

## REVIEW OF ITV NETWORKING ARRANGEMENTS 2008

TO: ANTHONY SZYNKARUK

FROM: SENATOR ALAN MACLEAN, MINISTER FOR ECONOMIC DEVELOPMENT,  
STATES OF JERSEY AND DEPUTY GEOFF MAHY, MINISTER FOR THE HOME  
DEPARTMENT, STATES OF GUERNSEY

CONFIDENTIALITY LEVEL: PUBLIC – OPEN ACCESS

### STATEMENT MADE ON BEHALF OF THE STATES OF JERSEY AND THE STATES OF GUERNSEY.

The States of Jersey and States of Guernsey are grateful for the opportunity to respond to this consultation and this response represents the views of both governments.

The consultation proposals as they stand give rise to concern in relation specifically to the assertion in paragraph 1.10 that *'we are using this consultation document to restate our sanctions policy to make clear that all Channel 3 regional licensees may be liable for a sanction when they have transmitted a network programme which breaches the Code and not solely the licensee appointed to carry out compliance for the programme'*. This appears to dictate a change to the current accepted process and changes the nature of the document from one where the provisions are explored to one where the outcome is declared *de facto* and consultation is only upon the nature of the new declared regime. This in our opinion is unsatisfactory as we do not believe that Ofcom should move to this conclusion unilaterally. The review is also somewhat premature insofar as it relates to the Contract Rights Renewal review being undertaken by the Office of Fair Trading and we believe that no substantive changes to the current arrangements should be made by Ofcom before the final results of the OFT review, the impact of which could be significant.

Both Island Governments have been in contact with Ofcom for a number of months regarding the current Public Service Broadcasting Review and have made clear our support for Channel Television's position as a locally based and locally delivered broadcaster which we see as vital to compliment the services of the BBC.

Channel Television has also engaged with ourselves in open discussion regarding its regional revenues and indicated during 2008 that its broadcast division was forecast to go into deficit for the first time in its history. For this reason we are well aware of and appreciate the impact that CRR has had on the company's commercial performance and we are particularly concerned that the future provision of PSB by Channel Television is under serious threat.

To add to this burden at this sensitive point in time, when the world's financial fortunes are low and confidence fragile does not seem opportune and could cause confidence within the sector to fall even further. To that end, neither the States of Jersey nor the States of Guernsey believe that Ofcom's stated objective of collective fining is fair, proportionate or reasonable and are not satisfied with the concluding statement in paragraph 1.10 that Ofcom may *"choose to sanction some licensees more heavily than others, depending on where culpability for the breach lies"*. Administrative fines should only be levied where a clear breach has taken place by an undertaking or where an undertaking should have reasonably been expected to have detected a breach taking place. In our opinion, such circumstances that might warrant a blanket approach to fining, regardless of guilt, proportionality or reasonableness do not apply in the current NWA across Channel 3.

As Ofcom will be well aware, Channel Television is the smallest licensee and faces significant commercial challenges as a consequence. Indeed, the consultation notes in paragraph 3.30 that *"its compliance business is an important contributor to the profits of the Channel licence – without this revenue stream its viability could be called into question"*. While loss of the compliance business would be serious, having to bear a system of

potentially unjust administrative fining due to breaches by other companies in a situation where the company could not commercially defend itself by re-complying networked programming is likely to render the company unviable.

As previously stated to Ofcom, both Island Governments have gone on record that Channel Television plays 'an important role in providing an audit and compliance function for the ITV Network and we understand that this function remains a part of the conditions underlying the Carlton-Granada merger'. We have also stated our wish to discuss with Ofcom our concern over any removal of competition provisions which would undoubtedly damage the company's continued viability.

We understand that the way forward for the United Kingdom and those operators is for Ofcom and Parliament to decide. We wish, however, to put on record with Ofcom our belief that it must put in place undertakings designed to protect the interests of the smaller non-consolidated licensees, and, while not wishing to protect Channel Television from any deliberate or serious failure, will seek to ensure that the continued operation of what many in the Islands perceive as our 'national broadcaster' is not jeopardised unintentionally by what could potentially develop as a consequence of this consultation. To that end, we put on record with Ofcom that such a system is not in keeping with our aspirations in extending relevant sections of the Communications Act and that we would wish to review this legislation in the event that the future viability of our licensee was not specifically protected from the careless or adverse actions of third parties.

Senator Alan Maclean, Minister for Economic Development, States of Jersey

Deputy Geoff Mahy, Minister for the Home Department, States of Guernsey

May 2009