

VARIATION OF ITV UNDERTAKINGS REVIEW

1. The CMA has a statutory duty to keep under review undertakings made under section 88 Fair Trading Act 1973 by virtue of Schedule 24 paragraph 16 of the Enterprise Act 2002, as amended by the Enterprise and Regulatory Reform Act 2013.
2. ITV, supported by the other Channel 3 licensees (STV and UTV), has requested that two provisions in paragraph 2 of the Undertakings be reviewed.
3. The Undertakings followed a CC report entitled [Carlton Communications Plc and Granada plc: a report on the proposed merger, published in October 2003](#). The merger of Carlton and Granada led to the formation of ITV. As a result of the merger, 11 of the 15 regional Channel 3 licensees came under the ownership of ITV. In October 2011, ITV acquired Channel, leaving STV (which holds two licences) and UTV as the two other remaining regional licensees.
4. The sections of the Undertakings relating to the contract rights renewal (CRR) regime, which governs the way in which airtime on ITV1 is sold, were varied in September 2010 following a review by the CC. The CRR regime is not being reviewed in this current case.
5. ITV's request relates only to paragraph 2 of the Undertakings, which concerns the networking arrangements between the regional Channel 3 licensees. The networking arrangements govern how the licensees acquire network programmes for broadcast on each of their individual services. ITV considers that there has been a change of circumstances such that parts of paragraph 2 are no longer appropriate. In particular, new networking arrangements have been agreed between the regional Channel 3 licensees following Ofcom's 2010 review and recommendations.
6. **Paragraph 2(c) (programme compliance)**

Paragraph 2(c) requires ITV to: 'not make the commissioning or broadcasting of a programme conditional on using Carlton and/or Granada for Programme Compliance for that programme'. 'Programme Compliance' is the process whereby broadcasters ensure that their content meets the terms of the Ofcom Broadcasting Code before being broadcast. Under the new networking arrangements, ITV, STV and UTV collaborate on programme compliance

matters, particularly in the form of quarterly compliance meetings attended by all Channel 3 licensees. Neither STV nor UTV seek to provide compliance services for other independent productions, and are satisfied that ITV should be the only provider. STV has its own compliance department that it uses to provide compliance services for its own productions. ITV has stated that it is happy to continue to accord the compliance licensee role to STV for its own productions. Ofcom assessed the compliance arrangements as part of its approval of the new networking arrangements and concluded that they satisfied the competition test set out in Schedule 11 of the Communications Act.

7. ITV submits that since it is now the only party wishing to provide programme compliance for independent productions, and given ITV's confirmation that STV may continue to provide programme compliance for its own productions, paragraph 2(c) is no longer required and should be deleted from the Undertakings.
8. Against this background, the CMA considers that there is a realistic prospect that there has been a change of circumstances and that it will therefore undertake a review of this provision in the Undertakings.

9. **Paragraph 2(f) (monthly reporting)**

Paragraph 2(f) requires ITV to: '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'. Under the new networking arrangements, commissioning will be undertaken by a wholly owned subsidiary of ITV, rather than by a company in which the other licensees were minority shareholders (as was the case previously). ITV will then provide the programmes and schedule to the other licensees. ITV reports to Ofcom on behalf of itself and the other licensees in respect of licence quotas, and all licensees meet formally once a quarter to ensure progress can be effectively monitored and discussed. Ofcom retains its powers to request information from the licensees.

10. ITV submits that in view of this change of circumstances, it is no longer appropriate for ITV to be required to provide the detailed monthly information specified by paragraph 2(f). Accordingly, ITV submits that paragraph 2(f) should be deleted from the Undertakings.
11. Ofcom reported that it no longer believes the reports are required as the new networking arrangements provide sufficient protection and transparency in the market. Further, Ofcom is satisfied that the annual reports it receives, coupled with its information gathering powers under section 285(3)(f) of the

Communications Act 2003, should be sufficient for Ofcom to deal with any circumstances that may arise including any concern that ITV might use its commercial influence to require better terms from independent producers than it obtained from in-house producers – the original purpose behind the reports produced under paragraph 2(f) .

12. Against this background, the CMA considers that there is a realistic prospect that there has been such a change of circumstances and that it will undertake a review of this provision in the Undertakings.