

## A basic summary of advertisers and buyers' rights under the ITV merger

Carlton and Granada jointly attract more viewers than any other commercial channel in the television advertising market. With more than half of total advertising revenues the newly-merged ITV could have significant influence over the ability of advertisers and media buyers to negotiate contracts freely and fairly. Because of this, the Competition Commission decided that a remedy was needed to protect the market - the Contracts Rights Renewal (CRR) remedy.

The undertakings – the legal document which describes how CRR will work – have now been accepted by the Secretary of State. Therefore, the Carlton/Granada merger may now go ahead.

### What is CRR?

The CRR sets out a number of rights that advertisers and media buyers will have in the future when buying advertising time from Carlton/Granada.

The remedy gives advertisers and media buyers the right to renew their current contracts with Carlton and Granada in future, with no increase in the share of their spend that they commit to ITV1 and no reduction in the discounts they receive. From now until the remedy is no longer necessary, the share of revenue committed by advertisers/media buyers on television advertising to Carlton/Granada need not increase above 2003 levels.

However, this “Protected Contract” is a fall-back right. Advertisers and media buyers may always negotiate a change to this contract or indeed negotiate an entirely new contract. If they do negotiate a change or a new contract, Carlton and Granada must offer them fair and reasonable terms to do so.

The remedy also links advertising terms to audience performance, and gives advertisers/buyers the right to automatically reduce the proportion of their spend they give to ITV if the merged Carlton/Granada's audiences shrink. This linkage is a simple, proportionate ratchet (the Audience Ratchet Mechanism – ARM). The ratchet offers both added protection to advertisers and media buyers as well as a powerful incentive to the merged Carlton/Granada to produce compelling programming of widespread appeal to UK viewers.

Advertisers and buyers also have the right to bring contractual disputes to a newly formed “Adjudicator”. The role of the Adjudicator is to ensure that Carlton and Granada respond fairly when the demands of advertisers or buyers change from time to time. The Adjudicator will act as an expert to determine the outcome of disputes between the broadcaster and its advertising customers.

In addition to these basic rights, CRR also gives advertisers/media buyers a number of additional rights to cover certain situations. These cover:

- The rights of an advertiser to move between media buyers
- How advertisers who previously held contracts with ITV should be treated
- How new advertisers should be treated
- What happens when advertisers or media buyers merge

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This package of rights is designed to ensure that advertisers and media buyers are not in any way disadvantaged as a result of the Carlton/Granada merger.

### **How will the Adjudicator work?**

The ITC and Ofcom, with input from industry representatives, will appoint an Adjudicator, with a strong background in the television advertising market, to act as an expert should there be any disputes between an advertiser or media buyer and the merged Carlton/Granada.

The Adjudicator will be a single individual, employed on a part-time basis with budget for support staff and consultancy if required. He/she will be based at Ofcom's Riverside House headquarters but will be independent of Ofcom. Ofcom will pay for the costs of the Adjudicator in the first instance and will be reimbursed by Carlton/Granada.

In examining a dispute the Adjudicator will have access to all of the merged Carlton/Granada's contracts and trading information. His/her decisions will also be final and binding on Carlton/Granada. Advertisers and media buyers will have a right of appeal to Ofcom under defined circumstances and thereafter to the courts if required.

### **Further questions**

The ITC and Ofcom have also published a technical background guide to the CRR remedy. This can be found at:

[http://www.ofcom.org.uk/codes\\_guidelines/crr/technical\\_guide/index.htm](http://www.ofcom.org.uk/codes_guidelines/crr/technical_guide/index.htm)

Ofcom has also set up a dedicated email address, [crr@ofcom.org.uk](mailto:crr@ofcom.org.uk) for further questions about the CRR remedy.