

# The Office of the Adjudicator Periodic Report

October 2010

The following Report to Ofcom and the Office of Fair Trading sets out the Adjudicator's dispute determinations, his views about the operation of the Undertakings, the CRR scheme and CRR rules together with any recommendations, his views about the performance of Carlton and Granada (ITV plc) in complying with the Undertakings, his opinion about the evolution of the airtime sales market, and other relevant matters and information that he considers appropriate.

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## Background

In November 2003, Undertakings were accepted by the Secretary of State for Trade and Industry pursuant to the Fair Trading Act 1973, section 88(2), from the Channel 3 Broadcasters Carlton Communications Plc (“Carlton”) and Granada Plc (“Granada”), as required of them by the Secretary of State as a condition of approval of the agreed merger of those Broadcasters to form ITV plc (“ITV”). These Undertakings required the appointment of an Adjudicator to adjudicate on any dispute between ITV and advertisers/media agencies that arise out of the interpretation or exercise of the rights or obligations set out under the Contracts Rights Renewal (“CRR”) remedy.

Paragraph 22 of the Contracts Rights Renewal Adjudication Scheme (“the CRRA Scheme”) provides that every 3 months (or as otherwise agreed with Ofcom) the Adjudicator shall make a written Periodic Report to Ofcom and the OFT. **This is the Periodic Report for the period April - September 2010.** This Report and the Annual Report (published in April) are made available to the public.

Pursuant to paragraph 22 of the CRRA Scheme, this report sets out:

- the Adjudicator’s determinations in relation to disputes;
- the Adjudicator’s views about the performance of Carlton and Granada in complying with the Undertakings (in relation to CRR);
- the Adjudicator’s views about the operation of the Undertakings (in relation to CRR), the CRRA scheme and the CRRA rules together with any recommendations;
- other relevant matters and information that the Adjudicator considers it appropriate to include.

In addition, it has been agreed with Ofcom that these Reports will also contain information on the use of the Adjudicator’s budget to date. This information will not be placed in the public domain.

The level of information contained in this Report is sufficient as to inform Ofcom and the Office of Fair Trading adequately on each of these areas.

*All confidential information contained within this Report is redacted from the public version.*

## **1.0 Office of the Adjudicator**

### **1.1 Core operating functions**

#### **1.1.1 The Adjudicator**

In May 2006 Robert Ditcham was appointed as the Adjudicator.

#### **1.1.2 The Office of the Adjudicator's staff**

Richard Baker joined in December 2006 as deputy Adjudicator. In addition the Office of the Adjudicator ("Office") has an executive assistant, Claire Gilmour. Julian Gregory, a barrister at Monckton Chambers specialising in competition law, continues as consultant legal advisor.

#### **1.1.3 Maintaining a secure office environment and procedures**

Given the confidential nature of the information that the Office handles, security is a high priority. Access to Riverside House, where the Office is situated, can be gained only with the use of security cards. Furthermore, the Adjudicator has put in place additional procedures to ensure that the confidential information is fully protected. In particular, the Office:

- uses heavy duty safes to store all confidential information. These are kept locked at all times, and only members of staff at the Office have access to the safes;
- operates a clear desk policy;
- has a policy that generally no confidential documents should leave the building.

#### **1.1.4 Access to appropriate information systems**

The Office has online access to all of the industry data it requires, including data supplied by BARB, Donovan Data Systems and Nielsen Media Research. BARB, Donovan Data Systems and Nielsen Media Research have all been very helpful to the Office in setting these systems up and providing ongoing support. In addition, the Office has developed its own systems and processes for analysing key information.

#### **1.1.5 Financial procedures**

These are set in accordance with Annex 3 of the Undertakings. Ofcom has set a budget for the total costs of the Adjudicator and his Office for each year in advance, after having consulted with ITV. Ofcom make payments in the first instance, but it invoices ITV on a quarterly basis for the actual costs incurred up to the maximum of the relevant budget.

### **1.1.6 The Office of the Adjudicator website**

The Office's website is at [www.adjudicator-crr.org.uk](http://www.adjudicator-crr.org.uk) and houses all documentation relating to the Undertakings and the Office, including;

- the Undertakings;
- a 'technical guide to the CRR remedy';
- the process for disputes including any documentation needed to submit a dispute;
- the Adjudicator's Periodic Reports;
- updated guidance enquiries,; and
- other news, in particular of the Competition Commission's review of CRR.

## **1.2 Core process**

### **1.2.1 Procedure for submitting disputes**

The procedure for disputes is set out in the CRR Rules (Annex 3 of the Undertakings). For the purposes of clarification, the "Process for disputes" section on the Adjudicator's website explains key aspects of the procedure, such as the distinction between a dispute and a complaint, the importance of making a case clearly, and the need to include evidence and relevant documentation in the Notice of Adjudication (dispute form) ("NoA"). Prior to submitting a formal dispute, the Adjudicator recommends that potential complainants read this guidance as it will help them in formulating their case.

When a party wishes to submit a dispute, a NoA has to be completed. The NoA is a standardised form designed to minimise the administrative burden on all parties. It asks for details of the key facts and supporting evidence relating to the case. The submitted form should include a brief summary of the dispute, the number of discussions between both parties in relation to the dispute, details of the areas of change in the offer and the aspect of the offer to which the advertiser or media buyer objects along with the nature of the redress which is sought. ITV must also be sent a copy of this NoA. If the Adjudicator decides to act on the dispute, ITV must send a Notice of Reply setting out its response to the NoA.

The Office took the decision that it would give a detailed explanation for its decisions. Any confidential information provided by either party in support of its case is redacted in the explanation. The Office will make decisions on disputes using evidence supplied by the parties which is supplemented by other information to which the Office has access. Decisions will take into account, in particular, historical data, prevailing market conditions, the current contract between the parties and other contracts in the market. The decision by the Office is final and binding on ITV.

### **1.2.2 Confidentiality process**

Confidentiality is of paramount importance to the operation of the Office. Confidentiality is maintained through the general office procedures set out at section 1.1.3 above and the way in which the Adjudicator deals with disputes. A limited number of people are involved in the dispute process. Confidentiality clauses are inserted on all documentation sent out to external parties involved in the dispute.

### **1.2.3 Maintaining information flows with ITV (Memorandum of Understanding)**

A Memorandum of Understanding (“MoU”) was formalised with ITV in August 2004. This is a standardised process for the provision to the Office of certain general information and documents, i.e. information and documents that do not relate to specific disputes.

The MoU has facilitated the effective processing of information requests made by the Adjudicator, under paragraph 21 of the Scheme, ensuring that there is full and timely compliance by the provision of up-to-date information within a specified deadline, without over-burdening ITV. The MoU covers the provision of a number of different categories of information and documents, including in particular the following:

- copies of final sales contracts 2009/10. Where contracts are not available the Office will be supplied with a summary of the key terms on which media agencies/ advertisers are trading with ITV;
- a fortnightly report on the past, present and future position of the trading balance by ITV region;
- a full report on the treatment of all bookings made after the ABD (advance booking deadline); and
- a monthly summary of all DRTV (Direct Response Television) campaigns by region.

The MoU also puts in place regular status meetings between the Office and ITV, in which both parties are able to discuss any concerns that they might have in relation to the operation of the Undertakings. This includes a monthly meeting between the Office and ITV; a monthly meeting between a member of the Office and ITV’s sales operation controller and sales operation planning controller to discuss any issues arising from ITV’s trading balance figures; and a quarterly meeting between the Adjudicator and the ITV commercial sales director.

When considered necessary, to enhance the efficiency and effectiveness of the Office, the Adjudicator will propose any amendments deemed necessary to the MoU to ITV, either in relation to the provision of data or the timetable of such provision.

### **1.2.4 Interim reports process**

The Undertakings state that the Adjudicator shall bring to the attention of Ofcom and the OFT any matter that gives rise to a reasonable suspicion on his part that ITV is not complying with the Undertakings. If such a matter arises the Adjudicator can submit a ‘Process and Interim’ report to Ofcom and the OFT.

### **1.3 Relationships with key stakeholders**

Since the last Annual Report of April 2010, and in addition to the regular meetings with senior ITV staff (as laid out in the MoU), the Adjudicator has attended industry conferences and met a number of representatives of the UK's advertising community. These meetings are held to allow the Adjudicator to seek views on the workings of the Undertakings and on the operation of the television marketplace more generally. It is important for the Adjudicator to seek a broad range of opinions to understand fully the state of the market. The Adjudicator appreciates the time that these organisations provide the Office.

The Adjudicator has met with media representatives at the IPA and ISBA, the two main industry trade bodies, to seek their views of the operation of the CRR remedy. Comments from these bodies can be found in Section 5 of this Report.

## 2.0 Disputes and guidance

### 2.1 Disputes

The Office received no Notices of Adjudication in relation to disputes between media agencies/advertisers and ITV since April 2010.

In our April Report we commented that “the Undertakings have been in force for six deal seasons and both ITV and agencies/advertisers are now generally aware of their rights and obligations under the Undertakings. Where clarification is needed agencies/advertisers have sought guidance from the Office - as discussed below.” Since then the Competition Commission has concluded its CRR review and as a result revised Undertakings are now in place. Whether these revisions alter this previous equilibrium of awareness and understanding is yet to be seen. However, given the minor nature of the amendments we would not anticipate any significant change. We discuss at 4.1 how the Adjudicator intends to issue new guidance to facilitate a consistent understanding on the revised Undertakings for ITV and advertisers/media buyers.

### 2.2 Informal guidance

11 guidance enquiries have been brought to the Office by advertisers and media agencies since the last Annual Report in April 2010. This compares with 13 for the equivalent period last year (April-September 2009). It is not unusual for a lower number of guidance enquiries to occur during this period (April-September) as fewer negotiations between advertisers/media buyers and ITV take place - annual airtime negotiations tend to be contracted between October and March.

Guidance enquiries received since the last Annual Report have related to the following issues.

- Advertisers within agency deals moving to line by line deals
- Advertisers with line by line deals moving to agency deals
- Micro-region changes
- The calculation of the ARM mechanic
- The inclusion of ITV1 HD impacts in the ARM mechanic
- Burst deals
- Kids programming
- Protected contracts
- Contract variations
- Accepting CRR as a fallback position

When relevant the Office will from time to time post general guidance on to the Adjudicator website: <http://www.adjudicator-crr.org.uk/enquiries.htm>. Since the last Annual Report in April 2010 no new guidance has been posted at the time of writing this report.



In responding to guidance enquiries, the Office cannot advise on individual contracts and negotiations. Nonetheless, where an enquiry falls within the remit of the Office, it is able to provide guidance by directing the parties to the relevant sections of the Undertakings and the technical guide. Any guidance provided is without prejudice to the view that may be taken by the Adjudicator if and when the issue is brought as a formal dispute, when further information relating to the issue may be available and may need to be taken into account (for example, details of historical precedents showing how the parties have dealt with similar issues in the past). The Office has adopted the practice of confirming any guidance in writing where appropriate.

## **3.0 Reporting on ITV's compliance**

### **3.1 General considerations**

Since the April 2010 Annual Report ITV has continued to cooperate within the rules of the Undertakings.

### **3.2 Contracts**

The Adjudicator is pleased to report that the provision of contractual information to the Office from ITV has been good during this period.

The formalised timetable that the ITV legal team devised to cover the contract agreement process continues to work well and is resulting in a more efficient and clarified status of deal arrangements and eliminating potential uncertainties regarding contracts. The countersigning of contracts by advertisers and agencies is also occurring to a greater degree than occurred previously.

ITV continues to adopt the process of contract information provision suggested by the Office in 2008.

## 4.0 CRR Review and other regulatory issues and developments

### 4.1 CRR Review

On 12 May 2010, in its review of CRR the CC concluded that ITV would not be released from the CRR Undertakings.

On 16 July 2010, the CC published ITV's proposed variations to the Undertakings. These account for a changed definition of ITV1 so as to include ITV1+1 and ITV1 HD services. On 17 September 2010, Notice of Acceptance of these undertakings was given and accepted by the CC.

The Office intends to work closely with ITV and Ofcom to ensure that media buyers and advertisers have sufficient guidance available to them for the purposes of understanding their rights under the revised terms. This technical guidance will probably be published on the Office's website.

Although it was outside the scope of the review, the CC stated in its report that the way in which television airtime is currently sold contributes to the need to retain a variant of the CRR remedy. As in 2003, the CC stated that it continues to consider that a wider review of the market for television airtime would be appropriate. On 28 July 2010, Ofcom announced that, given the resource implications and the information available, an 'own initiative' review was not justified at this time. However, Ofcom stated that it would keep the situation under review by monitoring any stakeholder concerns and wider market developments.

The full final report is on the Competition Commission's website:

[http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/final\\_report.pdf](http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/final_report.pdf)

The Notice of acceptance of undertakings to vary the CRR Undertakings and the CRR Undertakings showing the changes is at:

[http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/itv\\_crr\\_undertakings\\_160710.pdf](http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/itv_crr_undertakings_160710.pdf)

[http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/10\\_09\\_17\\_notice\\_of\\_acceptance\\_of\\_undertakings\\_from\\_itv.PDF](http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/10_09_17_notice_of_acceptance_of_undertakings_from_itv.PDF)

The CC's press release is set out below:

COMPETITION COMMISSION



## News Release

18/10

12 May 2010

### CC PUBLISHES FINAL DECISION ON CRR

ITV's unrivalled ability to deliver large audiences on ITV1 means that the Contracts Rights Renewal (CRR) undertakings are still needed to prevent the channel from exploiting this position to the detriment of advertisers and other commercial broadcasters, the Competition Commission (CC) has concluded today.

The CRR undertakings allow buyers of advertising airtime to renew their existing contracts with ITV, adjusted to reflect the change in ITV1's audience share. In its final report on the undertakings, the CC has confirmed that the definition of ITV1 in the CRR undertakings will now be varied so that audience share on time shifted (+1) and high-definition ITV1 channels can be included in the CRR calculations. The CC has also renewed its call for an overall review of the system for selling television advertising.

CC Deputy Chairman and Chairman of the CRR Review Group, Diana Guy, said:

ITV1 remains a 'must have' for certain advertisers and certain types of campaign. Despite all the changes in this market, no other channel or medium can come close to matching the size of audience that ITV regularly provides. So the essential reason for the CRR undertakings remains: to protect advertisers and other commercial broadcasters from the enhanced market position created by the merger of Carlton and Granada.

There has been virtual unanimity among the advertisers, media agencies, commercial broadcasters and trade bodies we have heard from that CRR should be retained in some form. We believe that ITV has overstated the cost and distortions imposed by CRR. When it succeeds in making popular programmes which attract large audiences, CRR does not prevent ITV from reaping the rewards. We agree, however, that in order to avoid distortions, the definition of ITV1 should be widened to include +1 and high-definition channels.

Our review looked only at the circumstances surrounding the CRR undertakings in the context of the current television airtime trading system, a system which has a significant influence on the need for CRR to be retained in some form. Although we rejected ITV's alternative remedy proposals as ineffective to prevent ITV from worsening the deals it offers to advertisers, we have no wish to see CRR in place forever.

Many participants have told us that the system of selling television airtime is far from perfect and we repeat our concerns, also raised in 2003, about the potential anti-competitive effects of 'share of broadcasting' and agency 'umbrella' deals between broadcasters and media agencies. We continue to believe it appropriate for there to be a wider review of the whole system for selling TV advertising.

The CC found that:

- ITV1 retains the unique ability to deliver audiences of up to 18 million at a time, and in 2009, accounted for 982 of the top 1,000 most-watched programmes on commercial television.
- Despite the many changes in this market over recent years, ITV1's relative position of strength compared with other commercial broadcasters is little changed since 2003. Whilst ITV's share of commercial impacts (SOI) has fallen since 2003, it remains by far the largest commercial broadcaster with a share more than double that of the next largest commercial channel (Channel 4). Media agencies and advertisers continue to believe that ITV1 offers them something that no other commercial channel can give. ITV1's price premium over other commercial channels has increased since the undertakings were introduced.
- Although the internet and the advent of many new digital channels provide possible alternatives for advertisers, these cannot yet replicate ITV's ability to deliver such large audiences on ITV1. The internet's growing share of overall advertising expenditure in the UK has been driven by classified advertising. Expenditure on internet display advertising—which is closest in nature to television advertising—was only a fifth of television advertising expenditure in 2009.
- Most advertising is bought through a small number of media agencies, who cannot credibly withdraw expenditure from ITV1 if they are to serve their clients' needs. Attempts to switch some of their spending elsewhere could still result in much less favourable terms, were it not for CRR.
- ITV has overstated the detrimental effects of CRR, which does not prevent ITV from producing good-quality programmes that people want to watch. The majority of media agencies have continued to negotiate at least to some extent with ITV rather than simply falling back on deals from years ago.
- Although the CC has a preference for a solution that will encourage competition rather than regulation, ITV's alternative remedy proposals would not be effective in preventing ITV from worsening the deals it offers to media agencies and advertisers.
- The definition of ITV1 in the undertakings should be widened to include any future ITV1+1 channel and the recently launched ITV1 high-definition channel so that impacts on these channels are included in the CRR calculation. The changes will come into effect once revised undertakings are agreed with ITV.

In May 2009, the CC was asked by the Office of Fair Trading (OFT) to review the undertakings and specifically whether circumstances had changed sufficiently since 2003 to warrant their removal or variation. The undertakings were introduced to protect advertisers and other commercial broadcasters from the loss of competition in the sale of television advertising airtime, following the merger of Carlton and Granada. (*See Notes to Editors.*)

Last September, the CC **provisionally concluded** that the CRR undertakings should be retained given ITV1's continued advantage in delivering large audiences for advertisers, although developments since their introduction in 2003 could justify some variations. Since that time the CC has been discussing these potential variations with ITV and other parties and has also received several further submissions from ITV including a number of variations on an alternative remedy proposal entitled 'Rules for the Protection of Advertisers' (RPA), on which the views of other parties were also sought.

#### **Notes to editors**

1. The CC is an independent public body, which carries out investigations into mergers, markets and the regulated industries.
2. The OFT formally launched a review of CRR in January 2008. This review was undertaken at the request of ITV plc in light of possible changes of circumstance in the sale of UK television advertising since the Undertakings were accepted in 2003.
3. On 29 May 2009 the OFT, with assistance from Ofcom, advised the CC to reconsider ITV's CRR Undertakings. A redacted version of the OFT's Advice, along with other information on the review, is available at:  
[www.competition-commission.org.uk/inquiries/ref2009/itv/index.htm](http://www.competition-commission.org.uk/inquiries/ref2009/itv/index.htm).
4. The CRR Undertakings are a part (Clauses 5 to 11 and associated clauses) of a larger set of undertakings given by Carlton and Granada in 2003 following a report by the CC on the proposed merger of those two businesses to form ITV plc. The CRR Undertakings address concerns the CC had about the effect the enhanced market position of ITV plc would have on competition in the sale of television advertising airtime. Among other things, the CRR Undertakings allow buyers of advertising airtime to roll forward their pre-merger contracts, subject to annual adjustments which reflect the change in ITV1's share of ratings (measured in the form of its share of commercial impacts). The CRR Undertakings created the Office of the Adjudicator which is responsible for determining certain disputes arising under the Undertakings and which reports on compliance. For a full text of the CRR Undertakings and more information, see the Office of the Adjudicator's website: [www.adjudicator-crr.org.uk](http://www.adjudicator-crr.org.uk).
5. The CRR Undertakings were accepted by the Secretary of State under section 88 of the Fair Trading Act 1973. Under the Enterprise Act 2002, the power to supersede, vary or release undertakings under section 88 passed from the Secretary of State to the CC.
6. The members of the Review Group are: Diana Guy (Review Group Chairman and Deputy Chairman of the CC), Robin Aaronson, Tony Stoller and (until the expiry of his term of appointment as a member of the CC at the end of January 2010) Robert Turgoose.
7. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its website at [www.competition-commission.org.uk](http://www.competition-commission.org.uk).
8. Enquiries should be directed to Rory Taylor on 020 7271 0242 (email [rory.taylor@cc.gsi.gov.uk](mailto:rory.taylor@cc.gsi.gov.uk)).

## 4.2 New guidance on the Undertakings

In the light of the conclusion of the CRR review and the introduction of amended Undertakings, the Office intends to review its published guidance on CRR (both on the Adjudicator website and within the Technical guide) with a view to ensuring continued consistency with the updated position.

## 4.3 Airtime Sales Rules

On the 28 July 2010, Ofcom announced it would remove a number of rules governing the way TV airtime is sold to media buyers and advertisers ahead of the autumn deal season.

One rule to be lifted is the prohibition against conditional selling across a portfolio of channels. However, ITV will remain obligated under CRR to offer an ITV1 only deal, should media buyers and advertisers request it.

Another rule to be lifted is the requirement that the PSB broadcasters must sell all of their advertising minutage.

## 4.4 House of Lords enquiry into market

A House of Lords select committee inquiry was launched on 27 July 2010. At launch the committee issued a call for evidence into the regulation of television advertising with "particular reference to the Contract Rights Renewal Mechanism."

In considering the prospects for TV advertising revenues, the Committee welcomed views on the following;

- *How much of the recent decline in television advertising was due to migration to the internet and how much was due to the economic recession?*
- *Can television compete successfully in the medium-term with the internet and other media for advertising?"*

And in looking at the impact of regulatory changes to advertising revenues of commercial broadcasters, the Committee sought views on;

- *Whether the current level of regulation of television advertising is appropriate.*
- *What the financial impact might be on television companies if changes are made to the regulation of scheduling and sales of television advertising or if product placement is introduced.*
- *The extent to which the CRR undertakings limit ITV's ability to compete in the production of quality programming.*
- *The extent to which the reduction or removal of the CRR undertakings would affect the commercial public broadcasting sector.*
- *The extent to which current arrangements reflect the public interest."*

The announcement and further explanation can be found at the following link;

<http://www.parliament.uk/business/committees/committees-a-z/lords-select/communications-committee/inquiries/regulation-of-television-advertising/>

#### **4.5 ITV1 +1 and ITV1 HD**

As a consequence of the CRR review, ITV1+1 and ITV1 HD impacts will count toward the ITV1 SOCI (share of commercial impacts) and be included in the ARM (Audience Ratchet Mechanism) used to calculate an advertisers/media buyers SOB commitments.

ITV has already started to transmit ITV1 HD, a service it started in time for the football world cup in June 2010. Currently ITV plans to start transmission of the ITV1+1 service in January 2011.



## 5.0 Stakeholders views of the operation of the Undertakings and the CRR scheme

### 5.1

*This section details the verbatim replies received by the office of the adjudicator, following his request to the stakeholders for their views of the operation of the Undertakings and the CRR scheme. The views contained within each stakeholder response are the views of that stakeholder. They should not in any way be construed as the views or the opinions of the adjudicator.*

## 5.1.2 ISBA view of the operation of the Undertakings and the CRR scheme



Robert Ditcham  
Adjudicator CRR  
Ofcom  
The Office of the Adjudicator (CRR)  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Dear Robert

6<sup>th</sup> October 2010

**Re: The Office of the Adjudicator Periodic Report**

These are our public comments for The Adjudicator (CRR)'s periodic report:

As is usual, we and our members are usually one step detached from the detail of any issues of adjudication as it is typically delegated to their media agencies. For that reason, and because the process is confidential, we are therefore unaware of any specific current issues. We do however have some comments on more general related matters:

- *The revised undertakings.* We were obviously pleased that the competition authorities' lengthy review of CRR finally recognised that ITV's position in the market remains dominant and excites numerous concerns about possible leverage of that position. We have therefore taken, and continue to take, a close interest in the revisions which the Competition Commission recommended as they move towards implementation. Overall, we had no concerns but drew particular attention to certain comments which a leading media buyer had made, and which we supported.
- *Recent and expected relevant reviews.* The summer also saw a review of the airtime sales rules which previously prevented and conditional selling of airtime. Although Ofcom clearly signalled in its consultation that it was minded to remove these rules, we were nevertheless very disappointed when it chose to ignore our objections and remove the rules with effect from September 1<sup>st</sup>. It may be that Ofcom is right that under CRR 'sufficient economic incentives exist' to prevent ITV from withholding, but we are by no means sure that they are sufficient to prevent ITV and other broadcast sales houses from ramping up efforts to sell conditionally, or perhaps in some cases withholding.
- We also continue to expect an Ofcom review of the amount of advertising permitted. We agree that the circumstances which gave rise to differential minutage between 'terrestrial' and 'multichannel' stations have long passed. We expect Ofcom to propose harmonisation at some mid-point and are likely to support this provided that it is at least 'impact neutral' – in other words, it does not result in the removal of commercial impacts from the marketplace and lead to scarcity and cost inflation. Ofcom has also given us to expect a possible tightening of the cap on maximum hourly minutage, citing the Irish precedent. We will need to read Ofcom's reasoning and conduct our own analysis once there is something published to respond to, again with a keen eye on any likely upward cost impacts.
- *Terms and conditions.* Finally, we would also record that we are observing a rise in enquiries from our members relating to a general stiffening in broadcasters' application of terms and conditions. We have no issue with the reapplication of clearly published Ts & Cs, but would comment that the suddenness of some broadcasters' stiffening of their (re-) application is leading to considerable advertiser concern and disenfranchisement.

Yours sincerely

**Bob Wootton**  
Director of Media & Advertising

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### 5.1.3 IPA view of the operation of the Undertakings and the CRR scheme



Institute of Practitioners in Advertising

Mr Robert Ditcham  
The Office of the Adjudicator (CRR)  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

7th October 2010

Dear Robert

#### **Adjudicator's Report: April – September 2010**

This note provides an update on the operation of the ITV Undertakings, the CRR mechanism and the Adjudicator's Office across the previous six months.

#### **1. Operation of the undertakings**

As is typical during this time period, there has been comparatively little activity to test the ITV/CRR/Adjudicator relationship.

#### **2. How has CRR operated?**

ITV continues to behave much as it has done over the previous 18 months. It applies the maximum allowed within the limits of the contract when charging penalties, leverages its digital channels where it is able - and generally plays a robust game exploiting its strengths as far as it can under the rules.

As Ofcom will be aware, while there may have been comparatively little trading activity across April – September, the majority of IPA agencies have been vigorously defending the continuation of CRR in their various submissions to, and appearances before, the Competition Commission (CC).

The industry was therefore generally relieved when the CC concluded in May 2010 that the mechanism should be retained –but equally has been perturbed by the decision of the House of Lords Select Committee on Media to revisit this topic.

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### **3. Office of the Adjudicator**

No disputes were reported during this period.

As stated in previous reports, however, the ability to refer to the Adjudicator continues to be valued as much for its deterrent value against cavalier behaviour- as for its actual ability to resolve disagreements.

I hope this is useful. If you should require any additional information, do let me know.

Best wishes

A handwritten signature in black ink, appearing to read 'Geoff', with a large, sweeping flourish underneath.

Geoffrey Russell  
Secretary and Director for Media Affairs