

PROPOSED AGREED MERGER OF CARLTON COMMUNICATIONS PLC AND GRANADA PLC

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

WHEREAS:

- (a) On 16 October 2002, Carlton Communications plc and Granada plc announced a proposed agreed merger;
- (b) On 11 March 2003 the Secretary of State for Trade and Industry referred the proposed merger to the Competition Commission under sections 64, 69(2) and 75 of the Fair Trading Act 1973 (the 'Act');
- (c) The report of the Competition Commission (the 'Report') was presented to Parliament in October (Cm 5952) and sets out such conclusions as are mentioned in section 73(1) of the Act;
- (d) Pursuant to a request by the Secretary of State, the OFT has consulted with Carlton and Granada with a view to obtaining from them undertakings to take action in accordance with section 88(1) of the Act;

NOW THEREFORE Carlton and Granada hereby give to the Secretary of State the following undertakings (the 'Undertakings') pursuant to section 88(2) of the Act for the purpose of remedying or preventing the adverse effects on the public interest specified in the Report.

Effective date of these Undertakings

- 1. These Undertakings shall take effect from the date that, having been signed by Carlton and Granada, they are accepted and dated by the Secretary of State.

Other Licensees

- 2. Carlton and Granada shall, directly or indirectly,
 - (a) convene the Network Council at least twice a year to: (i) consult the Other Licensees; and (ii) ensure that the Other Licensees are properly and fully informed of the Channel 3 Network's broadcasting and programme strategy, as presently referred to in Clause 4 of the Network Supply Contract. They shall circulate in good time the agenda and supporting papers for such meetings, and provide minutes of such meetings to the Regulator in a form approved by it from time to time;
 - (b) ensure that any Other Licensee's contribution, net of any discount, rebate or abatement currently provided in the Network Supply Contract, to the Network Programme Budget in any year does not increase from such net

contribution to the 2003 Network Programme Budget (excluding the costs occasioned by Exceptional Events and excluding the discount relating to the Premier League) by more than the cumulative rate of inflation since December 2002, measured by reference to the Retail Prices Index, save to the extent necessary to meet a fair and reasonable share of the increased costs occasioned by Exceptional Events which is, at the date hereof, deemed to be the Agreed Share as defined in the Network Supply Contract;

- (c) not make the commissioning or broadcasting of a programme conditional on using Carlton and/or Granada for Programme Compliance for that programme;
 - (d) at no extra cost provide Grampian TV, Scottish TV and Ulster TV (and any future Licensee for the respective Regional Channel 3 Services authorised by such companies' Licences at the date of entry into force of these Undertakings) with a Clean Broadcast Feed from the Channel 3 Network to the extent and on the same basis as it is provided at the date hereof (save as amended from time to time by mutual agreement);
 - (e) offer the Licensee for Ulster (currently Ulster TV) equivalent terms to those made available to Scottish TV following devolution in Scotland, if its local programming obligations set out in its Licence change as a result of devolution in Northern Ireland;
 - (f) 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; and
 - (g) use their best endeavours to procure any changes to the Networking Arrangements required to enable them to comply with the Undertakings.
3. Carlton and/or Granada shall offer to each Other Licensee, for the duration of its Licence from time to time, terms similar to those in effect on 1 November 2003 (as amended from time to time by mutual agreement) between it and Carlton and/or Granada for the sale of Commercial Airtime and programme sponsorship.
4. Carlton and/or Granada shall offer to any future Licensee for a Regional Channel 3 Service currently supplied by any Other Licensee, for the duration of its Licence from time to time, the terms last agreed between that Other Licensee and Carlton and/or Granada for the sale of Commercial Airtime and programme sponsorship (which may be amended from time to time by mutual agreement).

The sale of Commercial Airtime

- 5. The conclusion of any contract for the sale of Commercial Airtime with Carlton and/or Granada is without prejudice to Clauses 12-18 below.
- 6. Carlton and Granada shall offer to each person that holds or has held a Protected Contract the option of contracting for the purchase of Commercial Airtime on the same terms (including duration) as those contained in such

Protected Contract. Carlton and/or Granada shall make this offer to each such person at least two months before any contract with that person for the supply of Commercial Airtime expires. Each such offer shall remain open until accepted or a new agreement for the sale of Commercial Airtime with Carlton and/or Granada enters into force.

7. If a Protected Contract contains any Share of Broadcast provisions, such shares will be revised annually in direct proportion to changes in the Regional Channel 3 Services' share of Commercial Impacts, calculated against the base level of the average share of Commercial Impacts achieved by the Regional Channel 3 Services in 2002, or the relevant Base Year defined in Annex 1.
8. Such revised shares shall not at any time exceed the Initial Share of Broadcast Commitment (as defined in Annex 1) specified in the relevant Protected Contract.
9. The revised Share of Broadcast shall be weighted by the mix of demographic audience, regions and specific time periods contracted for. Annex 1 states how this shall be calculated.
10. Carlton and Granada agree that:
 - (a) they must offer Commercial Airtime on fair and reasonable terms to any person, including any person seeking to vary a contract (whether a Protected Contract or not) for the sale of Commercial Airtime. Any Protected Contract existing on 1 November 2003 (or as modified in relation to any Share of Broadcast provision pursuant to Clause 7) is presumed to be fair and reasonable;
 - (b) where an Advertiser under an Umbrella Agreement switches to a new Media Buyer, that Media Buyer may apply the terms of its Protected Contract to the purchase of Commercial Airtime on behalf of that Advertiser, where the terms of the Protected Contract so provide, or otherwise with the consent of Carlton and/or Granada as the case may be. They may withhold such consent only:
 - (i) to the extent necessary to avoid Overtrading to a material extent;
 - (ii) to the extent necessary to avoid materially increasing existing Overtrading;
 - (iii) to the extent that such switching would put Carlton and/or Granada as the case may be in breach of pre-existing contractual arrangements relating to the use of particular advertising slots; or
 - (iv) if such switching would result in a material reduction of the Advertiser's Share of Broadcast commitment;

Should Carlton and/or Granada withhold consent in the circumstances detailed in Clause 10(b), they shall nevertheless offer fair and reasonable terms to the new Media Buyer with the aim of accommodating such Advertiser and shall offer for such terms to become part of the new Media Buyer's Protected Contract.

- (c) where an Advertiser under a Line-by-Line Agreement switches between

Media Buyers, Carlton and/or Granada shall offer terms for that Advertiser to the new Media Buyer no less favourable than those that the Advertiser enjoyed with its previous Media Buyer;

- (d) a person, who has not done so since 31 December 2000, may purchase Commercial Airtime by agreement with a Media Buyer and benefit from such Media Buyer's Protected Contract with Carlton and/or Granada, subject to Carlton's and/or Granada's consent which they may only withhold:
 - (i) to the extent necessary to avoid Overtrading to a material extent;
 - (ii) to the extent necessary to avoid materially increasing existing Overtrading; or
 - (iii) to the extent that the proposed agreement would put Carlton and/or Granada in breach of pre-existing contractual arrangements relating to the use of particular advertising slots;
- (e) a person that holds or has held a Protected Contract may agree with Carlton and/or Granada that a new or replacement contract, or any variation to its Protected Contract, becomes its Protected Contract. Carlton and/or Granada shall not unreasonably withhold or delay their agreement;
- (f) Advertisers, which purchase Commercial Airtime under Line-by-Line Agreements, that cease to be distinct may:
 - (i) apply the terms for the supply of Commercial Airtime enjoyed by the larger or largest of those Advertisers with Carlton and/or Granada (calculated by reference to spend on Commercial Airtime), although Carlton and/or Granada may decline to provide Commercial Airtime on that basis:
 - (aa) to the extent necessary to avoid Overtrading to a material extent;
 - (bb) to the extent necessary to avoid materially increasing existing Overtrading; or
 - (cc) to the extent that to do so would put Carlton and/or Granada in breach of pre-existing contractual arrangements relating to the use of particular advertising slots;
 - (ii) apply the weighted average (calculated by annual spend on Commercial Airtime) of those Advertisers' terms contained in their Protected Contracts, or
 - (iii) exercise their rights under Clauses 5 to 10 for each Protected Contract separately;
- (g) Media Buyers that cease to be distinct may:
 - (i) apply the weighted average (calculated by annual spend on Commercial Airtime) of the terms of their Protected Contracts; or

- (ii) exercise their rights under Clauses 5 to 10 for each Protected Contract separately; and
 - (h) they shall not change their Current Airtime Sales System without the consent of the OFT in a way that materially alters the basis on and the way in which they offer Commercial Airtime for sale.
11. The Undertakings in Clauses 5 to 10 inclusive only apply to Commercial Airtime sales in relation to the Regional Channel 3 Services provided by Licensees.

Adjudication

12. Carlton and Granada agree to comply with and fulfil any obligations placed upon them under the CRRA Scheme and the CRRA Rules.
13. Any decision of the Adjudicator shall bind Carlton and/or Granada as the case may be. Notwithstanding any conflicting provision contained in a contract with Carlton and/or Granada, they shall offer such terms as are required to comply with the Adjudicator's decision.
14. Carlton and Granada shall at all times expressly maintain the offer (whether or not such offer has previously been rejected) to insert the following clause into all contracts with Media Buyers and Advertisers for the sale of Commercial Airtime:

'In the event of any inconsistency between this paragraph and any other provision [*in these Terms and Conditions/of this Agreement*], the provisions of this clause shall prevail.

As regards any dispute between the parties arising out of the interpretation or exercise of the rights given to or obligations upon Advertisers, Media Buyers, Carlton and Granada in relation to contracts for the sale of Commercial Airtime pursuant to the undertakings given by Carlton Communications Plc and Granada Plc to the Secretary of State for Trade and Industry dated [*COMPLETE*] 2003 (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 the Contracts Rights Renewal Adjudication Rules, the Contracts Rights Renewal Adjudication Scheme, or the Adjudicator's jurisdiction to determine the dispute, [*name of Advertiser or Media Buyer*] may refer the dispute to the Contracts Rights Renewal Adjudicator for determination in accordance with the Contracts Rights Renewal Adjudication Scheme and Contracts Rights Renewal Adjudication Rules annexed to the Undertakings and as amended from time to time.'

15. If an Advertiser or Media Buyer accepts this offer and accordingly to be bound by the CRRA Scheme and CRRA Rules, it may refer disputes referred to in Clause 14 to the Adjudicator.
16. Carlton and/or Granada shall offer to persons not holding a contract with them for the sale of Commercial Airtime, for the following disputes to be referred to the Adjudicator for determination in accordance with the CRRA Scheme and CRRA Rules:

- (a) if a person considers that Carlton and/or Granada have not complied with their obligations under Clauses 10(a) and 10(d);
 - (b) if an Advertiser considers that Carlton and/or Granada have not complied with their obligations under Clause 10(b) and 10(c); and
 - (c) if an Other Licensee considers that Carlton and/or Granada have not complied with their obligations under Clause 3.
17. If a person, Advertiser or Other Licensee accepts this offer and to be bound by the CRRRA Scheme and CRRRA Rules, it may refer the dispute to the Adjudicator.
18. Carlton and Granada consent to the Regulator providing the Adjudicator with any documents and information received from them relevant to the operation of the CRRRA Scheme and CRRRA Rules.

Compliance

19. Carlton and Granada shall provide to the OFT or the Regulator such documents and/or information as they may from time to time require for the purposes of ascertaining whether Carlton and Granada have complied with these Undertakings.
20. Carlton and Granada shall deliver a report to the OFT and the Regulator annually, on, or if not a business day on the next business day following, the anniversary of these Undertakings coming into force. It shall include a detailed and accurate account of:
- (a) steps taken during the preceding year to ensure compliance with the Undertakings;
 - (b) instances where a breach or potential breach of the Undertakings has been identified;
 - (c) how the report was compiled.
21. Carlton and Granada shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these Undertakings to do or to refrain from doing.

Transitional provision

22. In relation to any Protected Contract that expires prior to 1 February 2004, Carlton and Granada shall be regarded as having complied with the obligation to make an offer as required in Clause 6 if they make that offer as soon as

reasonably practicable following the effective date of these Undertakings.

Interpretation

23. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
24. Any word or expression used in these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as it has in the Fair Trading Act 1973 or the Enterprise Act 2002, as the case may be.
25. Further, in these Undertakings:

'Advertiser' means a purchaser of Commercial Airtime for the purpose of broadcasting advertisements;

'Adjudicator' means the Adjudicator established under these Undertakings;

'Carlton' means Carlton Communications plc and:

- (a) any person who directly or indirectly controls Carlton Communications plc from time to time; and
- (b) any person directly or indirectly controlled by Carlton Communications 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;

where such person is a Licensee or carries on any activity that involves or is related to or connected with the broadcast or sale of Commercial Airtime;

'Channel 3 Network' means the nationwide system of television broadcasting services to be provided by Licensees under the Networking Arrangements;

'Clean Broadcast Feed' means the provision of a broadcast transmission feed of the Channel 3 Network schedule of all programmes including end credits but free from all end credit promotions and end credit announcements, commercials, other promotions, interstitial material and continuity announcements not relevant to the regions served;

'Commercial Airtime' means the television transmission time that a television channel may sell to third parties to show advertisements in relation to the Regional Channel 3 Services provided by Licensees;

'Commercial Impact' means the viewing by one member of the target audience of an advertisement (including an interactive advertisement), as currently measured by BARB (the Broadcasters' Audience Research Board);

'CRRR Rules' means the rules set out in Annex 2 as amended from time to time;

'CRRR Scheme' means the scheme set out in Annex 3 as amended from time to time;

'control' shall be construed in accordance with section 65 of the Act, and **'controlled'** and **'controlling'** shall be construed accordingly;

'Current Airtime Sales System' means the features and processes currently used by Carlton and Granada in relation to the sale of Commercial Airtime. This includes: the use of SAP, the sale of Commercial Impacts in all regions by all demographic audiences, specific time periods, time length factors and day part definitions as currently sold by Carlton and Granada, and the current limited sale of 'specials' outside contracts for the sale of Commercial Airtime between Carlton or Granada and Advertisers and Media Buyers;

'Exceptional Events' means UK parliamentary elections, international conflicts or major international sporting events (namely the Olympics, European Athletics Championships, Football World Cup, European Football Championships, Cricket World Cup, Rugby World Cup and Commonwealth Games);

'Grampian TV' means Grampian Television Limited;

'Granada' means Granada plc and:

- (a) any person who directly or indirectly controls Granada plc from time to time; and
- (b) any person directly or indirectly controlled by Granada 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;

where such person is a Licensee or carries on any activity that involves or is related to or connected with the broadcast or sale of Commercial Airtime;

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'ITV Network' means ITV Network Limited or any successor body which is responsible for the provision of the Networking Arrangements;

'Licence' means a licence granted by the Regulator to provide a Regional Channel 3 Service;

'Licensee' means a person holding a Licence;

'Line-by-Line Agreement' means a type of agreement between a Media Buyer and a particular channel or sales house where the agreement specifies the specific Share of Broadcast commitment and the discount level received by some or all of the Advertisers on whose behalf the Media Buyer is contracting;

'Media Buyer' means a purchaser of Commercial Airtime on behalf of an Advertiser;

'Network Council' means the council of ITV Network as constituted under the ITV Network Memorandum and Articles of Association, or any successor body carrying out the same, or similar, functions;

'Network Hour' means an hour of transmission of Channel 3 Network programming, measured in terms of 'slot times' i.e., including advertising breaks, programme trailers and presentation material during and at the end of programmes;

'Network Programme Budget' means for each financial year of ITV Network the total amount of money to be raised for the purposes of the Channel 3 Network programme transmission budget for that year by the payment by each Licensee of its agreed share, as currently set out in Clauses 8 and 9 of the Network Supply Contract;

'Network Supply Contract' means the agreement between the Licensees and ITV Network entered into under the Networking Arrangements which, inter alia, authorises ITV Network, acting on behalf of the Licensees, to commission and acquire ITV Network programmes, to procure that these programmes are made available by ITV Network to each of the Licensees and to set out the financial contributions to be made by each Licensee to ITV Network in relation to such network programmes;

'Networking Arrangements' means, prior to the entry into force of section 291 of the Communications Act 2003, such networking arrangements as are for the time being approved by the Regulator under section 39 of the Broadcasting Act 1990 (as amended), and otherwise approved networking arrangements within the meaning of section 291(2) of the Communications Act 2003 or networking arrangements imposed pursuant to section 292 of the Communications Act 2003, without prejudice to the operation of paragraph 36 of Schedule 18 to that Act;

'Other Licensees' means any Licensee other than one controlled by Carlton and/or Granada;

'Overtrading' means a situation in which Carlton and Granada are or would become unable to meet their contractual obligations to supply Commercial Impacts. This may occur on a total national basis, or for a particular region, for a particular demographic audience, specific time period, or specific airtime slot;

'Programme Compliance' means procedures for the verification of the rights underlying particular programming or the availability of cash-flow finance or production monitoring or for ensuring that a programme complies with the relevant statutory and regulatory provisions, for example the Regulator's Programme Code;

'Protected Contract' means a contract for the purchase of Commercial Airtime:

- (i) between an Advertiser or Media Buyer and Carlton or Granada that has been in force at any time between 1 January 2001 and 1 November 2003 inclusive. Where an Advertiser or Media Buyer has had more than one such contract, or its terms have been altered during this period, the most recent such contract or set of terms is the Protected Contract; or
- (ii) concluded between a person and Carlton and/or Granada who has not held a contract with Carlton or Granada that has been in force between 1 January 2001 and 1 November 2003 inclusive, provided that, without prejudice to Clause 10(e), where an Advertiser or Media Buyer enters into more than one such contract or varies its terms, only the first such contract, or contract as unvaried, shall be a Protected Contract.

Where Carlton and/or Granada have terminated a Protected Contract lawfully due to a breach by an Advertiser or Media Buyer, such contract shall no longer be a Protected Contract;

'Regional Channel 3 Service' has the meaning ascribed to it in section 14(6) of the Broadcasting Act 1990 (as amended);

'Regulator' means the Independent Television Commission ('ITC') and/or the Office of Communications ('Ofcom'), as the context requires and their statutory powers and duties require and/or permit;

'Scottish TV' means Scottish Television Limited;

'Share of Broadcast' means the proportion of an Advertiser's or Media Buyer's total TV advertising spend that it has committed, as part of its contract, to a particular channel or sales house in return for a given discount and which may be specified by reference to any one or more of a total share on a national basis, or for a particular region or regions, or for a particular demographic audience or audiences or for a particular time period or periods;

'Station Average Price' or 'SAP' means a benchmark price for delivery of a specific target audience. It is defined for each target audience and for each region sold. It is calculated as:

$$\text{SAP}_{\text{Demographic A}} = \frac{\text{Total Revenue committed to that station (all audiences)}}{\text{Total number demographic A impacts}}$$

'Ulster TV' means Ulster Television Limited;

'Umbrella Agreement' means a type of agreement between a Media Buyer and a particular channel or sales house, where the agreement specifies the Media Buyer's Share of Broadcast commitment and the discount level it will receive in aggregate; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

SIGNED FOR AND ON BEHALF OF CARLTON COMMUNICATIONS PLC

..... Signature Signature

..... Name Name

..... Title Title

..... Date Date

AND GRANADA PLC

..... Signature

..... Name

..... Title

..... Date