency A] used its internal optimization system when excluding ITV1 in contrast to ITV's natural delivery. [Agency A's] optimization system accounts for client-specific objectives, ie reach and frequency requirements. This process appears to be superior to natural delivery. Assuming a constant budget, the [Brand B] example shows 1+ cover falls whilst 3+ cover remains the same. In contrast the [Brand A] campaign case indicates that substitution is possible.

¹⁷Please note that we (a) do not describe evidence on 300 and 400 TVRs in one week—the OFT requested this data but all the evidence (ITV and others) suggests that campaigns are never of this size in one week; (b) omit scenarios that hold coverage constant and flex the budget and TVRs. Third parties submitted that, in practice, a budget was typically assigned to a campaign, therefore it was reasonable to hold this variable constant whilst the coverage and TVR were flexed; and (c) focus on the exclusion of ITV1 only.

¹⁸[Media Buyer B] examined a [Brand A] campaign illustrating that coverage falls for several specific demographics when ITV is excluded.

¹⁹[Brand A] five-week campaign and [Brand B] nine-week campaign.

31. *Women*: share of ITV1's revenue is [%] per cent and the only third-party example excluded the entire ITV Group rather than ITV1 only.
32. *16–34 Women*: share of ITV1's revenue is [%] per cent. [Agency A] (same methodology as above) provided two examples—[Brand C] and [Brand D].²⁰ Assuming a constant budget, the campaigns showed that coverage increases or stays constant when ITV1 is excluded.
33. *ABC1 Women*: share of ITV1's revenue is [%] per cent. [Agency A's] four-week [Brand E] campaign analysis with a constant budget showed that 1+ cover fell whilst 4+ cover increased. [Agency B] provided a manual reallocation analysis for a three-week [Client A] campaign illustrating the same result—1+ cover falls whilst 4+ cover increases.
34. In summary, campaigns purchased against these demographics represent a small proportion of ITV1's revenue therefore ITV has not provided any substitutability analyses. Some third parties have provided some examples in which 1+ coverage falls for 16-34 Men and ABC1 Women when ITV1 is excluded. We consider that, given the relative importance of these demographics to ITV, these are unlikely to cause significant concern and the examples provided are sufficiently few for us to reach a view that substituting campaigns bought against these demographics is not possible.

²⁰[Brand C]: three-week campaign and [Brand D]: four-week campaign.

Group C—ABC1 HW, ABC1 Men, 16–34 Adults and HW + C

35. These demographics account for in excess of 5 per cent of ITV1's revenue and ITV has provided substitution analyses for ABC1 Men, 16–34 Adults and HW + C.²¹
36. *ABC1 HW*: share of ITV1's revenue is [X] per cent. [Media Buyer F's] three-month (one week on, one week off) [Brand A] campaign and [Media Buyer A's] five-week [X] campaign showed that coverage falls when ITV1 is excluded.²² ITV did not provide any detailed analyses for this demographic.
37. *ABC1 Men*: this is a relatively narrow demographic representing 11.8 million and share of ITV1's revenue is [X] per cent.
38. ITV's analysis, based on the software-based substitution technique, shows an increase in 4+ coverage and 1+ coverage without ITV1 in all major scenarios, including the £30 million scenario. For the £205 million scenario 1+ coverage falls whilst 4+ coverage improved.²³ ITV's manual substitutability analysis shows that coverage improved for 4+ cover when ITV is excluded but not for 1+ cover. This result held for the £30 million scenario with a further fall in 4+ cover under the £205 million scenario.

²¹[X]

²²[Media Buyer A's] reallocation methodology uses natural delivery. ITV1 represented 40 per cent of TVRs in the original campaign. [Media Buyer A] stated that the initial two weeks' coverage was particularly important in this campaign and excluding ITV1 under-delivered here. This represented 1.1 million fewer ABC1 HWs.

²³Exception 1+ coverage improves for one week 100 TVR scenario.

TABLE 1 **ABC1 Men: ITV's substitutability analyses—difference in coverage, ITV1 excluded**

Week	Date of analysis	TVRs	Difference in coverage excluding ITV1			
			1+	4+	1+	4+
<i>Manual substitutability</i>						
	Mar-07		-	+	[X]	[X]
	Apr-08		-	+	[X]	[X]
<i>Software-based substitutability</i>						
1 week	Mar-07	100	+	+	[X]	[X]
	Apr-08	100	+	+	[X]	[X]
	Sep-08	100	+	+	[X]	[X]
	Sep-08	150	+	+	[X]	[X]
	Sep-08	200	-	+	[X]	[X]
2 week	Mar-07	200	+	+	[X]	[X]
	Apr-08	200	+	+	[X]	[X]
3 week	Mar-07	300	+	+	[X]	[X]
	Apr-08	300	+	+	[X]	[X]
4 week	Mar-03	400	-	+	[X]	[X]
	Mar-07	400	+	+	[X]	[X]
	Apr-08	400	+	+	[X]	[X]
	Dec-08	400	+	+	[X]	[X]
	Mar-09	400	+	+	[X]	[X]

Source: ITV.

39. Third-party evidence shows that coverage can fall when ITV1 is excluded, especially for 1+ cover. As discussed above, [Agency A's] methodology is slightly more sophisticated than ITV's in that it uses internal reallocation tools that factors in client objectives.

40. Five submitted two types of analysis. The first attempted to reproduce one of ITV's software-based approaches substituting ITV1 spend for each campaign on to other commercial channels (Five's 'ITV-based approach'). Five used actual campaigns to carry out this analysis. Five noted that, in theory, individual campaigns could replicate coverage of ITV1 using this approach, but this did not demonstrate that in reality a large number of campaigns that currently included ITV1 could be run without recourse to ITV1.²⁴ The second analysis involved moving either £1 million or £205 million of spend out of ITV1 and redistributing this to other sales houses in

²⁴Five highlighted further limitations of this approach, including the limited number of campaigns that it had analysed; that campaigns selected tended to have a higher share of TVRs on ITV1 than the station average; and that it had no information on which ITV1 programmes or dayparts the campaign ran in, or how the balance of campaigns were distributed across other sales houses and hence how easy it would be in practice to obtain similar value and coverage to that achieved on ITV1.

accordance with natural delivery and (in the second case) amending sales house prices to take account of the effects of that redistribution (Five's 'own' methodology).²⁵ Five argued that the second part of this analysis addressed the question of the extent to which ITV1 was not substitutable for large amounts of advertising spend.

TABLE 2 **ABC1 Men: third-party submissions, ITV1 excluded**

Third party	Time period	Campaign type		Variable held constant		Difference in coverage excluding ITV1	
		Actual	Theoretical	TVR	Budget	Difference—1+	Difference—4+
<i>Software-based substitutability</i>							
Five—[Brand A]	3 week	√			√	1.6	5.9
Five—[Brand B]	4 week	√			√	1.1	5.3
Agency A—[Brand F]	4/5 week	√			√	-3.2	-2.5
Five—[Brand C]	5 week	√			√	1.2	4.0
[Agency A]—[Brand G]	5 week	√			√	-1.9	-0.2
[Agency A]—[Brand H]	6 week	√			√	-0.4	4.6
[Agency A]—[Brand F]	4 week	√		√		-4.6	-5.9
[Agency A]—[Brand G]	5 week	√		√		-2.9	-2
[Agency A]—[Brand H]	6 week	√		√		-3.3	-1.9
[Agency C]—[Brand A]	6 week	√			√	0	3
[Agency A]—[Brand I]		√		√		-3.3	-3.6
Five—£205 million moved	4 week		√		√	-2.8	0.4
Five—£1 million moved	4 week		√		√	-1.4	3.3
IPA	4 week				√	0.4	5.1

Source: Third-party submissions.

41. **16–34 Adults:** the demographic size is 14.4 million and share of ITV1's revenue is [X] per cent. For all major scenarios tested under ITV's software-based substitutability analysis (including £30 million and £205 million scenarios), coverage improves in the absence of ITV1. ITV's manual substitutability analysis also displayed an improvement in 1+ and 4+ cover (see Table 3). However, under the £30 million scenario using the manual substitutability analysis 1+ cover falls with 4+ cover also falling under the £205 million scenario.

²⁵Five carried out both types of analysis for a one-week and four-week period. Results in the tables are for a four-week period.

TABLE 3 16–34 Adults: ITV’s substitutability analyses—difference in coverage, ITV1 excluded

Week	Date of analysis	TVRs	Difference in coverage excluding ITV1			
			1+	4+	1+	4+
<i>Manual substitutability</i>						
	Mar-07		+	+	[X]	[X]
	Apr-08		+	+	[X]	[X]
<i>Software-based substitutability</i>						
1 week	Mar-07	100	+	+	[X]	[X]
	Apr-08	100	+	+	[X]	[X]
	Sep-08	100	+	+	[X]	[X]
	Sep-08	150	+	+	[X]	[X]
	Sep-08	200	+	+	[X]	[X]
2 week	Mar-07	200	+	+	[X]	[X]
	Apr-08	200	+	+	[X]	[X]
3 week	Mar-07	300	+	+	[X]	[X]
	Apr-08	300	+	+	[X]	[X]
4 week	Mar-03	400	+	+	[X]	[X]
	Mar-07	400	+	+	[X]	[X]
	Apr-08	400	+	+	[X]	[X]
	Dec-08	400	+	+	[X]	[X]
	Mar-09	400	+	+	[X]	[X]

Source: ITV.

42. Third-party evidence is not consistent. Five’s own analysis shows that coverage improves when £1 million is excluded from ITV1 but coverage weakens when £205 million is excluded from ITV1. Coverage also improves using Five’s ITV-based approach.
43. [Agency A], [Media Buyer C]²⁶ and [another party] all show a weakening of 1+ cover when ITV1 is excluded. [Agency A’s] methodology is the same as described above, ie ITV1 TVRs are reallocated on the basis of an internal optimization programme. [Media Buyer C’s] approach varies from ITV’s approach in that it focused on maintaining frequency and did not allocate any spare budget to alternative channels. The initial allocation of TVRs was based on a hypothetical [Media Buyer C] campaign and reallocation of ITV1’s TVRs used natural delivery.
44. [Another party] manually reallocated ITV1’s share of TVRs. Reallocation was based on using similar dayparts and strike weightings although there was discretion over

²⁶Analysis carried out by a [media agency].

the choice of alternative slots. [Another party] argued that it was possible to manipulate the results of any manual exercise highlighting the flaws in ITV's manual substitutability analysis.

TABLE 4 16–34 Adults: third-party submissions, ITV1 excluded

Third party	Time period	Campaign type		Variable held constant		Difference in coverage excluding ITV1	
		Actual	Theoretical	TVR	Budget	Difference—1+	Difference—4+
<i>Manual substitutability</i>							
[Another party]—[Brand A]	4 week	√			√	-1.5	-0.3
<i>Software-based substitutability</i>							
Five—[Brand D]	1 week	√			√	1.6	3.2
[Agency C]—[Brand C]	1 week	√			√	0.1	
Five—[Brand E]	11 days	√			√	1.1	3.7
Five—[Brand F]	2 week	√			√	1.9	5.4
Five—[Brand G]	2 week	√			√	2.8	3.4
[Agency A]—[Brand J]	4 week	√			√	-1.6	2.4
[Agency A]—[Brand J]	4/5 week	√		√		-2.5	-1.1
Five—£1 million moved	4 week		√		√	0.1	3.0
Five—£205 million moved	4 week		√		√	-1.4	-0.2
[Media Buyer C]	4 week		√	√		-0.8	
IPA				√		-0.4	
IPA	4 week				√	2.3	7.6

Source: Third-party submissions.

45. *HW + C*: share of ITV1's revenue is relatively high at [§<] per cent whilst the universe size is narrow at 6.7 million. For all major scenarios tested under the software-based substitutability analysis (exception 1+ cover in 2003), ITV's analyses illustrate that coverage improves in the absence of ITV1. Coverage increases under the £30 million scenario whilst 1+ cover falls for the £205 million scenario. ITV's manual substitutability analysis, including the £30 million and £205 million scenarios, illustrates that coverage improves in the absence of ITV1.

TABLE 5 HW + C: ITV's substitutability analyses—difference in coverage, ITV1 excluded

Week	Date of analysis	TVRs	Difference in coverage excluding ITV1			
			1+	4+	1+	4+
<i>Manual substitutability</i>						
	Mar-07		+	+	[X]	[X]
	Apr-08		+	+	[X]	[X]
<i>Software-based substitutability</i>						
1 week	Mar-07	100	+	+	[X]	[X]
	Apr-08	100	+	+	[X]	[X]
	Sep-08	100	+	+	[X]	[X]
	Sep-08	150	+	+	[X]	[X]
2 week	Mar-07	200	+	+	[X]	[X]
	Apr-08	200	+	+	[X]	[X]
3 week	Mar-07	300	+	+	[X]	[X]
	Apr-08	300	+	+	[X]	[X]
4 week	Mar-03	400	-	+	[X]	[X]
	Mar-07	400	+	+	[X]	[X]
	Apr-08	400	+	+	[X]	[X]
	Dec-08	400	+	+	[X]	[X]
	Mar-09	400	+	+	[X]	[X]

Source: ITV.

46. Similar to 16–34 Adults, third-party evidence is not consistent. Five's ITV-based analyses display an improvement in coverage whilst its own simulations taking £1 million or £205 million out of ITV1 show a weakening of cover when ITV1 is excluded. Third-party results also vary between campaigns with no apparent link to campaign length. [Media Buyer D's] campaign analysis also shows an improvement in coverage but [Media Buyer D] submitted that this did not illustrate that ITV1 was substitutable. [Media Buyer D] submitted that substituting away from ITV1 increased the proportion of the audience seeing the advertisement more than ten times, which it deemed excessive. [Media Buyer F] submitted that it was more important to analyse excessive frequency rather than just 1+ and 4+ cover.²⁷

²⁷Media buyer F also provided frequency data showing that frequency increased when ITV1 was excluded.

TABLE 6 HW + C—third-party submissions, ITV1 excluded

Third party	Time period	Campaign type		Variable held constant		Difference in coverage excluding ITV1	
		Actual	Theoretical	TVR	Budget	Difference—1+	Difference—4+
<i>Software-based substitutability</i>							
Five—[Brand H]	2 week	√			√	0.5	4.6
Five—[Brand I]	2 week	√			√	2.5	5.6
Five—[Brand J]	3 week	√			√	2.4	7.0
Five—[Brand K]	3 week	√			√	2.3	6.5
Five—[Brand L]	4 week	√			√	0.2	2.1
[Agency A]—[Brand K]	4 week	√			√	0.9	5.6
Five—[Brand M]	4 week	√			√	1.9	3.7
[Agency A]—[Brand K]	4 week	√		√		-1.4	-0.9
[Media Buyer F]—[Brand B]	4 week	√		√		-1.9	
[Agency D]—[Brand A]	2 weeks	√				1.0	5.5
[Media Buyer F]—[Brand C]	3 week	√				1.0	-1.4
[Agency F]—[Brand A]	4 week	√				-2.7	
[Agency D]—[Brand B]	4 week	√				0.2	2.6
Five—£1 million moved	4 week		√		√	-1.4	2.2
Five—£205 million moved	4 week		√		√	-2.7	-1.5
[Media Buyer C]	4 week		√		√	-1.4	
IPA	4 week				√	1.1	8.7
Other							
[Media Buyer D]	4 week	√			√	0.7	10.7

Source: Third-party submissions.

47. [Media Buyer E] provided a manual reallocation analysis showing that coverage fell but this excluded ITV Group rather than ITV1.²⁸
48. In summary, these demographics account for in excess of 5 per cent of ITV1's revenue and ITV has provided substitution analyses for ABC1 Men, 16–34 Adults and HW + C. For ABC1 Men, 16–34 Adults and HW + C, ITV's substitution analyses indicated it was possible to exclude ITV1, however, some third-party evidence casts some doubt on the extent of substitutability when buying against these demographics, especially when analysing 1+ cover. For ABC1 HW, ITV did not undertake any analyses whilst third-party evidence questioned the degree of substitutability. Overall, although for some campaigns ITV1 might be substitutable when bought against these demographics, there remain a number of campaigns that would struggle to achieve the same 1+ cover.

²⁸ [X]

Group D—HW, Adults and ABC1 Adults

49. This group includes wider demographics and those in excess of 10 per cent of ITV1's revenue.
50. *HW*: share of ITV1's revenue is [X] per cent and universe size 25.9 million. ITV's analysis, based on the software-based substitutability, shows an improvement in 4+ coverage for most scenarios, however, 1+ cover falls. This result is exacerbated under the £30 million scenario with a further weakening of 4+ coverage. With the £205 million scenario coverage falls. ITV's manual substitutability analysis conducted by an auditor also shows that coverage weakened when ITV1 was excluded, a result that is exacerbated under the £30 million and £205 million scenarios.

TABLE 7 **HW: ITV's substitutability analyses—difference in coverage, ITV1 excluded**

Week	Date of analysis	TVRs	Difference in coverage excluding ITV1			
			1+	4+	1+	4+
<i>Manual substitutability</i>						
	Mar-07		–	–	[X]	[X]
	Apr-08		–	+	[X]	[X]
<i>Software-based substitutability</i>						
1 week	Mar-07	100	–	+	[X]	[X]
	Apr-08	100	+	+	[X]	[X]
	Sep-08	100	–	+	[X]	[X]
	Sep-08	150	–	+	[X]	[X]
	Sep-08	200	–	+	[X]	[X]
2 week	Sep-08	250	–	+	[X]	[X]
	Mar-07	200	–	+	[X]	[X]
3 week	Apr-08	200	–	+	[X]	[X]
	Mar-07	300	–	+	[X]	[X]
4 week	Apr-08	300	–	+	[X]	[X]
	Mar-03	400	–	–	[X]	[X]
	Mar-07	400	–	–	[X]	[X]
	Apr-08	400	–	+	[X]	[X]
	Dec-08	400	–	+	[X]	[X]
	Mar-09	400	–	+	[X]	[X]

Source: ITV.

51. Third-party evidence is consistent with ITV's analyses illustrating that 1+ cover weakens when ITV1 is withdrawn. However, the analyses also show that 4+ cover weakens in a number of simulations. This is consistent with [Agency B's] manual reallocation process exercise. We, however, have some reservations about [Agency B's] [Client B] analysis as the replacement schedule has multiple spots appearing in

the same breaks on certain channels. This would have an impact on the level of 1+ cover that could be achieved by this schedule.

TABLE 8 HW: third-party submissions, ITV1 excluded

Third party	Time period	Campaign type		Variable held constant		Difference in coverage excluding ITV1	
		Actual	Theoretical	TVR	Budget	Difference—1+	Difference—4+
<i>Manual substitutability</i>							
[Agency B] and [Client B]—[Brand A]	1 week	√			√	-3.8	3.8
<i>Software-based substitutability</i>							
Five—[Brand N]	1 week	√			√	-1.0	-0.4
Five—[Brand O]	1 week	√			√	-3.1	1.4
Five—[Brand P]	2 week	√			√	-4.5	1.0
Five—[Brand Q]	3 week	√			√	1.3	-0.2
Five—[Brand R]	3 week	√			√	-2.9	0.1
[Media Buyer F]—[Brand C]	3 week	√				-4	-2.7
Five—[Brand S]	4 week	√			√	-4.0	1.6
[Media Buyer F]—[Brand A]	6 week	√				-3.5	-2.6
[Media Buyer F]—[Brand B]	4 week	√				-1.5	
Five—£1 million moved	4 week		√		√	-4.3	-1.7
Five—£205 million moved	4 week		√		√	-5.4	-4.5
[Another party]	4 week		√		√	-1.7	
IPA	4 week				√	-2.1	0.5

Source: Third-party submissions.

52. *Adults*: share of ITV1's revenue is [X] per cent and the universe size is 48.2 million.
53. For all major scenarios, ITV's software-based analysis shows that excluding ITV1 improves 4+ cover, however, 1+ cover falls for shorter campaigns. For the £30 million scenario ITV1 results show a drop in 1+ cover and for the £205 million scenario 4+ coverage is further weakened.
54. Coverage also improves when ITV1 is excluded under ITV's manual substitutability analysis. However, the Adjudicator re-optimized the original campaign on ITV1 with the benefit of hindsight as had been carried out in the reallocation of spots to other channels. This 're-optimization' improves 1+ coverage from 82.1 to 83.5 and 4+ from 44.5 to 45.6 which results in 1+ coverage falling when ITV1 is excluded.²⁹ ITV's manual analysis based on the £30 million scenario also shows that coverage improves when ITV1 is excluded, but for the £205 million scenario coverage falls.

²⁹Source: Office of the Adjudicator.

TABLE 9 Adults: ITV's substitutability analyses—difference in coverage, ITV1 excluded

Week	Date of analysis	TVRs	Difference in coverage excluding ITV1			
			1+	4+	1+	4+
<i>Manual substitutability</i>						
	Mar-07		+	+	[X]	[X]
	Apr-08		+	+	[X]	[X]
<i>Software-based substitutability</i>						
1 week	Mar-07	100	+	+	[X]	[X]
	Apr-08	100	+	+	[X]	[X]
	Sep-08	100	+	+	[X]	[X]
	Sep-08	150	-	+	[X]	[X]
	Sep-08	200	-	+	[X]	[X]
2 week	Mar-07	200	-	+	[X]	[X]
	Apr-08	200	+	+	[X]	[X]
3 week	Mar-07	300	-	+	[X]	[X]
	Apr-08	300	-	+	[X]	[X]
4 week	Mar-03	400	-	+	[X]	[X]
	Mar-07	400	-	+	[X]	[X]
	Apr-08	400	-	+	[X]	[X]
	Dec-08	400	-	+	[X]	[X]
	Mar-09	400	+	+	[X]	[X]

Source: ITV .

55. Third-party evidence appears relatively consistent with ITV's software-based analysis when the year and type of campaign are compared. 1+ cover weakens for 2007 campaigns analysed by Five (for both its ITV-based approach and own analysis) and for shorter campaigns examined by [Agency A]. We do observe a few scenarios where 4+ cover falls.

TABLE 10 Adults: third-party submissions, ITV1 excluded

Third party	Time period	Campaign type		Variable held constant		Difference in coverage excluding ITV1	
		Actual	Theoretical	TVR	Budget	Difference—1+	Difference—4+
<i>Software-based substitutability</i>							
Five—[Brand T]	1 week	√			√	-1.2	2.7
Five—[Brand U]	3 week	√			√	1.3	1.6
[Agency A]—[Brand L]	3 week	√			√	-0.3	1.4
[Agency A]—[Brand L]	3 week	√		√		-1.1	-0.7
[Agency C]—[Brand D]	4 week	√			√	-1.0	4.0
[Agency A]—[Brand L]	4 day	√				1.5	5.1
[Agency A]—[Brand M]	1 day	√				7.1	2.4
[Agency A]—[Brand N]	5 week	√				5.8	8.6
[Agency A]—[Brand O]	4 week	√				-0.3	-2.9
Five—£205 million moved	4 week		√		√	-4.2	-2.5
Five—£1 million moved	4 week		√		√	-3.0	0.2
IPA	4 week		√		√	-1.3	1.3

Source: Third-party submissions.

56. *ABC1 Adults*: This is ITV's largest demographic in terms of share of ITV1 revenue at [X] per cent. The universe size is 24.3 million. ITV's software-based analysis shows a similar pattern to the Adults demographic. Excluding ITV1 improves 4+ cover in all scenarios; 1+ cover falls for shorter campaigns and improves in 2008/2009 for four-week campaigns. The £30 million scenario results in a drop in 1+ cover and the £205 million scenario weakens 4+ coverage.
57. ITV's manual substitutability analysis shows an improvement in coverage with the exclusion of ITV1; a result held for the £30 million scenario, however, 4+ cover falls under the £205 million scenario.

TABLE 11 **ABC1 Adults: ITV's substitutability analyses—difference in coverage, ITV1 excluded**

Week	Date of analysis	TVRs	Difference in coverage excluding ITV1			
			1+	4+	1+	4+
<i>Manual substitutability</i>						
	Mar-07		+	+	[X]	[X]
	Apr-08		+	+	[X]	[X]
<i>Software-based substitutability</i>						
1 week	Mar-07	100	+	+	[X]	[X]
	Apr-08	100	+	+	[X]	[X]
	Sep-08	100	+	+	[X]	[X]
2 week	Sep-08	150	+	+	[X]	[X]
	Sep-08	200	-	+	[X]	[X]
	Mar-07	200	+	+	[X]	[X]
	Apr-08	200	+	+	[X]	[X]
	Mar-07	300	-	+	[X]	[X]
3 week	Apr-08	300	+	+	[X]	[X]
	Mar-07	400	-	+	[X]	[X]
4 week	Mar-03	400	-	+	[X]	[X]
	Mar-07	400	-	+	[X]	[X]
	Apr-08	400	+	+	[X]	[X]
	Dec-08	400	+	+	[X]	[X]
	Mar-09	400	+	+	[X]	[X]

Source: ITV.

58. Third-party evidence for ABC1 Adults also appears relatively consistent with ITV's software-based analysis. 1+ cover weakens when ITV1 is excluded. We do observe a few scenarios where 4+ cover falls. [Agency B's] manual reallocation technique shows a fall in 1+ cover when excluding ITV1. [Agency B] stated that 'peak delivery was maintained throughout the schedule'. However, in ITV's manual substitutability work, a significantly higher proportion of peak airtime was used for the replacement

schedules than occurred in the originally ITV1 schedules. In the [Client C] analysis, the replacement airtime used by [Agency B] reflected a cross section of the airtime available on the replacement channels. The average spot rating for each channel was similar in the original and the replacement schedule, showing that a representative cross section was used.

TABLE 12 ABC1 Adults: third-party submissions, ITV1 excluded

Third party	Time period	Campaign type		Variable held constant		Difference in coverage excluding ITV1	
		Actual	Theoretical	TVR	Budget	Difference— 1+	Difference— 4+
<i>Manual substitutability</i>							
[Agency B]—[Client C]	4 week	√			√	-1.7	11
<i>Software-based substitutability</i>							
Five—[Brand V*1]	1 week	√			√	-5.8	3.3
Five—[Brand V*2]	1 week	√			√	-4.5	4.5
Five—[Brand X]	1 week	√			√	-0.4	3.4
Five—[Brand Y]	3 week	√			√	0.0	2.1
Five—[Brand V] (addition of two campaigns)*	3 week	√			√	-1.7	4.1
Five—[Brand Z]	24 days	√			√	0.2	5.4
[Agency A]—[Brand P]	3/4 week	√			√	-0.7	0.6
[Agency A]—[Brand P]	3 week	√			√	-2.3	-3.4
[Agency A]—[Brand O]	4 week	√			√	-1.7	-3.4
Five—£205 million moved	4 week		√		√	-3.5	-0.7
Five—£1 million moved	4 week		√		√	-2.2	2.2
IPA	4 week				√	-0.6	3.8

Source: Third-party submissions.

59. In summary, share of ITV1's revenue is in excess of 10 per cent for these demographics and it has therefore provided substitution analyses (both software based and manual reallocation). ITV's analyses show that in many of its scenarios 1+ cover falls for these demographics or is increased very slightly. ITV's software-based analysis shows an improvement in 4+ cover when ITV1 is excluded; 1+ cover for 400 TVR four-week campaign is positive in 2008/2009 and for some shorter campaign periods. Third-party evidence provided indicates that campaigns bought against these demographics may not be substitutable, especially when considering 1+ cover. Some of the falls in 1+ cover are significant when viewed as numbers of impacts lost for these advertisers. Third-party evidence further highlights the problems with

reduced 1+ cover across all demographics. In particular, for HWs, when ITV1 is excluded all evidence indicates that 1+ coverage falls.

Change from 2003 analysis

60. The evidence provided by third parties tends to focus on data from recent years rather than looking at a change over time.

61. ITV's software-based substitution analysis displays an improvement in coverage between 2003 and 2009, as shown in Figure 5. ITV did not provide any manual substitution analysis in 2003.

FIGURE 5

Difference in reach 1+ based on 400 TVRs over four weeks



Source: ITV.

62. Figure 6 displays this same data but also charts ITV's initial TVR allocation. This shows that in March 2009, under natural delivery, fewer TVRs were allocated to ITV.

FIGURE 6

Difference in reach 1+ based on 400 TVRs over four weeks charted against initial ITV TVR allocation



Source: CC and ITV data.

63. The IPA analysed³⁰ a 60 TVR campaign optimized for 1+ coverage based on natural delivery. Results were provided for several demographics for the years 2002, 2003 and 2007. The analysis shows decreased 1+ cover if ITV1 is not purchased for all demographics. However, the differences have decreased over time for all

³⁰This analysis was carried out by an IPA member agency using Infosys software.

demographics (except ABC1 Men) suggesting some improvement in substitutability over time. The results also show that for all audiences 3+ cover increases slightly if ITV1 is excluded from the campaign. The 3+ cover analysis does not display any discernable trend over time. A weakness of the IPA analysis is that it assumes that the number of TVRs purchased remains constant, even if ITV1 is excluded from the campaign plan. As ITV1 has a higher price than other channels, it is likely that more TVRs could be purchased on other channels, without exceeding the original campaign budget.

64. [Agency D] submitted analysis of the replicability of campaigns aimed at HW + C for 2003, 2007 and 2008. One of these analyses seems to use the same methodology as ITV and shows that cover was slightly higher without ITV1 for campaigns aimed at lower levels of TVRs in both 2003 and 2008. In other words, it shows that these campaigns were replicable but that this has not changed significantly over time. The second example examined a 200 TVR campaign over two weeks aimed at HW + C, and again assumed a constant budget. The results show that that the ability to achieve 1+ cover without ITV1 has improved over time. [Agency D] agreed in principle that it might be possible to achieve the same coverage levels on an individual campaign, yet this was only possible due to the additional ratings afforded due to ITV's cost premium.
65. Similarly, [Agency E] provided three examples of substitutability over time but it would appear that it may have kept TVRs constant across all the scenarios tested. However, even under this assumption the results from the tests are mixed.
66. On the basis of ITV's analysis, substitution appears to have improved since 2003. Evidence from third parties is too limited to draw any conclusions on the change since 2003.

Summary

67. We have considered both software-based and manual substitution analysis together and have grouped these demographics into four categories:

- (a) *Group A—16–24 Adults, Children, 16–54 HW, Men*: ITV1's revenue share for these demographics is low (less than 5 per cent) and it did not therefore undertake substitution analyses. Third parties have provided little, if any, evidence to suggest that it is possible to substitute campaigns bought against these demographics.
- (b) *Group B—16–34 Men, Women, 16–34 Women, and ABC1 Women*: ITV1's revenue share for these demographics is low (less than 5 per cent) and it did not therefore undertake substitution analyses. Some third parties have provided examples.
- (c) *Group C—ABC1 HW, ABC1 Men, 16–34 Adults and HW + C*: ITV1's revenue is in excess of 5 per cent for these demographics and it has provided substitution analyses for ABC1 Men, 16–34 Adults and HW + C. For ABC1 Men, 16–34 Adults and HW + C, ITV's analyses show that substituting campaigns bought against these demographics has improved since 2003 with 1+ and 4+ cover invariably higher when ITV1 is excluded. However, third-party evidence in these three demographics casts some doubt on the extent of substitutability. In particular, 1+ cover seems to fall when ITV1 is excluded for a number of scenarios. This pattern is most pronounced for ABC1 Men. For ABC1 HW, ITV did not undertake any analyses but third parties questioned the degree of substitutability for such campaigns. Taking this evidence together suggests that, although for some campaigns ITV1 might be substitutable when bought against these demographics, there remain a number of campaigns that would struggle to achieve the same 1+ cover.
- (d) *Group D (wider demographics) HW, Adults and ABC1 Adults*: ITV1's revenue is in excess of 10 per cent for these demographics and it has therefore provided

substitution analyses. ITV's analyses shows that in many of its scenarios 1+ cover fell for these demographics or increased very slightly. Some of the falls in 1+ cover are significant when viewed as numbers of impacts lost for these advertisers. Third-party evidence further highlights the problems with reduced 1+ cover across all demographics. In particular, for HWs, when ITV1 is excluded, nearly all evidence indicates 1+ coverage falls.

ITV's comparison of 2008 and pre-merger simulations

68. ITV submitted that the degree of dependence that advertisers had on ITV1 today was less than the degree of dependence that advertisers had on either Carlton or Granada pre-merger. It therefore concluded that the increase in the level of competition between ITV1 and other broadcasters since 2003 far exceeded the limited loss of competition that resulted from the merger of Carlton and Granada.³¹

TABLE 13 Degree of dependence assessment pre and post merger

	<i>Ex-Carlton</i>		<i>Ex-Granada</i>		<i>Difference in coverage</i>							
	<i>2003</i>		<i>2003</i>		<i>Ex-ITV1</i>		<i>Ex-Carlton</i>		<i>Ex-Granada</i>		<i>Ex-ITV1</i>	
	<i>1+</i>	<i>4+</i>	<i>1+</i>	<i>4+</i>	<i>1+</i>	<i>4+</i>	<i>1+</i>	<i>4+</i>	<i>1+</i>	<i>4+</i>	<i>1+</i>	<i>4+</i>
Adults	-	-	-	-	+	+	[X]	[X]	[X]	[X]	[X]	[X]
Ads ABC1	-	+	-	-	+	+	[X]	[X]	[X]	[X]	[X]	[X]
16-34s	+	+	-	+	+	+	[X]	[X]	[X]	[X]	[X]	[X]
Men ABC1	-	+	-	-	+	+	[X]	[X]	[X]	[X]	[X]	[X]
HW	-	-	-	-	-	+	[X]	[X]	[X]	[X]	[X]	[X]
HW + C	-	-	-	-	+	+	[X]	[X]	[X]	[X]	[X]	[X]

Source: ITV.

69. We do not consider that the comparison between each of Carlton and Granada in 2003 and ITV1 in 2008 is the correct one to make for the purposes of this review. To understand the change in merger-specific effects we would need to compare ITV1 in 2008 against the counterfactual situation of whatever Carlton and Granada would look like today (assuming that the entities had been held separate). As we cannot

³¹The OFT considered in its advice that this analysis was unreliable (paragraph 5.48). However, ITV has subsequently provided a satisfactory explanation for the concerns raised by the OFT.

model this counterfactual situation, we consider that it is most appropriate to consider the change in substitutability of ITV1 in 2003 (ie a combined Carlton and Granada) against the substitutability of ITV1 today, as considered above.³² This ensures a like-for-like comparison of the changes over time.

70. We could use ITV's analysis to assess the original impact of the merger on 1+ and 4+ coverage by comparing the Carlton and Granada pre-merger results with the combined ITV1 results in 2003. However, such a comparison is not possible as ITV used the Xpert software package for the data provided in Table 13 and InfoSys in its 2003 submissions to the CC. Moreover, we recognize that this would not be a true reflection of the merger effect given the limitations of the software-based substitutability analysis that we have identified above.

³²Table 13 provides data based on Xpert, which produces different results than the InfoSys system. Xpert generally shows a percentage point above InfoSys.

Quality of impacts

Introduction

1. In this appendix we examine what is meant by 'quality' and which parties have advanced the argument that ITV1's impacts are qualitatively different from other channels' impacts, including an assessment of the relevant evidence.

What does 'quality' mean?

2. Much of the debate about the 'quality' of ITV1 impacts centres on, essentially, how much of the commercial the viewer has 'taken in' and therefore the likelihood that this exposure will lead to a purchase. ITV's proposition to advertisers has been that, for one reason or another (viewers are more engaged by the programme content, they watch certain programmes in groups, they talk about storylines at work or in school) ITV1 viewers are more deeply immersed in the programme content, and by extension the advertising shown within it or around it.

Proponents of the proposition

ITV

3. Although ITV has not argued this as part of its submissions, through its sales and marketing communications to media buyers, ITV has claimed ITV1 impacts are superior in 'quality' terms to those of other channels. In its submissions to this review, however, ITV has stated that the research underlying these arguments is not robust, that its marketing uses results from the research that are most helpful to ITV1 and that ITV1 impacts are not generally of a higher quality..
4. Several pieces of research/evidence were brought to our attention: (a) tvWorks in 2002; (b) Fame presentation in 2004; (c) an Event TV marketing presentation in

2008; and (d) the audience appreciation index (AI). We consider each of these in turn.

tvWorks

5. In 2003, Granada reported the results of a study, tvWorks,¹ conducted on ITV1's behalf by TNS.² This study linked exposure to television advertisements to sales uplift in FMCG purchases and concluded that ITV1 was the most effective of the commercial television channels.
6. The CC considered this study in its 2003 report. At that time the merger parties suggested that the study was of limited interest as it was produced for marketing purposes and inevitably used the data that was most helpful to television airtime sales, was old and only covered FMCG.

Fame presentation

7. In its autumn presentation to advertisers in 2004, the argument regarding the quality of ITV1's impacts was developed in the context of 'fame', the suggestion being that brands associated with very popular, and in particular 'talked-about' programmes, gained a degree of celebrity from this association.

Event TV

8. In 2008, ITV developed the concept of Event TV. ITV's marketing presentations observed that certain programmes were watched by a higher proportion of viewers with a greater degree of 'engagement' with the programme (so-called 'True Fans'), which in turn indicated a greater engagement with the programme's advertising content and thus a higher propensity to purchase the product or service being

¹2003 CC report, paragraph 5.140.

²This work, in fact, built on earlier research by Taylor Nelson AGB, TVSpan, in the late 1990s.

advertised. The presentation noted that ITV1 showed the majority of Event TV programmes across almost every programme genre.

9. ITV told us that this research was only undertaken for marketing purposes, that it had significant methodological flaws and that ITV used the results that are most favourable to ITV. ITV submitted that many of the results of its research in fact showed that, when compared with other commercial channels, ITV1 did not have a more engaged audience nor was there any specific sales uplift attributable to ITV1. Further, ITV told us that ITV1 did not fare well in terms of 'water-cooler moments' as viewers who strongly like ITV1 are also least likely to say that TV gives them something to talk about.

10. We agree that the research supporting the Event TV marketing presentation had significant flaws including the following:
 - (a) The sample of respondents who took part in this survey was just 16 and insufficient to provide a robust basis for us to draw conclusions on the quality of ITV1's impacts.
 - (b) The work was carried out for specific marketing purposes and used the results that were most helpful to ITV1 and omitted many negative comments about ITV .
 - (c) The True Fans research,³ which formed a quantitative element of the Event TV presentation, used an online survey to collate opinions on specific genres of television regardless of the channel it was watched on. As a result, this data can give us no evidence as to people's behaviour and preference for watching ITV1.

³True Fans was a quantitative piece of research carried out in April 2008 via an online survey and covered 5,000 respondents. The survey, conducted by the independent market research company, Other Lines of Enquiry, questioned respondents on their likelihood of watching different genres of programmes (for example live sport, live reality entertainment, US drama, etc).

Audience appreciation index

11. ITV uses an audience AI to track audience appreciation of its programmes relative to programmes on other channels.
12. The survey is run independently of ITV by GfK NOP and is representative of the UK population. The ITV Vision online panel consists of 10,000 respondents and around 3,000 adults are reporting their viewing preferences every day. This panel is used to calculate AI. Viewers report their preferences within 36 hours of watching the programme and it is based on what they actually watched, rather than what they prefer to watch.
13. Respondents are asked which television programmes they watched for more than 5 minutes and having selected the programmes watched are asked a few questions on them, including a question to rate the programme out of 10, where 10 is the highest score. These scores are then averaged for each individual programme, and reported as an index out of 100. For example, if *Coronation Street* is rated by two individuals at 9 and 8 out of 10 then the programme's AI would be 85.
14. ITV said that, on the basis of AI data collected in the first 22 weeks of 2008, programming on ITV1 is [redacted] than programming on the other major channels. It said that the average AI score for ITV1 programmes within the top 50 was [redacted] and that this was [redacted], which scored [redacted]. ITV also presented results of the top 50 shows across all channels—of the total 1,100 shows (22 weeks x 50 shows) ITV [redacted] in this list.

Media agencies

15. Several agencies also told us that they believed that ITV1 engaged with consumers in subtle and effective ways either on the basis of ITV's research or evidence of their own.⁴ We examined in particular evidence from three media agencies.

Agency A

16. This agency⁵ has developed its own index which it uses to try and optimize its clients' advertising schedules.
17. It constructed a model based on BARB data which could predict whether viewers of a particular programme would be likely to claim that they had given their full attention to the programme or not, obviating the need for a survey. The model, from which it derives its index, uses 14 BARB measures, the most important of which are the proportion of the programme viewed and the degree of flicking.⁶
18. It told us that this measure indicates some qualitative differences between ITV1 and other channels.⁷
19. Data from this model clearly shows differences between the attention apparently being paid by viewers to end and centre breaks with viewers apparently less engaged during end breaks than they are during centre breaks.
20. Further, the model suggests that ITV1 does indeed, on average, retain the attention of viewers better than other channels, scoring 68.6 compared with Ch4's 58.9, Five's

⁴In addition, [§], responding on behalf of [§] cited the high quality of the broadcast environment as a feature, including fewer repeats, high production values and shorter breaks (vs satellite).

⁵ Media agencies have been anonymized in the appendices. The coding is separate for each appendix, so Agency A does not mean the same agency in all appendices.

⁶Changing between channels during the programme or advertising break.

⁷[§]

55.3 and Sky1's 47.2. Within this average popular soaps like *Coronation Street* and *Emmerdale* score consistently highly during their centre breaks.

Agency B

21. Agency B has a similar analysis tool to determine the 'stickiness' of ITV1's programming. The methodology links programme viewing persistency, ie how many viewers watch the programme the whole way through, to whether or not viewers can recall the advertisement the day after. The longer the uninterrupted viewing time, the higher recall to commercials that appear in the advertisement breaks in the programme. The agency conclude that, on the basis of this analysis, for programmes that delivered an audience in excess of one million viewers, ITV1 dominated in terms of viewing persistence.

Agency C

22. Agency C described its tracking tool, which it has conducted every year since 2003. This tool draws upon BARB data and proprietary research. It told us that it had analysed a campaign for an advertiser targeting 16 to 34 year olds and estimated the quality of the impacts of each channel. On the basis of this analysis ITV1 was the top-rated channel.

Advertisers

23. In general, advertisers did not lay great stress on the *quality* of ITV1 impacts issue, concentrating instead on the return on advertising investment they received across all sales channels. In other words, they have been measuring effectiveness rather than quality. However, some advertisers suggested that certain features of the ITV1 audience might offer qualitative advantages.

Quality

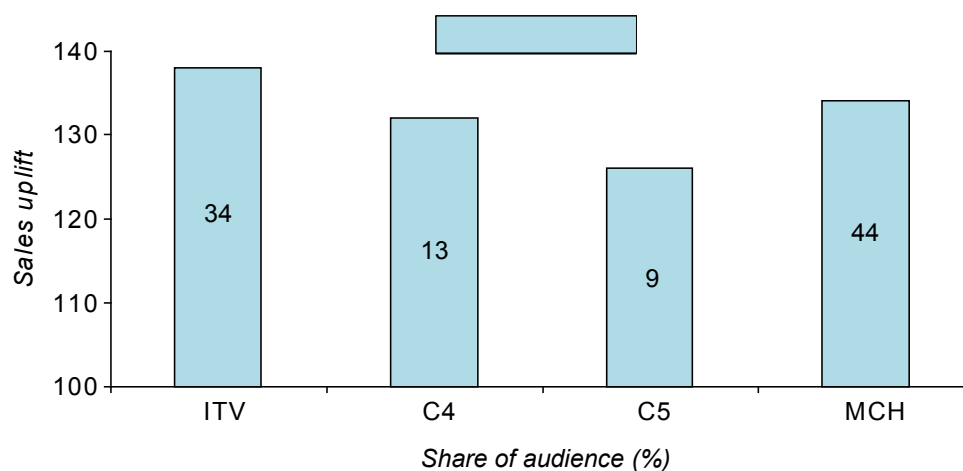
24. Research by one major FMCG advertiser, for example, indicated—in a similar way to that described by ITV—that shared viewing resulted in greater attentiveness and ITV1 had a very high share of shared view programmes. COI, in its Change for Life agency brief specifically suggests ITV's 3G (three generation) programmes as a relevant editorial environment. It explained to us that one of the generations viewing an advertisement might reinforce the message of the advertisement to another generation watching on, for example, child obesity.

Effectiveness

25. Tesco told us that it commissioned Accenture to estimate the return on investment of its media spend. This exercise was only sensitive down to the medium level not the individual TV channel. Nonetheless, Tesco noted that it used ITV1 heavily and the Accenture work indicated a positive return on its TV advertising.
26. Mars told us that, like ITV, it used TNS Single Source data to monitor sales uplifts against advertising placed with various television channels and comparing purchases by consumers exposed to that advertising and those not. On the basis of this analysis it concluded that ITV delivered better sales uplifts than any other channel. It provided an example of this kind of analysis, which we reproduce below.

FIGURE 1

Mars UK advertising effectiveness Category Y—overview of overall market performance by channel



Source: TNS/internal modelling.

27. Argos told us that work conducted by the media auditor Billets indicated that for every £1 invested in ITV1 it received a return of [X]. Argos did not provide us with comparable results for other television channels.
28. Kraft also showed us analysis conducted for it by TNS linking exposure to its commercials, particularly in terms of frequency and recency, to likelihood of product purchase. It also showed us some post-campaign analysis which compared results achieved against plan, by channel, but neither focused on a comparison between channels' impact quality. Kraft used these examples to demonstrate the importance it attached to the delivery of discrete frequency ranges and the avoidance of excessive frequency.
29. An entertainments company also shared with us its analysis of the return it achieved on its investment in television airtime. It told us that ITV1 consistently delivered cost-effective research on the majority of its activity and that, conversely, other terrestrial channels delivered patchy results. However, the data it supplied on the cost per unit

sold by channel did not point to a clear pattern favouring ITV1, nor were we told how much it had spent with each station, which will almost certainly impact on CPU.

30. In addition, specialist firms exist who will undertake econometric modelling for clients to determine the return on investment in advertising. OHAL, for example, measures sales uplift achieved through the use of various media against the cost of advertising employed.

31. The evaluation work undertaken by advertisers was both comparatively rare and, in any case, focused on effectiveness rather than the underlying drivers of effectiveness. What limited evidence we have seen from advertisers tended to demonstrate that advertising on ITV1 was a good investment, not that its viewers engaged with it in some special way. In many cases, however, advertisers, in response to the OFT's questions on the quality of ITV1 impacts, simply referred to ITV's research on Event TV, which we have discussed above.

Review of ITV's customer survey

1. This appendix provides a review of ITV's customer survey.

Background

2. ITV commissioned an independent market research agency to carry out a survey into the switching behaviour of media buyers (ie advertisers and media agencies). At the core of this research were a number of quantitative questions designed to understand how media buyers would behave in the event that ITV1 were to attempt to extract a higher spend commitment by a small but significant non-transitory amount (5 to 10 per cent). The results were then used to assess the impact on ITV1 revenues.
3. Respondents were screened via a 10-minute set of questions to ensure that the individual respondent had the relevant knowledge and understanding of the subject matter to be able to answer the questionnaire. For this survey it was necessary to ensure that respondents understood the television advertising market and were actively involved in purchasing decisions. Respondents were therefore screened on age, type of company, job role, primary industry of focus, UK company turnover, UK location, television advertising purchasing activity and spend, and level of involvement in allocating spend across terrestrial and multimedia channels.
4. The survey was executed using an online questionnaire that was sent to people who had been pre-screened as eligible to complete it.

Survey results

5. The survey achieved 102 respondents in total comprising 59 media agencies and 43 advertisers.

6. ITV highlighted the following results from the survey:
- (a) Although 74 per cent of respondents stated that ITV1 was essential to their media mix (with 94 per cent of respondents citing access to large audiences as the reason), [X] per cent of respondents stated that they would switch some or all of their expenditure away from ITV1 in response to a 5 per cent increase in the cost of purchasing ITV1 airtime. This rose to [X] per cent of respondents being willing to switch when faced with a 10 per cent increase in price.
 - (b) ITV used these numbers to calculate that approximately [X] per cent of revenue would be lost if ITV1 were to demand a 5 per cent increase in expenditure from media buyers. This amounted to [X] a year, of which £[X] would be diverted to non-ITV television channels.¹
 - (c) ITV used its survey, stating this was the only reliable source of data, to derive the amount of expenditure that would need to be switched away from ITV1 in order to make a price rise unprofitable (a 'critical loss' type calculation). Based only on the survey sample, if ITV1 were to demand a 5 per cent increase in expenditure from its customers, then £[X] of expenditure switching away from ITV1 would be sufficient to offset any revenue gains to ITV1 from media buyers paying the increased 'price'.
 - (d) Based on the same survey responses, of this £[X] would switch to other media and £[X] would switch to other television channels. Therefore, in the event that ITV1 were to attempt to extract a 5 per cent increase in expenditure from media buyers, ITV stated that [X] worth of expenditure would need to be absorbed by other channels. ITV submitted that this provided the relevant switching constraint for considering volume issues in determining whether media buyers could continue to meet their campaign objectives with/without ITV1.

¹The survey question did not differentiate between non-ITV and non-ITV1 channels ie 'switch some/all of your spend to another channel/channels'.

Issues with the survey

7. Whilst it is always hard to ask stated preference questions the survey used a well-recognized process using actual revenues provided by the respondent and as such the results of these questions can be used in price sensitivity analysis. However, we identified a number of issues with the survey relating to incentives, representativeness of sample and the sample size.

Incentives

8. A £50 Selfridges voucher, or donation to charity, was given to all respondents who filled in the questionnaire. Such incentives can often bias the sample of a survey and we regard it as best practice not to use incentives.

Representativeness of sample

9. ITV stated that respondents covered media buyers accounting for 75 per cent of ITV1's revenue. Weighting was used to correct for the respondent sample not matching actual buyers of airtime as closely as wished.
10. The respondents to the survey do not appear to be representative of all people buying ITV1 airtime. This is seen on a number of levels discussed below.
11. The respondents were media agencies or advertisers and while the research agency introduced a process to attempt to address issues arising of double counting of opinions it is possible that some double counting occurred—where an advertiser uses a particular media agency there was no process of ensuring that both did not answer the survey.
12. Of the 102 answering the entire survey only [X] stated their job role as buyer, or planner and buyer (combined role), of airtime. The others stated their job as a

planner or strategist, or did not give their job role. These buyers, and planner/buyers, may not be making the major decisions on purchasing share of business for advertising for the whole year and as such may not actually have the decision-making power on whether to switch spend away from ITV.

13. Respondents were categorized based on whether they were a brand owner/ advertiser or a media agency, and within these groups by how much they spend. The sample is not representative of the actual media buyers, for example, media agencies spending up to £2.5 million account for [X] per cent of ITV's customers, yet are only [X] per cent of the sample (on a revenue basis, media agencies spending up to £2.5 million account for [X] per cent of revenue, yet they are [X] per cent of the sample).
14. Whilst the weighting system tries to account for these sampling issues it would have been significantly better had the survey been representative of either customer numbers or revenue to allow use of the actual data rather than weighted data. Weighting can cause distortions in data results, especially if trying to correct for differences between proportions in the sample and actual customers.²

Sample size

15. The price sensitivity question for increasing the price of ITV1 advertising by 5 per cent had [X] of the 102 respondents stating that they would switch some, or all, of their spend away from ITV. First, only [X] of these respondents classified themselves as buyers or planners/buyers. Interpretation of data based on the [X] respondents is not a representative sample as we are assuming that a very small number of people decide on advertising spend. Given the misrepresentative sample

²The weighting for media agencies spending up to £2.5 million takes the sample share for this group from 0.8 per cent up to 19.5 per cent—neither of which were close to the 6.8 per cent they actually represented.

this would imply that the calculation of revenue lost, following a 5 per cent rise, is unreliable. Second, a sample size of [X] respondents is too small to be quantitatively robust.

16. Sub-group analysis is carried out within the survey and this creates very small sample sizes. For example, the FMCG group is quoted and this only has [X] respondents within it of which [X] of these respondents classified themselves as buyer or planner/buyer. Such a low sample size is too small to form quantitatively robust findings.
17. When dealing with sample surveys, using confidence intervals is one way to put the data into perspective as they give the range that an answer is likely to fall within. With such small sample sizes, for some of the questions analysed confidence intervals are needed to interpret the data and appreciate if answers are representative or not.

Our view on ITV's survey

18. ITV argued that the survey results implied that, when faced with a price increase, media buyers would switch some or all of their spend away from using ITV1, which [X].
19. We have a number of concerns with this analysis and the survey, primarily in relation to:
 - (a) the representativeness of the sample: the results are based on a small sample of media buyers who do not seem to represent the population of airtime buyers. In addition, there is a very low level of respondents who actually stated that they made the decision for buying airtime and there could be double counting in the survey as media agencies of the advertisers questioned were not screened out; and

(b) the sample size: the actual number of respondents who actually stated that they made the decision for buying airtime and answered the price sensitivity questions was very low.

20. All of these factors make the survey unreliable in terms of assessing ITV1's ability to raise prices of airtime.

Evidence of disputes before the Office of the Adjudicator

1. This appendix summarizes the disputes referred to the Office of the Adjudicator ('the Adjudicator') since 2004. We then focus on two particular disputes relating to attempts by media agencies to reduce share of broadcast (SOB) commitment by more than that governed by the CRR ARM.

Summary of disputes since 2004

2. Since 2004, 15 disputes have been brought to the Adjudicator and many more matters for informal guidance.¹ As outlined in Table 1 these disputes occurred for a variety of reasons; a few were related to the terms offered by ITV to a media agency that was proposing to amend some of the parameters of its core agency deal. Disputes also occurred over the policy on day-to-day trading, particularly the price offered for 'burst' campaigns² and 'late approvals'.

¹Nine of these disputes were awarded in favour of the complainant and four in favour of ITV, the remaining two were settled before a decision was made.

²A burst campaign is a heavyweight of advertising over a short space of time. It is used when advertisers want to reach a large number of people quickly.

TABLE 1 Disputes submitted to the Office of the Adjudicator

Year	Number of guidance enquires	Number of disputes	Details	Complainant	ITV	Settled
2004	N/A	3	<ol style="list-style-type: none"> 1. 'Burst' campaign—price offered 2. 'Late approvals'—prices offered after advanced booking deadline (ABD) 3. CRR interpretation—commitment to deliver both a guaranteed share and a minimum expenditure to Carlton and Granada 	3		
2005	103 Telephone alone	3	<ol style="list-style-type: none"> 1. Penalty charges relating to change dates of campaign and brand 2. ITV's new terms of the share and price for advertiser that switched media agency 3. Resubmission of a previous dispute—revised penalty charges relating to change dates of campaign and brand 	1		2
2006	68	3	<ol style="list-style-type: none"> 1. The terms proposed to amend agency deal parameters 2. 'Burst' campaign—terms offered 3. Resubmission of a previous dispute—The terms proposed to amend agency deal parameters 	2	1	
2007	37	3	<ol style="list-style-type: none"> 1. Line-by-line deal request for an advertiser previously within an agency deal—terms offered 2. The terms proposed to amend agency deal parameters 3. Contract enforcement and interpretation 	1	2	
2008	37	3	<ol style="list-style-type: none"> 1. Offering airtime on a fair and reasonable basis 2. Offering airtime on a fair and reasonable basis 3. Contract Enforcement and interpretation 	2	1	
2009	<u>28</u>	<u>0</u>				
Total	273	15		9	4	2

Source: Office of the Adjudicator annual reports.

Note: NA =not available.

[✂]

3. [✂]

4. [✂]

5. [✂]

TABLE 2 [✂]

6. [✂]

7. [✂]

8. [✂]

TABLE 3 [✂]

9. [✂]

10. [✂]

11. [✂]

12. [✂]

[✂]

13. [✂]

14. [✂]

15. [✂]

16. [✂]

Concentration of media agencies

1. This appendix provides details on the change in concentration of media agencies since 2003.
2. Since the merger there has been consolidation of buyer agencies and some media agencies now trade together without having formally merged their businesses:
 - Mindshare, Mediaedge:CIA, Maxus (BJKE) and Mediacom now trade together as Group M;
 - OMD, MGM and PHD now trade collectively as Opera;
 - Vizium and Carat trade as Aegis;
 - Starcom and MediaVest merged creating the Starcom MediaVest Group, which also generally trades collectively with Zenith Optimedia as Vivaki; and
 - Initiative and Universal McCann now tend to trade together as Magma.
3. Table 1 shows an increase in consolidation for the top six media agencies.

TABLE 1 Buyer agency television expenditure

Buyer agency	2003		Buyer agency	2007	
	TV expenditure £m	Total TV revenue %		TV expenditure £m	Total TV revenue %
Magna	518.0	13.7	Group M	1081.7	27.3
Starcom	486.4	12.9	Opera	581.3	14.7
Group M	454.7	12.0	Starcom	491.7	12.4
Aegis	444.0	11.8	Aegis	428.9	10.8
OMD	380.2	10.1	Zenith Optimedia	294.3	7.4
Mediacom	339.2	9.0	Magna	263.8	6.7
Total TV revenue	3774.6		Total TV revenue	3955.5	
Total top 6	2622.4	69.5	Total top 6	3141.7	79.4

Source: The Office of the Adjudicator based on data from *Nielsen Media Research*.

4. Table 2 shows that in 2003 the top three media agencies' share of ITV1's total revenue was [X] per cent but by 2008 this had risen to [X] per cent of ITV1 revenues, [X] what it was in 2003. ITV added that the top four buying agencies now

accounted for [redacted] per cent of ITV1's revenues, whereas ITV1 accounted for [redacted] per cent of these agencies' respective budgets.

TABLE 2 Top 3, 5 and 10 media buyers' expenditure on ITV1

Buyers	2003		2007		2008	
	£	% of ITV1	£	% of ITV1	£	% of ITV1
Top 3	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Top 5	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Top 10	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source: ITV .

5. ITV claimed that ITV1 had become a much less important part of the agencies' business, as [redacted], while the same media agencies [redacted]. As a result, ITV submitted that there had been a material shift in the relative dependency of the agencies versus ITV.

Glossary

1+ coverage	1+cover (or reach) refers to the percentage of the target audience seeing the advertisement at least once. A frequency of 4+ cover refers to the percentage of the audience seeing the advertisement at least four times.
2003 Report	<i>Carlton Communications plc and Granada plc: A report on the proposed merger</i> , October 2003. (www.competition-commission.org.uk/inquiries/completed/2003/carlton/index.htm).
ABD	Advance Booking Deadline.
Act	The Enterprise Act 2002.
The Adjudicator	Office of the Adjudicator.
Adults	Individuals aged 16 or over are classified as adults by BARB .
AI	Audience appreciation index, which tracks audience appreciation of ITV's programmes relative to programmes on other channels .
Airtime	Time that a channel is broadcasting. At times advertising airtime, the time available for broadcasting advertising, it is abbreviated to airtime.
ARM	Audience ratchet mechanism.
BARB	Broadcasters' Audience Research Board Ltd, a body jointly owned by the ITV companies, the BBC, Channel 4, Channel 5, BSkyB and the IPA, which measures television audiences.
CC	Competition Commission.
Channel	A collection of programming bundled, scheduled, distributed and branded as a single proposition, recognized and located in a consistent way by the viewer.
Channel 4	Channel Four Television Corporation, owner of the Channel 4 licence.
Channel 5	Channel 5 Broadcasting Limited, holder of the Channel 5 licence. Owned by the RTL Group (part of the German Bertelsmann group).
Children	BARB reports viewing for children aged 4 to 15.
Commercial impact	A single viewing of a television advertisement by a member of the target audience . A commercial impact is a single viewing of an advertisement by a member of a particular demographic .
COSTA	Code on Scheduling of Television Advertising.

Coverage	The proportion of the target demographic audience viewing the advertisement at least once over the campaign period.
CPT	Cost per Thousand. The cost of one thousand commercial impacts for a target audience . CPT is used when purchasing and measuring the efficiency of advertising campaigns.
CRR	Contract Rights Renewal.
Daypart	One of a number of periods into which the broadcasting day is divided for the purposes of scheduling.
Demographic group	Demographic audiences against which most television airtime is sold. ITV sells against 15 groups: Adults, ABC1 Adults , 16–24 Adults , 16–34 Adults, Men, ABC1 Men, 16–34 Men, Women, ABC1 Women, 16–34 Women, ABC1 Housewives, 16–54 Housewives, Housewives, Housewives with Children and Children .
Discount (off SAP)	Discounts off SAP are not money discounts; they are, in effect, a commitment by a sales house to deliver additional commercial impacts to an agency for a given price. Increasing the discount means giving an agency a greater proportion of impacts for a given sum of money; conversely, reducing the discount means giving the agency a smaller proportion of impacts for a given price. Airtime is generally sold at a discount to the SAP for a particular demographic group.
DSO	Digital switchover.
Five	The on-air brand identity for Channel 5.
FMCGs	Fast-moving consumer goods such as packaged groceries, confectionery and toiletries.
Frequency	Frequency is the proportion of the target audience that has seen the advertisement a particular number of times. For example, 4+ coverage of 50 implies that 50 per cent of the target audience has seen the advert 4 or more times during the campaign.
FTA	Free-to-air.
GMTV	GMTV Limited, a company in which ITV has a 75 per cent interest and Disney holds the remaining shares; holds the only national Channel 3 licence and broadcasts daily from 6.00am to 9.25am.
HD	High definition.
HW	Housewives—a demographic group . The member of the household who is solely or mainly responsible for household duties. A housewife may be male or female. There is only one housewife per household.
HW + C	Housewives with children —a demographic group . Housewives living in a household in which a child (or children) aged 0–15

also lives.

Hulu	A US video-on-demand site owned by NBC Universal, News Corporation and Disney.
Impact	A single viewing of a TV advertisement by a member of the target audience.
IPA	Institute of Practitioners in Advertising.
ITV	ITV plc created by the Merger of Carlton Communications plc and Granada plc.
ITV1	ITV's channel 3 service.
ITV1+1	A possible service comprising time-shifted ITV1 content transmitted one hour later than shown on ITV1
ITV1HD	A possible service comprising ITV1 content transmitted in high definition rather than standard definition
Line-by-line deal	A deal between a media buyer (or individual advertiser) and a broadcaster under which a specified SOB and discount are both contracted at a named advertiser level.
Media agency	A media agency or agency is an organization that buys airtime on behalf of its advertiser clients.
Media auditor	A consultant employed by the advertiser, to assess the cost-effectiveness of advertising and the performance of the media buyer .
Media buyer	Anyone who buys media, whether an advertiser or a media agency.
Multi-channel	All television channels in the UK that are broadcast via platforms other than the old analogue terrestrial platform, ie cable, satellite or digital terrestrial transmissions.
NAR	Net advertising revenue: aggregate total advertising revenue, net of all agency fees and commission.
Natural delivery	Average viewing patterns across each channel and daypart or the original campaign.
Ofcom	Office of Communication, the regulator the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.
OFT	Office of Fair Trading.

Optimization	Through optimization sales houses can maximize the number of impacts traded and effectively achieve better results than would be achieved were advertisements shown randomly throughout the day.
Overtrading	A situation in which advertisers have not received the impacts that the broadcaster agreed to deliver.
Peak time	The period during which a television station broadcasts its early and mid-evening schedule, typically used by Ofcom to refer to the period between 18.00 and 22.30 each day (including weekends).
Platform	The particular technology used to distribute TV programmes to homes.
Position in break	Position in break means any specific position within an advertisement break, ie first advertisement, centre advertisement, etc.
PYO	Pick your own slots ie programme access and programme guarantees.
Ratings	[TVRs]
Reach	Reach is the percentage of the target audience that has seen at least one advert of the campaign. Reach is always expressed in terms of 1+ coverage .
Sales house	An organization which sells advertising airtime on behalf of one or more television broadcasters.
SAP	The station average price for buying airtime on a channel ; it is not a fixed price but varies according to supply (of impacts) and demand (from advertisers). It is estimated in advance and calculated after the end of each month based on actual impacts and revenues achieved. Each ITV region has a separate monthly SAP for each demographic group .
Share of viewing	The percentage of the total viewing audience watching over a given period of time. This can apply to channels, programmes, time periods etc. For example, a share of 58 per cent for Coronation Street would mean that, of all the viewers watching television when Coronation Street was being transmitted, 58 per cent were watching Coronation Street.
Share deal	An agreement in which an advertiser commits a proportion of its annual television advertising budget to a broadcaster (SOB), in return for agreed discounts off or premia on SAP and other terms on which the agency is able to buy airtime for specific target audiences .

SOB	Share of broadcast; the proportion, by value, of an advertiser's or media buyer's television advertising received by (or committed to) a particular channel .
SOCI	Share of commercial impacts .
Specials	Programmes designated by ITV to which particular access terms, usually premiums above SAP, apply. These may include the finals of programmes like the X-Factor or sports tournament finals.
Spot	An individual occurrence of a commercial.
Strike weights	The weight of TVRs by day, week, month or other pre-determined period.
weighted impacts	Varying levels of ratings bought over a pre-defined period, normally a week. Often represented as the percentage in peak hours and in daytime in a week.
Target audience	The demographic group at which the advertisement is aimed, for example ABC1 Men.
TVR	Television rating. 1 TVR equates to 1 per cent of the relevant target audience .
Undertakings	Following the 2003 report , Undertakings were given by Carlton and Granada and accepted by the Secretary of State for Trade and Industry under section 88(2) of the Fair Trading Act 1973 for the purpose of remedying or preventing the adverse effects on the public interest specified in the 2003 report .
VOCI	Volume of commercial impacts .
VOD	Video on demand—a facility offered by digital television providers whereby households can access a movie or programme that can be watched at any time.