

Notice of a proposal to accept undertakings from ITV plc varying the undertakings given by Carlton Communications Plc and Granada plc to the Secretary of State for Trade and Industry pursuant to section 88(2) of the Fair Trading Act 1973

1. On 14 October 2003 the Secretary of State for Trade and Industry accepted final undertakings (the Undertakings) from Carlton Communications Plc and Granada plc under section 88(2) of the Fair Trading Act 1973 (FTA). The Undertakings followed from the Competition Commission's (CC's) report entitled *Carlton Communications Plc and Granada plc: a report on the proposed merger* published in October 2003.
2. In October 2006 ITV plc (ITV) asked the Office of Fair Trading (OFT) to review those clauses of the Undertakings relating to the contracts rights renewal (CRR) remedy.¹ On 29 May 2009, in exercise of its powers under Schedule 24, paragraph 16, of the Enterprise Act 2002 (the Act), the OFT published its advice to the CC recommending that the CC should review the Undertakings and consider variations to them.²
3. On 12 May 2010, the CC published its report entitled *Review of ITV's Contracts Rights Renewal Undertakings* (the final report). In its final report the CC set out the proposed variations to the Undertakings and the reasons for them. The relevant paragraphs setting out the CC's proposed variations are paragraphs 8.109 to 8.111.
4. A copy of the proposed undertakings to be given by ITV varying the Undertakings is attached to this Notice as Annex A. For ease of reference, we have also published a draft of the Undertakings showing the effect of the proposed changes. The Undertakings (without the variations) can be found at Appendix A to the final report.

Representations

5. Any representations in relation to these proposals to accept undertakings to vary the Undertakings in the manner described in this Notice should be made by 2 August 2010 and sent to:

T J Oyler Esq
Remedies Manager
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD
or email: tim.oyler@cc.gsi.gov.uk

DIANA GUY
Group Chairman
16 July 2010

¹Namely clauses 5 to 11 and Annex 1 which relate to the sale of Commercial Airtime, clauses 12 to 18 and Annexes 2 and 3 which relate to adjudication, and clauses 23 to 25 which relate to the interpretation of the words and expressions used in the Undertakings.

²Under Schedule 24, paragraph 16(3), of the Act, power to supersede, vary or release undertakings under section 88 of the FTA passed from the Secretary of State to the CC, subject to the designation of the relevant undertakings by the Secretary of State. The Undertakings were designated for the purposes of Schedule 24, paragraph 16(1), of the Act in The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004 (SI 2004/2181).

**Undertakings given to the Competition Commission by ITV plc in order to vary
Undertakings given by Carlton Communications plc and Granada plc to the
Secretary of State for Trade and Industry pursuant to section 88(2)
of the Fair Trading Act 1973**

On 14 October 2003 the Secretary of State for Trade and Industry accepted final undertakings (the Undertakings) from Carlton Communications Plc and Granada plc under section 88(2) of the Fair Trading Act 1973 (FTA). The merger of Carlton Communications Plc and Granada plc to form ITV plc (ITV) became effective on 2 February 2004.

Under Schedule 24, paragraph 16(3), of the Enterprise Act 2002 (the Act), power to supersede, vary or release undertakings accepted under section 88 of the FTA passed from the Secretary of State to the Competition Commission (CC), subject to the designation of the relevant undertakings by the Secretary of State. The Undertakings were designated for the purposes of Schedule 24, paragraph 16(1), of the Act by The Enterprise Act 2002 (Enforcement Undertakings and Orders) Order 2004.³

In October 2006, ITV asked the Office of Fair Trading (OFT) to review those clauses of the Undertakings relating to the contracts rights renewal (CRR) remedy. On 29 May 2009, in exercise of its powers under Schedule 24, paragraph 16, of the Enterprise Act 2002 (the Act), the OFT published its advice to the CC recommending that the CC should review the Undertakings and consider variations to them.

On 12 May 2010, the CC published its final report entitled *Review of ITV's Contracts Rights Renewal Undertakings* (the final report). On [date], the CC published a Notice of a proposal to accept undertakings to vary the Undertakings.

ITV as the successor to Carlton Communications Plc and Granada plc now undertakes and agrees with the CC that the Undertakings shall be varied as set out in these undertakings and that it will comply with the Undertakings as though it had given them.

Effective date of these undertakings

1. These undertakings shall take effect from the date that, having been signed by ITV, they are accepted by the CC. The changes to the Undertakings shall take effect as soon as these undertakings are accepted and the amended Share of Broadcast provisions in paragraph 7 of the Undertakings shall then apply to the next annual calculation under that paragraph.

Compliance with the Undertakings

2. ITV undertakes that it will comply with the Undertakings as though it had given them.

Variations to the Undertakings

3. In paragraph 7:

³SI 2004/2181.

- (a) insert '(including Commercial Impacts generated on cable or satellite transmissions of the Regional Channel 3 Services)' after 'Regional Channel 3 Services' share of Commercial Impacts'; and
- (b) insert '(including those generated on cable or satellite transmissions)' after 'the average share of Commercial Impacts achieved by the Regional Channel 3 Services'.

4. At the end of paragraph 7 insert:

'For these purposes the calculation of the Regional Channel 3 Services' share of Commercial Impacts shall include Commercial Impacts generated on any digital transmission of one or more Regional Channel 3 Services (including a transmission that covers a part of one or more Regional Channel 3 Services) simulcast in high definition or time-delayed by one hour, on condition that the services simulcast in high definition or time-delayed by one hour are exact replicas of those Regional Channel 3 Services except for:

- any difference in programmes and advertisements transmitted at the time of such programmes caused by time-delay constraints in transmission; or
- any difference in regional news programmes and advertisements transmitted at the time of such programmes caused by differences in regional transmission.

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

- the Commercial Impacts were purchased for that same Region on the Regional Channel 3 Service and the advertisement is an exact replica of the advertisement transmitted on the Regional Channel 3 Service in that Region; or
- the Commercial Impacts were purchased against a narrower geographic Region on one or more Regional Channel 3 Services than on the digitally transmitted versions of those Services simulcast in high definition or time-delayed by one hour and the advertisement is an exact replica of the advertisement transmitted on the Regional Channel 3 Service in that Region.'

5. In paragraph 25:

- (a) At the end of the definition of '**Regional Channel 3 Service**' insert 'being a service provided pursuant to a licence granted under Section 215 of the Communications Act 2003'.
- (b) In the definition of '**Regulator**' delete 'the Independent Television Commission ('ITC') and/or' and ', as the context requires and their statutory powers and duties require and/or permit'.
- (c) Insert the following definition: "**Region**' means an ITV franchise region which is available individually to Advertisers and Media Buyers for purchase of commercial airtime.'

Directions

6. ITV will comply with such written directions as the OFT may from time to time issue, to take such steps as may be specified or described in the directions for the purpose of ensuring the effective operation of and compliance with these undertakings and the Undertakings.

Provision of information

7. ITV shall provide to the OFT or the Regulator such documents and/or information as either may from time to time require for the purposes of any of their respective functions in relation to these undertakings or the Undertakings.

Subsidiaries

8. ITV undertakes to procure that its subsidiaries comply with these undertakings as if they had been given by those subsidiaries.

Termination

9. These undertakings and the Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
10. The variation, release or supersession of these undertakings or the Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

Interpretation

11. Words and expressions defined in the recitals to these undertakings shall have the same meaning in these undertakings.
12. Words and expressions defined in the Undertakings shall have the same meaning in these undertakings unless otherwise specified.
13. In these undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
14. The headings used in these undertakings are for convenience and shall have no legal effect.
15. Expressions in the singular include the plural and vice versa and references to persons include corporations.
16. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
17. **ITV** means ITV plc and:
 - (a) any person who directly or indirectly controls ITV plc from time to time; and
 - (b) any person directly or indirectly controlled by ITV 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;

18. **Subsidiaries**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006.

FOR AND ON BEHALF OF ITV PLC

DATE