Following an investigation under the Competition Act the OFT has accepted commitments by TV Eye. TV Eye is a company, owned by the major commercial broadcasters in the UK, that provided credit risk assessment and credit security administration services to its shareholders and certain other commercial broadcasters (the 'Member Broadcasters'). The OFT had identified competition concerns relating to the effect of TV Eye’s arrangements on the terms and conditions offered to media agencies by the Member Broadcasters. In particular, the OFT was concerned that TV Eye had facilitated a collective boycott of media agencies that refused to put in place credit security arrangements by sharing amongst its Member Broadcasters’ details of their security arrangements and by making the same recommendation to each of its Member Broadcasters as to whether particular media agencies should receive credit.

The commitments offered by TV Eye ensure that TV Eye will only distribute to each Member Broadcaster details about that Member Broadcasters’ credit risk and not details of other Member Broadcasters’ arrangements with media agencies. As a result, the Member Broadcasters should not be in a position to know what arrangements their competitors have in place with a given media agency nor the full extent of the analysis and information their competitors have obtained from TV Eye. The OFT considers that the commitments fully address the OFT’s competition concerns and accordingly the OFT has closed its file.
INTRODUCTION

The OFT's investigation

1. The Institute of Practitioners in Advertising (IPA) wrote to the Office of Fair Trading (OFT) on 4 March 2003 to complain that the Member Broadcasters\(^1\) of TV Eye Ltd (and, before its creation, ITV Network Ltd (ITVNL)) had infringed Chapters I and II of the Competition Act 1998 (the Act).

2. The IPA’s complaint focused on TV Eye’s Agency Registration and Credit Listing Procedures (the Procedures), which set out the terms on which advertising agencies contract with TV Eye’s Member Broadcasters to purchase advertising airtime. Specifically, the Procedures set out how agencies should cover the risk to broadcasters that agencies are unable to pay for airtime once it has been used for an advertisement.\(^2\)

3. The IPA complained that the Procedures imposed the same terms and conditions on all individual advertising agencies who wished to buy television airtime from the Member Broadcasters, that this reduced the scope for negotiation and that this in turn had the effect of reducing or eliminating competition between broadcasters in the supply of free-to-air TV airtime for customers wanting to buy advertising airtime, in breach of the Act’s Chapter I prohibition. The IPA also alleged that TV Eye was abusing a dominant position, in contravention of the Act’s Chapter II prohibition.

4. Having considered the IPA’s complaint, the OFT concluded at the end of June 2003 that there were reasonable grounds to suspect that the Act’s Chapter I prohibition had been infringed and that the threshold for launching a formal

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\(^1\) The term Member Broadcasters refers to the shareholders of ITVNL and its successor company TV Eye, as well as those broadcasters who have taken the services of TV Eye while not being shareholders (also described as ‘beneficiaries’). The Member Broadcasters have varied, depending on the time period in question, but have included: ITV plc (formerly Granada Media Group Ltd and Carlton Television Ltd.); Channel Four Television Corporation Limited; Channel Five Broadcasting Limited; GMTV; S4C; Interactive Digital Sales Limited (IDS); ITV2 Limited; and ITV News Channel Limited. Viacom Brand Solutions Limited received several emails from TV Eye although it was never formally a member.

\(^2\) Advertising airtime is generally paid for only after an advertisement has been aired, due to the need to assess the price payable according to the number of ‘impacts’ actually achieved by that advertisement (ie the number of viewers deemed to have watched the advertisement, based on industry approved viewing figures). As a result, there will generally be a period of up to seven weeks between the date when the airtime is used and the date when the broadcaster is paid for that use. It should also be noted that, although described as agencies, media agencies generally buy airtime as principals, rather than agents, and are therefore primarily liable for the purchase price. Although broadcasters will generally be prepared to trade with agencies who pay in advance, this is rarely an option, due to the fact that clients will generally be unwilling to pay up front and because agencies are unlikely to have sufficient cashflow to support such payments.
investigation under section 25 of the Act had therefore been reached on this case.

5. The OFT formally requested extensive information under section 26 of the Act to help it form a view as to whether the suspected infringement had in fact taken place. It also conducted a series of telephone interviews with a wide range of media agencies, both in the UK and overseas, to establish a detailed record of the experiences of individual media agencies.

The OFT's concerns

6. The OFT's investigation confirmed that the practices of TV Eye gave rise to competition concerns. In particular, the OFT considered that the Member Broadcasters had entered into an agreement, manifested in a number of separate formal and informal agreements and/or practices, to:

- collectively agree standard terms and conditions concerning credit arrangements and payment dates, and
- collectively enforce those terms using a collective boycott, or threats of a collective boycott, where buyers (media agencies) had expressed a desire to negotiate with broadcasters on an individual basis.

7. The OFT also considered that there was evidence to show that the Member Broadcasters, who compete to sell airtime on their stations, had also exchanged information between themselves, relating to their future revenues and to their customers, which would under normal circumstances be considered commercially confidential.

8. The OFT noted that certain changes had been made to the operation of TV Eye, following its creation as an entity distinct from ITVNL. It had in the course of the investigation received evidence that meetings between TV Eye shareholders were now limited to discussing the general functioning of TV Eye, as opposed to discussing details of the terms of business between individual broadcasters and media agencies. In addition TV Eye had moved to informing broadcasters of media agencies’ registration and credit status on an individual and confidential basis.

9. However, it noted that there still existed an agreement which appeared to cover:

- the collective setting of criteria which agencies needed to meet to be considered a trustworthy business partner for Member Broadcasters (registration/ verification)
• the provision of confidential and price sensitive business information for that purpose

• the setting of a single set of terms which media agencies and other buyers of airtime were obliged to meet in order to be given credit by a Member Broadcaster and the imposition of a single form of financial security (bank guarantees) in the event that an agency failed to meet these terms (credit arrangements)

• the inclusion of information in accreditation review reports allowing all Member Broadcasters to see whether TV Eye held guarantees (and if so of what kind and for how much) from specified agencies for the benefit of specific broadcasters, and

• the collective setting of payment dates.

10. Although the OFT acknowledged that TV Eye had improved its procedures to address the most problematic behaviour, it identified remaining concerns over how TV Eye operated, namely that this agreement:

• restricted competition between Member Broadcasters to attract media agencies’ business by impinging on the media agencies’ freedom to negotiate alternative means of covering Member Broadcasters’ exposure to credit risk and alternative payment dates, and, in so doing, raised agencies’ costs through collective action above those that would be incurred through individual dealing, and

• reduced competition between media agencies to provide media planning and buying services, to the extent that such competition may be affected by the terms on which broadcasters contract with media agencies.

11. The OFT was also concerned that the inclusion of sales directors as representatives of the shareholder Member Broadcasters on the Board of TV Eye gave rise to a risk that commercially sensitive information, potentially going beyond the information covered by TV Eye’s legitimate remit, could be exchanged between the shareholders.

12. In the interests of transparency, the OFT wrote to TV Eye and its Member Broadcasters on 29 June 2004 setting out its preliminary conclusions on the above points.

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3 Media planning and buying services refer to the provision of advice on the structuring of advertising spend across different media and the most efficient use of a given advertising budget. They also include the purchase of media space, including television airtime on behalf of advertiser clients.
**Negotiation of the commitments**

13. On 5 November 2004, solicitors acting on behalf of TV Eye wrote to the OFT to indicate a willingness to address the OFT’s competition concerns by changing the way TV Eye operated and offered a set of proposed changes to the OFT.

14. On 20 December 2004 the OFT wrote to TV Eye acknowledging its willingness to treat TV Eye’s commitments as a basis for negotiations aimed at producing a set of formal commitments, subject to TV Eye making certain changes and clarifications to the commitments offered.

15. TV Eye sent a finalised set of commitments (the commitments) to the OFT on 13 January 2005, in the form annexed to this Notice. The OFT confirmed to TV Eye on 13 January that it was minded to accept the commitments and close its investigation, subject to completion of a formal consultation. This provisional agreement was announced on 21 January 2005.4

16. The OFT commenced a public consultation in respect of the proposed commitments on 2 March 2005. At the same time, the OFT consulted on the proposed commitments with the European Commission (the 'Commission') (see paragraph 17 below). The public consultation was completed on 31 March 2005 and the Commission provided its comments on 11 April. The outcome of the consultation process is summarised at paragraphs 68-70 below.

**Application of Article 81**

17. Under the provisions of Article 3(1) of the Modernisation Regulation5 which is directly applicable in English law, the OFT is obliged to apply Article 81 of the EC Treaty (Article 81) when it applies national competition law to agreements between undertakings or decisions by associations of undertakings that may affect trade between EC Member States. A decision by the OFT to accept formal commitments under section 31A of the Act involves the application of national competition law. As a result, the OFT is required to consider whether the conduct investigated in this case may affect trade between Member States.6

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6 If such an effect is found, as well as being obliged to apply EC law, the OFT is also obliged to comply with certain procedural requirements. In this case, Article 11(4) of the Modernisation Regulation required the OFT to inform the Commission of its intention to accept the commitments at least 30 days before adoption of a final decision. As noted in paragraph 16, this consultation took place concurrently with the wider consultation initiated by the Notice of 2 March 2005.
18. In this case the OFT has identified a number of reasons why the TV Eye arrangements may have an effect on trade. These are:

(a) the Member Broadcasters contract with media agencies which are either domiciled elsewhere in the EU or are the subsidiaries of companies domiciled elsewhere in the EU

(b) the media agencies handle advertising accounts on behalf of advertisers domiciled elsewhere in the EU

(c) some of the Member Broadcasters are themselves partly owned by companies domiciled elsewhere in the EU, and

(d) the Member Broadcasters account for a high proportion of the supply of advertising airtime in the UK.

19. As trade between Member States may be affected, the OFT is taking this decision to accept commitments by reference to Article 81 as well as Chapter I of the Act. Since the Chapter I prohibition was closely modelled on Article 81, and given the duty already imposed upon the OFT (by section 60 of the Act) to apply the Act consistently\(^7\) with Community law, the OFT’s substantive analysis of its competition concerns under Article 81 is not materially different from its substantive analysis of the competition concerns it identified under Chapter I.

20. The OFT’s concerns would therefore be expressed in substantially the same terms, irrespective of whether they are expressed in respect of an infringement of Chapter I of the Act or Article 81. The OFT considers therefore that, since the commitments offered by TV Eye address the OFT’s concerns under the Chapter I prohibition, they also address its concerns under Article 81.

\(^7\) Section 60 allows the OFT to have regard to any relevant differences between the two regimes.
THE PARTIES

Institute of Practitioners in Advertising

21. The Institute of Practitioners in Advertising (IPA) is the trade association and professional institute for UK media agencies and is the complainant in this case. Its members are primarily involved in giving strategic advice to advertisers on marketing communications, including creating and/or placing advertising. According to the IPA itself, its members cover over 80 per cent of the UK’s media agency business, with estimated revenues of £8bn in 2002. Total marketing communications spend managed by IPA members amounted to £43 billion in 2002.

TV Eye Limited

22. TV Eye is owned by ITV plc, Channel Four Television Corporation, Channel 5 Broadcasting Limited and GMTV Limited. It has been owned by these shareholders since 17 April 2003, when it took over certain functions from ITVNL.

23. TV Eye’s operations consist of three main functions:

- assessing whether an media agency wishing to do business with a Member Broadcaster falls within the statutory definition of a media agency contained in the Broadcasting Act 1990 (known as ‘agency registration’)

- collecting financial information from media agencies and other sources and assessing it to verify whether agencies meet credit worthiness criteria, set by TV Eye, (known as ‘credit listing’), and

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8 Shareholdings were held by both Granada Media Group Ltd. and Carlton Communications Ltd. Both of these companies, and thus their shareholdings in TV Eye, are now controlled by ITV plc.

9 Section 202(7) defines an advertising agency as a person carrying on 'a business involving the selection and purchase of advertising time … for persons wishing to advertise'. Although there is no legal requirement that an agency must comply with this definition for it to be able to trade, it is relevant for calculation of commercial broadcasters’ net advertising revenue, which in turn determines the level of licence fee payments payable to the ITC and subsequently Ofcom. Under section 19(4) and (5), ITV broadcasters are entitled to deduct commission paid to ‘advertising agents’ from their total revenues, subject to a maximum commission rate of 15 per cent, which produces a figure for ‘net advertising revenue’, from which licence fees are calculated. As a result, it has in practice operated as a requirement for agencies wishing to deal with commercial broadcasters that they meet this definition.
• managing, on behalf of its Member Broadcasters, bank guarantees covering airtime purchases by media agencies not granted credit.

24. According to TV Eye itself, its business ‘derives from activities previously carried on by ITV Network Limited’. TV Eye further stated to the OFT that:

’[ITVNL] originally provided services only to the ITV broadcasters. As the number of commercial broadcasters in the UK increased, to include Channel 4 and Channel 5, those companies also asked [ITVNL] to undertake agency accreditation for them. The service was extended to these companies, but upon review the shareholders of [ITVNL] felt that this took [ITVNL] outside the intended scope of its activities, namely providing services to the ITV companies. It was therefore agreed [in 2002] that a new company should be set up which would take over the accreditation operations from [ITVNL] and that this company should be owned by the five major terrestrial commercial broadcasters – the current shareholders of the Company’.\(^\text{10}\)

25. In addition to providing the services listed above to its shareholders, TV Eye also provides its services to the following companies, referred to as ‘beneficiaries’ or ‘members’: S4C, ITV2 Ltd and ITV News Channel Ltd. Previous beneficiaries have included Interactive Digital Sales Limited (the sales house for cable television companies ntl and Telewest). TV Eye’s current members account for approximately 85 per cent of all UK TV advertising, by value.

Shareholder Member Broadcasters of TV Eye

\textit{ITV plc}

26. ITV plc (ITV) began trading on 2 February 2004, following conditional clearance of the merger of Granada plc and Carlton Communications plc by the Secretary of State for Trade and Industry.

27. ITV plc operates the eleven English regional ITV licences. In the 15 months to December 2003 the turnover of ITV plc (ie the combined turnover of Granada plc and Carlton Communications plc) was £2,078m, comprising broadcasting sales of £1,719m and production sales of £359m. ITV plc owns the production company Granada, which in 2003 produced eight of the top ten programmes shown in the UK. It also has shareholdings in ITV2, ITV News Channel and GMTV, all of which are beneficiaries of TV Eye, as well as in ITN and Granada Sky Broadcasting.
**Channel 4 Television Corporation**

28. Channel 4 Television Corporation (Channel 4) was created by Act of Parliament in 1982. It is a publicly owned corporation, with a board appointed by Ofcom, in agreement with the Secretary of State for Culture, Media and Sport. It receives no public funding and is funded entirely by its own commercial activities.

29. As well as the main Channel 4 service, Channel 4 operates a variety of pay channels, including the E4 entertainment channel, E4 +1, and three film channels. Its Film Four division produces and co-produces feature films for the UK and global markets and it also operates a variety of online and broadband services.

30. Group turnover for 2003 was £770m, generating an operating profit before interest, tax and restructuring costs of £59m.

**Channel 5 Broadcasting Limited**

31. Channel 5 Broadcasting Limited (Channel 5) is the fifth national public service channel and commenced service on 30 March 1997. The channel is available free-to-air on analogue and digital television and can be received by approximately 80 per cent of the households in the UK.

32. In 2003 Channel 5 had turnover of £259.9m, on which it made an operating loss of £21.6m.

**GMTV Limited**

33. GMTV Limited (GMTV) is the broadcaster responsible for providing breakfast television across the ITV network. It was launched in 1993 and transmits daily from 6am to 9:25am, reaching 25 million people. GMTV also produces a free-to-air digital channel, GMTV 2.

34. GMTV won its broadcasting licence under the competitive tender process laid down by the Broadcasting Act 1990, replacing the previous licence holder, TVAM. At the time of the OFT’s investigation, GMTV’s shareholders were ITV plc, with a 50 per cent share, and Disney and Scottish Media Group (SMG),

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10 Letter from TV Eye's solicitors to the OFT, dated 13 May 2003.
each of which held a 25 per cent share. Following ITV plc’s acquisition of SMG’s stake, ITV plc now holds 75 per cent of GMTV’s shares.¹¹

35. In 2003 GMTV had a turnover of £76m and generated a pre-tax profit of £13.2m.

**Non-shareholder Member Broadcasters of TV Eye**

36. As noted above, non-shareholder Member Broadcasters are parties on whose behalf TV Eye has operated the Agency Registration and Credit Listing system.

*ITV2 Limited*

37. ITV2 Limited (ITV2) is one of the channels forming the ITV network and is now wholly owned by ITV plc. It is a commercial television channel primarily dedicated to light entertainment.

*Interactive Digital Sales Limited*

38. Interactive Digital Sales Limited (IDS) is a media sales house representing a number of the UK’s broadcast, on-line and interactive brands, including the UKTV channels, LivingTV, Bravo, Challenge and Extreme Sports. IDS was formerly the sales department of Flextech Television. IDS ceased to use TV Eye on 21 August 2003.

*ITV News Channel Limited*

39. The ITV News Channel is one of the channels forming the ITV network and is now wholly owned by ITV plc. It is a rolling digital 24-hour news service providing discussion and analysis of the stories covered in ITV News bulletins, as well as some original news programming.

*S4C*

39. S4C is the Welsh language public service broadcaster, accountable to the Welsh Fourth Channel Authority, an independent broadcasting authority. Since 1982,
all Welsh language TV programmes, from whatever source, have been transmitted on S4C. S4C is funded by an annual fixed budget from the Treasury. In 2003, the Public Service Fund and General Fund turnover was £97.1m, on which S4C made an operating profit of £3.8m. The channel has sold its own advertising airtime since 1 January 1993.

Other broadcasters

**Viacom Brand Solutions Limited**

40. Viacom Brand Solutions Limited (Viacom Brand Solutions) is a wholly-owned subsidiary of Viacom Inc., a global media company with ownership in broadcast and cable television, radio, outdoor and online advertising, cinemas (co-owner of United Cinemas International, UCI together with Universal) and content production. In addition to selling airtime and sponsorship on Viacom’s UK cable channels (MTV, Paramount, Nickelodeon and VH1), Viacom Brand Solutions also sells on behalf of associated digital channels and Web sites.\(^{12}\)

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\(^{12}\) Viacom Brand Solutions was never a formal Member of TV Eye. During the period under investigation Viacom Brand Solutions entered into discussions regarding whether to join TV Eye, and in this context received several emails from TV Eye relating to the provision of bank guarantees. As a result of having received these emails the OFT considers that Viacom Brand Solutions took the services of TV Eye, notwithstanding that it was not a member of TV Eye.
THE COMMITMENTS

41. The commitments offered by TV Eye, the full text of which is annexed to this decision, propose certain changes to the operation of TV Eye in relation to media agencies wishing to buy airtime from Member Broadcasters. In particular they provide that:

a. the current registration process for media agencies will be replaced by a verification process, which will be limited to establishing the two facts necessary to meet the statutory conditions for deduction of commission from qualifying revenue (i.e. that an advertising agency is not connected with any television company and has at least one independent client)\(^{13}\)

b. the 'credit list' (i.e accreditation) will be abolished. TV Eye will no longer decide on behalf of its Member Broadcasters whether an advertising agency does or does not meet collectively agreed credit criteria. Instead, TV Eye will collect certain financial information, which will be augmented by an explanatory narrative identifying key trends, such as increases in profitability. TV Eye will collect the same basic information from agencies and analyse it on behalf of all the Member Broadcasters. It will be supplied on request to individual Member Broadcasters, to enable them to make their own independent decisions as to an agency’s creditworthiness, rather than producing a collective ‘pass/fail’ assessment. However, if individual Member Broadcasters request additional information or analysis, other Member Broadcasters will not see this, unless they also independently request this information.

c. the scope of the information shared between Member Broadcasters through TV Eye has been reduced, for example by omitting from the reports sent to Member Broadcasters estimates of advertising agencies’ future spending with other Member Broadcasters.

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\(^{13}\) Section 202(7) of the Broadcasting Act 1990 defines an advertising agency as a person carrying on ‘a business involving the selection and purchase of advertising time … for persons wishing to advertise’. Although there is no legal requirement that an agency must comply with this definition for it to be able to trade, it is relevant for calculation of commercial broadcasters’ net advertising revenue, which in turn determines the level of licence fee payments payable to Ofcom. When determining the levels of these fees, broadcasters are entitled to deduct commission paid to ‘advertising agents’ from their total revenues, subject to a maximum commission rate of 15 per cent, to produce a figure for ‘net advertising revenue’, from which fees payable are calculated. As a result, it has in practice operated as a requirement for agencies wishing to deal with UK commercial broadcasters that they meet this definition.
d. Sales Directors of the shareholder Member Broadcasters will no longer be allowed to represent shareholder Member Broadcasters on the Board of TV Eye, and

e. TV Eye will not stipulate that agencies must provide bank guarantees to cover any credit risk. Instead, at the request of a Member Broadcaster, TV Eye will administer any form of credit security that that broadcaster requires, based on that broadcaster’s assessment of the information it has on that agency and any negotiations between that broadcaster and the agency. TV Eye will not disclose to Member Broadcasters whether it holds security in respect of an advertising agency on behalf of other broadcasters or the form of any security held.
THE OFT’S ASSESSMENT OF THE COMMITMENTS

The appropriateness of accepting commitments

42. The OFT guideline Enforcement (OFT 407) contains as an annexe the OFT’s guidance as to the circumstances in which it may be appropriate to accept commitments. The OFT must have regard to the guidance for the time being in force when deciding whether to accept any commitments offered to it.

43. The decision whether to accept binding commitments is at the discretion of the OFT. The OFT is only likely to consider it appropriate to accept commitments in cases where:

- the OFT’s competition concerns are readily identifiable
- the competition concerns are fully addressed by the commitments offered, and
- the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.\(^\text{14}\)

44. The OFT considers that these conditions are met in this case. The OFT has identified competition concerns, as summarised at paragraphs 6 to 11 above, which relate to the collective setting of terms and conditions for the purchase of advertising airtime and for obtaining credit for that purpose.

45. Following the consultation required by Paragraph 2 of Schedule 6A to the Act, the OFT has concluded that the commitments offered fully address these competition concerns. The reasons for reaching this conclusion are set out at paragraphs 52 to 66 below.

46. The OFT is satisfied that these commitments, which are relatively straightforward, can be implemented effectively, and is also satisfied that the timescale for the implementation is appropriate. Most of the commitments will be implemented within three months of formal acceptance of the commitments with the commitments becoming fully effective by January 2006 at the latest.

47. Even in cases where the conditions set out in paragraph 43 are satisfied, the OFT will not necessarily consider it appropriate to accept commitments. In particular, the OFT will not accept, other than in very exceptional circumstances, commitments in cases involving secret cartels between competitors which include price-fixing, bid-rigging, output restrictions or quotas, sharing markets,

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\(^{14}\) Paragraph 4.3 of Enforcement and paragraph A.14 of the annexe.
and/or dividing markets, or in cases involving serious abuse of a dominant position.15

48. The conduct covered by the commitments does not fall within any of these categories.

49. Furthermore, the OFT will not accept binding commitments in circumstances:

• where compliance with and the effectiveness of any binding commitments would be difficult to discern, and/or

• where the OFT considers that not to complete its investigation and make a decision would undermine deterrence.16

50. The OFT considers that compliance with, and effectiveness of, the commitments will not be difficult to discern. Any concerns arising with the commitments that address these areas would become apparent in the media agencies’ dealings with the Member Broadcasters and the agencies should therefore be well placed to identify and report any such issues to the OFT.

51. The OFT considers that acceptance of commitments in this case will not undermine deterrence. The nature of television airtime sales and the complex negotiations that surround them, as well as the regulatory regime in which those negotiations take place, are sufficiently unique that commitments in this case should create no expectation that the OFT will be willing to accept commitments in all cases involving collective setting of terms and conditions or information exchange.

How the commitments address the OFT's concerns

52. As noted above, the OFT’s concerns about the operation of TV Eye were essentially that the company represented a vehicle through which a small number of important players could co-ordinate their approach in respect of the terms and conditions related to the selling of an important product: television advertising airtime, when such a level of co-ordination was not objectively justified. Through TV Eye, the Member Broadcasters had agreed a means of collectively setting certain key terms on which Member Broadcasters would do business with media agencies. TV Eye also appeared to be a means by which information could be acquired and exchanged between competing broadcasters in a way that should not occur in a competitive market. Although the OFT

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15 Paragraph 4.4 of Enforcement and paragraph A.15 of the annexe.
16 Paragraph 4.5 of Enforcement and paragraph A.16 of the annexe.
accepted that certain efficiencies could be gained through some centralisation of credit control and analysis functions, it took the view that TV Eye’s activities went beyond what was acceptable. In addition, the OFT took the view that TV Eye was not sufficiently isolated from its parent companies to avoid potential competition concerns arising. All of these concerns are addressed by the proposed commitments.

**Agency registration/verification**

53. The verification of a media agency by TV Eye tends to operate in practice as a gateway to the marketplace for advertising airtime sales, since without such verification it may be difficult or impossible for an agency to operate. It is critical therefore that, to encourage market entry and competition, the verification assessment sets no higher threshold than that applied by Ofcom when assessing whether an agency meets the definition of advertising agency contained in the Broadcasting Act 1990.

54. Ofcom have confirmed that the verification assessment should include only an assessment of whether the agency holds a licence and whether it or its directors have any television interests and an assessment of whether the agency has at least one independent advertising client.

55. By reducing the scope of the verification assessment to cover this information only, the commitments that have been offered remove the OFT’s concerns in this area.

**Credit arrangements**

56. As noted above, the terms on which Member Broadcasters were prepared to grant credit to those agencies unwilling or unable to pay in advance for airtime was the main focus of the OFT’s investigation. Rather than negotiate individually on these terms (which, as the OFT understood it, were of crucial importance to the media agencies because payment in arrears was invariably essential to their business models), the Member Broadcasters tended to follow a central credit assessment made by TV Eye and required an agreed form of financial security in respect of agencies failing that assessment. Any agency that failed to meet the credit accreditation criteria set by TV Eye, would have to put in place additional security, usually bank guarantees, completely protecting the Member Broadcasters from the risk of non-payment, at the agency’s cost. The OFT was concerned that, as a consequence of these arrangements, there appeared to be little scope for agencies to negotiate individually with Member Broadcasters on
these terms of credit and that the additional security required by Member Broadcasters was higher than would have been required absent the TV Eye arrangements.

57. The commitments offered ensure that the decision whether to consider an agency as creditworthy will be made by an individual broadcaster. It can request analysis of information collected centrally by TV Eye. It can also request further information from TV Eye. However, the latter will not disclose to any other broadcaster what information has been requested and provided. This ensures that the efficiencies of centralised collection and analysis of information on agencies’ creditworthiness can be retained, without the competition concerns that arise from the current arrangement.

58. The commitments also ensure that the assessment and negotiation of any security arrangements is not carried out on a collective basis and that, as a result, the possibility of individual negotiation taking place between a Member Broadcaster and a media agency on this critical element is not precluded.

59. Rather than a collective agreement to administer financial security in respect of a media agency centrally via TV Eye, the commitments undertake that TV Eye may, at the request of an individual broadcaster, administer on the latter’s behalf any security that the broadcaster decides to require.

60. There remains the scope for a security to be held on behalf of a number of broadcasters, which produces efficiency benefits, but it will not be known to any individual broadcaster whether the security arrangements being operated are for its benefit alone or for others as well.

61. Discussion of the renewal of any security and the terms which this should take will also be between TV Eye and individual broadcasters and not on a collective basis. Taken together, these changes remove the scope for collective action by broadcasters to obtain better security terms than could be obtained from individual negotiations. As a result, the proposed commitments will remove the OFT’s concerns in this area.

Exchange of information

62. As noted above, the OFT had a concern that information collected by TV Eye from media agencies and the Member Broadcasters was shared among TV Eye’s shareholders. The OFT was concerned that this information encouraged and facilitated Member Broadcasters’ requests for bank guarantees and also, when

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17 Although some broadcasters also applied their own credit checking arrangements, TV Eye’s recommendations were followed to a sufficient extent to raise concerns.
combined with a single set of credit terms, may have allowed Member Broadcasters to shorten the credit periods they offered to their customers.

63. As already mentioned, the financial information on which credit decisions will be based will be provided to broadcasters individually in a standard format and any additional information will be provided on a confidential and individual basis. A standard form table for the provision of financial information by media agencies is attached at Appendix 1 to the annexed commitments and details the categories of financial information that will be included. By reducing the amount of information requested, and limiting the onward disclosure of this information, the proposed commitments will remove the OFT’s concerns in this area.

64. The OFT was also concerned that the shareholder Member Broadcasters' nominated representatives included sales directors of their respective companies, who had access to sensitive information on their employer’s activities that went far beyond the area covered by TV Eye. The OFT was concerned that this increased the risk that the shareholders would exchange commercially sensitive information.

65. The commitments ensure that no sales directors will act as nominated directors of TV Eye, thus removing this concern.

Payment dates

66. As noted above, the OFT identified that the exchange of certain information, combined with the setting of a single set of terms for the granting of credit, may have allowed TV Eye’s Member Broadcasters to shorten their payment dates, even if there was no explicit co-ordination of this.

67. As a result of the commitments, competition in the advertising airtime sales market should be invigorated and it should no longer be possible for TV Eye’s Member Broadcasters to set payment dates independent of negotiating pressure from their customers. In particular, increased flexibility in respect of credit terms should allow media agencies to offset through negotiation any reduction in credit periods against the credit security they provide. As a result, the OFT will no longer have competition concerns in this area.
THE CONSULTATION RESPONSE

The IPA’s response

68. The OFT received only one response to the public consultation, from the IPA. The IPA’s response indicated that it was satisfied with the commitments.

The European Commission’s comments

69. As noted above, the OFT, via the European Competition Network informed the Commission of its intention. Following this notification, the Commission made a number of comments to the OFT aimed at improving the clarity of the commitments. Specifically, the Commission suggested that:

- paragraph 3.1 be extended to include a confirmation that TV Eye will not engage in the negotiation of security arrangements with media agencies on broadcasters’ behalf
- paragraph 3.2 be amended to state that TV Eye will not disclose to a broadcaster the nature, details or existence of any security held by it on behalf of another broadcaster, and
- a new paragraph 4.2 be added to prevent broadcasters’ representatives passing on to the broadcasters commercially sensitive information discussed at any meetings convened by TV Eye.

70. The OFT put these comments to TV Eye on 21 April. TV Eye submitted a revised set of commitments on 29 April reflecting all of the Commission’s comments.

The OFT’s consideration

71. As noted above, the public consultation produced no adverse comments. The OFT has carefully considered the Commission’s comments and TV Eye’s response to them to assess whether they give the OFT reason to believe that its competition concerns as set out in paragraphs 6 to 11 have not been fully addressed.

72. The OFT considers that the changes put forward by TV Eye adequately clarify the commitments, as requested by the Commission. Specifically, TV Eye made three amendments to the commitments in relation to the Commission’s comments.
• Paragraph 3.1 was amended to read, '[b]roadcasters to the exclusion of TV Eye, will negotiate bilaterally with media agencies whether a security is required and, if so, what form of security. Following the conclusions of such negotiations, TVE will at the request of a broadcaster put in place and administer on its behalf any security that the broadcaster decides to require.'

• Paragraph 3.2 was amended to read, 'TVE will not disclose to a broadcaster the nature, details or existence of any security held by it on behalf of another broadcaster.'

• A new paragraph 4.2 was added, '[t]o the extent required by Article 81 of the EC Treaty and Chapter 1 of the 1998 UK Competition Act, representatives of each broadcaster on the board of TV Eye will not pass on to such broadcaster information which is commercially sensitive to other broadcasters discussed at any TV Eye meetings.'

73. Accordingly, the OFT does not consider that any further amendments are needed to the commitments in order for all of the OFT’s competition concerns to be addressed.

74. The OFT considered that the changes made to the commitments pursuant to the Commission’s comments were not sufficiently material to require further consultation and has therefore decided to accept the revised proposals as they now stand.

75. TV Eye was therefore asked by the OFT on 9 April to confirm its offer of the commitments by duly executing them and submitting a signed copy to the OFT. This was done on 19 March 2005.
THE OFT’S DECISION

76. In light of the above, the OFT hereby accepts TV Eye’s commitments, as annexed to this decision, and executed by TV Eye and its members on 19 March 2005 and accordingly has closed its file on this investigation.