

ANNEX 2

Contracts Rights Renewal Adjudication Rules under the undertakings given by Carlton Communications Plc (“Carlton”) and Granada Plc (“Granada”) to the Secretary of State for Trade and Industry pursuant to Section 88 (2) of the Fair Trading Act 1973 (the “CRRA Rules”)

(6 November 2003, Edition v.1)

Definitions

1. Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this document shall have the same meaning as in the undertakings given by Carlton and Granada to the Secretary of State for Trade and Industry (the “Undertakings”).

Authority

2. In relation to the exercise of its powers and fulfilling its obligations under the CRRA Rules, in this document references to the Office of Communications (“Ofcom”) shall mean Ofcom after any consultation which Ofcom deems appropriate with the Independent Television Commission (the “ITC”).

Application

3. The following Rules as amended from time to time with the consent of the Office of Fair Trading may be incorporated by reference into any contract for the sale of Commercial Airtime between Carlton and/or Granada and any Advertiser or Media Buyer and any reference to the “Contracts Rights Renewal Adjudication Rules” in such contract shall mean, in relation to any adjudication, the most recent edition hereof as at the date of the Notice of Adjudication. These Rules may also apply in the circumstances set out in Clause 16 of the Undertakings.

The Adjudicator

4. The Adjudicator shall be appointed and exercise his functions in accordance with the Undertakings, the CRRA Scheme and the CRRA Rules annexed to the Undertakings as each may be amended from time to time. In the case of any inconsistency or conflict between the provisions of the CRRA Scheme and the CRRA Rules, the provisions of the CRRA Scheme will prevail; and, in the case of any inconsistency or conflict between the provisions of either or both of the CRRA Scheme and the CRRA Rules and the Undertakings, the provisions of the Undertakings shall prevail.

Notice of Adjudication

5. Any Advertiser or Media Buyer who is a party to a contract with Granada and/or Carlton concerning the sale of Commercial Airtime in the United Kingdom and who has agreed to be bound by the CRRA Scheme and the CRRA Rules, or any other person who has agreed to be bound by the CRRA Scheme and the CRRA Rules under paragraph 16 of the Undertakings (the "Referring Party") may apply to the Adjudicator, by giving written notice (the "Notice of Adjudication"). The Notice of Adjudication shall request the Adjudicator to determine any dispute arising out of the interpretation or exercise of the rights given to, or obligations upon, Advertisers, Media Buyers, Carlton and Granada or any such other person in relation to contracts for the sale of Commercial Airtime pursuant to the Undertakings, including any dispute relating to the interpretation, termination or enforcement of such contracts to the extent referable to such Undertakings, the interpretation of any provision of these Rules or the CRRA Scheme, or his jurisdiction to determine the dispute (a "Dispute").
6. The Notice of Adjudication and all accompanying documents shall at the same time be given by the Referring Party to every other party to the contract or Dispute.
7. The Notice of Adjudication shall set out briefly:
 - (a) the nature and a brief description of the Dispute, details of the contract under which it arises, if any (and of any related contract) and of the parties involved, and shall be accompanied by copies of the relevant television advertising airtime sales contract or

contracts and such other documents as the Referring Party intends to rely upon. Although the Referring Party must send copies of all such documents to the Adjudicator with the Notice of Adjudication, in sending the Notice of Adjudication to the other parties to the Dispute only, it may omit any such copies or redact them (and the Notice of Adjudication) for reasons of commercial confidentiality, subject to the right of the Adjudicator to direct disclosure of any such material to the other parties if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations on this issue. The fact that redacted copies of any documents have been served on other parties to the Dispute shall be drawn to the attention of the Adjudicator when the Notice of Adjudication is given to him, together with copies of any such redacted documents;

- (b) details of where and when the Dispute has arisen;
 - (c) the nature of the redress which is sought; and
 - (d) the names and addresses of the parties to the Dispute (including, where appropriate, the addresses which the parties have specified in any contract for the giving of notices).
8. The Adjudicator shall confirm in writing within two working days of receiving a Notice of Adjudication whether or not:
- (a) he is able to act; or
 - (b) he considers the Notice of Adjudication discloses no reasonable grounds for him to act and/or it is an abuse of the CRRRA Scheme and/or the CRRRA Rules for him to proceed to determine the Dispute. If he so considers, the Adjudicator shall issue a written, reasoned decision to the parties.
9. Where in relation to a particular Dispute the Adjudicator indicates to the parties that he is unable to act, or where he resigns pursuant to paragraph 12, or fails to respond in accordance with paragraph 8(1), the Referring Party may request Ofcom to, or Ofcom may on its own initiative, select a person to act as substitute Adjudicator.

10. (1) The Adjudicator may adjudicate at the same time on one or more Disputes under the same contract.
- (2) The Adjudicator may, with the consent of all the parties to any related Disputes, adjudicate at the same time on such related Disputes under different contracts, and shall do so where different contracts provide for joinder of Disputes.

Notice of Reply

11. Unless the Adjudicator otherwise directs, within five working days of receiving the Notice of Adjudication, the other party or parties shall give a Notice of Reply. This shall contain their response to the Notice of Adjudication and be accompanied by copies of any documents upon which the other party or parties intend to rely. Although the other party or parties must send copies of all such documents to the Adjudicator with the Notice of Reply, in sending the Notice of Reply to the Referring Party and any other party to the Dispute, it or they may omit any such copies or redact them (and the Notice of Reply) for reasons of commercial confidentiality, subject to the right of the Adjudicator to direct disclosure of any such material to the Referring Party and any other party to the Dispute if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations on this issue. The fact that redacted copies of any documents have been served shall be drawn to the attention of the Adjudicator when the Notice of Reply is given to him together with copies of any such redacted documents. The Notice of Reply shall be served by the relevant party on the Adjudicator, the Referring Party and any other party to the Dispute simultaneously.
12. The Adjudicator shall resign from determining any particular Dispute or Disputes as soon as:
 - (a) he becomes aware of a conflict of interest; or
 - (b) he is not competent to decide the dispute; or
 - (c) he becomes aware that a dispute varies significantly from the dispute referred to him in the Notice of Adjudication and for that reason he is not competent to decide it.

Powers of the Adjudicator

13. (1) The Adjudicator shall act fairly and impartially in carrying out his duties and shall do so in accordance with the CRRA Rules, the CRRA Scheme, the Undertakings and any relevant terms of any contract, having regard to the relevant Budget, and shall reach any decision concerning a Dispute as expeditiously as possible in accordance with the applicable law in relation to the contract or Dispute.
- (2) The Adjudicator shall take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed. In particular he may:
 - (a) request any party to the Dispute to supply him with such documents and information as he may reasonably require (other than documents that would be privileged from production to a court) including, if he so directs, any written statement from any party to the Dispute supporting or supplementing the Notice of Adjudication or Notice of Reply and any other documents given under paragraphs 7(a) and 11, and to draw such inference as may seem proper from any imbalance in such documentation that may become apparent;
 - (b) meet and question any of the parties to the Dispute and their representatives;
 - (c) obtain and consider such representations and submissions as he requires, and appoint experts, assessors or legal advisers;
 - (d) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and
 - (e) issue other directions relating to the procedure and timetable for the adjudication and the conduct of the adjudication generally.
14. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
15. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the Adjudicator made in accordance with his powers, fails to produce any document, information or written statement requested by the Adjudicator, or in any other

way fails to comply with a requirement under these provisions relating to the adjudication the Adjudicator may:

- (a) continue the adjudication in the absence of that party or of the document, information or written statement requested;
 - (b) draw such adverse inferences from that failure to comply as may, in the Adjudicator's opinion, be justified;
 - (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed; and
 - (d) refuse to determine the matter or matters in dispute.
16. Subject to any agreement between the parties to the contrary, any party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as it considers appropriate.
17. The Adjudicator shall consider all documents and information submitted to him by any of the parties to the Dispute and shall make available to them any documents and information to be taken into account in reaching his decision (subject to any omissions or redactions he considers appropriate for reasons of commercial confidentiality).
18. (1) Subject to paragraph 18(2), the Adjudicator and any party to the Dispute shall:
- (a) keep any information other than that a Dispute has been commenced before the Adjudicator on a specific date and that Carlton and/or Granada is a party to such dispute confidential; and
 - (b) not disclose to any other person, including the ITC and Ofcom, any information or document provided to it or him in connection with the Dispute which is confidential, except to the extent that disclosure by the Adjudicator is necessary for the purposes of, or in connection with, any decisions the Adjudicator takes in relation to the Dispute and any review thereof in accordance with paragraph 23 of these Rules or in order for the Adjudicator to fulfil his reporting functions set out in paragraph 22 of the CRR Scheme.

- (2) The Adjudicator has the authority to disclose the nature of the Dispute and his determination, although he shall not disclose confidential information.
19. (1) Subject to the power of the Adjudicator alone to make a direction otherwise in exceptional circumstances, the Adjudicator shall give his decision not later than:
- (a) fifteen working days after the date of the Notice of Adjudication; or
 - (b) twenty working days after the date of the Notice of Adjudication, if the Referring Party consents to such an extension of time; or
 - (c) such period exceeding twenty working days after the date of the Notice of Adjudication as all the parties to the Dispute and the Adjudicator may agree; or
 - (d) in the case of joinder of Disputes, a date agreed between the Adjudicator and all the parties.
- (2) Where the Adjudicator fails, for any reason, to deliver his decision in accordance with paragraph 19(1):
- (a) any of the parties to the Dispute may serve a fresh Notice of Adjudication under paragraph 5 and shall request Ofcom to name a substitute Adjudicator to determine the Dispute in accordance with these Rules; and
 - (b) if requested by the substitute Adjudicator, and in so far as it is reasonably practicable, the parties shall supply him with copies of all documents and information which they had made available to the previous Adjudicator.
- (3) As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of that decision to each of the parties.

Adjudicator's Decision

20. In the adjudication of a Dispute, the Adjudicator shall decide all the matters in dispute as identified in the Notice of Adjudication. He may take into account any other matters which the parties to the Dispute agree should be within the scope of the adjudication, or which are matters which he considers are necessarily connected with the Dispute, but only

insofar as such matters relate to the subject matter of the Dispute as identified in the Notice of Adjudication.

21. (1) In the absence of any directions by the Adjudicator relating to the time for performance of his decision, Carlton and/or Granada as the case may be shall be required to comply with any decision of the Adjudicator immediately on delivery of the decision to the parties, subject to any outstanding review brought under paragraph 23 below, and the other parties to the adjudication (the "Other Parties") shall be required to comply with any decision of the Adjudicator in accordance with paragraph 21(2).
- (2) The Other Parties shall be required to comply with any decision of the Adjudicator either:
 - (a) within five working days of the delivery of the decision to such parties, if a Review Notice has not been lodged in compliance with paragraph 23(2) or;
 - (b) immediately upon Ofcom, in accordance with paragraph 23(2), informing the parties that it has decided not to review the relevant determination of the Adjudicator; or immediately upon Ofcom issuing a final determination of the Dispute after reviewing the relevant decision of the Adjudicator.
22. The Adjudicator shall provide a written decision including reasons for his decision.

Effects of Decision

23. (1) The decision of the Adjudicator shall be final and binding on Granada and/or Carlton as the case may be. The decision of the Adjudicator shall be binding (but not final) on the Other Parties, any one or more of whom shall have the right if dissatisfied to request Ofcom to review the decision of the Adjudicator in accordance with paragraph 23(2) provided that where the context permits, any one or more of such Other Parties may elect to revert to the terms of its or their previous Protected Contract or to keep to the terms of its or their existing Protected Contract, as appropriate, by giving notice to Carlton and/or Granada as the case may be within five working days of receipt of the Adjudicator's decision.

- (2) The Other Parties' right to ask Ofcom to review a decision of the Adjudicator must be exercised within five working days of receipt of the decision, otherwise it lapses. To exercise this right the Other Party or Parties must send a request in writing to Ofcom (the "Review Notice"), copied to Carlton and/or Granada as the case may be, attaching a copy of the decision, together with any other relevant documents, and a summary of the reasons as to why that Party considers that Ofcom should review the decision. Ofcom shall review such decision and rehear the Dispute on its merits, with Ofcom acting as expert and not arbitrator, unless Ofcom considers that the review would not have a real prospect of success; or there is no other compelling reason why they should hear the review. Within five working days of receipt of the Review Notice (provided all the necessary documents have been provided), Ofcom shall inform the parties in writing whether it shall proceed with the review. If it decides not to proceed with the review, Ofcom shall issue a written reasoned decision. If it decides to proceed, Ofcom shall give appropriate directions in order for it to do so. For the purposes of any such review, Ofcom will have the power to open up, revise and review any decision taken by the Adjudicator. Ofcom will issue a written decision including reasons for its determination which shall be final and binding on all parties subject, where the context permits, to the relevant Other Party's or Other Parties' right to revert to the terms of its or their previous Protected Contract or to keep to the terms of its or their existing Protected Contract, as appropriate, by giving notice to Carlton and/or Granada as the case may be within five working days of receipt of Ofcom's decision. Any such review shall be carried out by the full Board of Ofcom or a committee or body to whom they delegate the necessary powers.
- (3) When, in accordance with this paragraph 23, the Adjudicator's (or Ofcom's) decision becomes final and binding upon all the parties, it shall be final and binding except in the case of fraud, or where a decision is made in bad faith or is so clearly and manifestly erroneous on its face that it would be unconscionable for it to stand.
24. (1) An award or decision of the Adjudicator or Ofcom may, by leave of the court, be enforced in a summary manner.

- (2) Where leave is so given, judgement may be entered in terms of the award or decision.
- (3) In certain circumstances a failure to comply with an award or decision of the Adjudicator or Ofcom may also constitute a breach of a relevant licence granted under the Broadcasting Act 1990 (as amended) or the Communications Act 2003, and the ITC and Ofcom reserve their rights to take enforcement action by these means as appropriate.
25. (1) The fees and expenses of the Adjudicator shall be paid directly and in the first instance by Ofcom, but Carlton and Granada shall be responsible for all such fees and expenses (giving credit for any fee paid by the Referring Party) in accordance with the CRRRA Scheme and shall reimburse Ofcom for all such costs on demand as directed by Ofcom without prejudice to paragraph 25(2) below.
- (2) The Adjudicator may in his discretion decide that it is appropriate that: (a) Carlton and Granada should bear all or a proportion of the legal costs and expenses relating to the adjudication incurred by any one or more of parties to the dispute other than Carlton or Granada; or (b) in exceptional circumstances, it is appropriate for any one or more of the parties to the Dispute other than Carlton and Granada to bear the costs of the adjudication, or for such party or parties to bear a proportion of such costs. Such costs shall include the fees and expenses of the Adjudicator and the fees and expenses of any witnesses in relation to the Dispute, and the legal costs and expenses properly incurred by the parties relating to the adjudication.

Immunity

26. The Adjudicator and his staff, employees and agents (including any advisers appointed by him) shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as the Adjudicator unless the act or omission is in bad faith.