



**GOVERNMENT RESPONSE TO THE HOUSE  
OF LORDS SELECT COMMITTEE ON COMMUNICATIONS  
REPORT INTO REGULATION OF TELEVISION ADVERTISING**

*Presented to Parliament by the Secretary of State for Culture,  
Olympics Media and Sport  
by Command of Her Majesty*

*April 2011*

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## **GOVERNMENT RESPONSE TO THE HOUSE OF LORDS SELECT COMMITTEE ON COMMUNICATIONS REPORT INTO REGULATION OF TELEVISION ADVERTISING**

The Government welcomes the Select Committee's First Report of the 2010-2011 Session.

The report presents a detailed overview of the regulation of television advertising, and consideration of the undertakings offered by Carlton/Granada on their merger in 2003.

The report also provides a detailed assessment of many of the issues affecting the UK television advertising market. The assessment then explores how certain issues might be holding back parts of the sector and examines ways in which changes might be made to address these concerns.

The Department is grateful to the Committee for its examination into the regulation of the television advertising industry and we note its recommendations. We have carefully considered all the recommendations made by the Committee and this document represents our response.

### **Conclusions and recommendations**

Recommendations 192 & 193 are directed towards Ofcom, the independent broadcast regulator, who will be responding to the Committee directly on these points.

**181. We believe that there is a strong public interest in supporting and promoting investment in UK originated content on television. It is therefore essential that the commercial PSBs' revenue potential is maintained and that revenue is reinvested in quality original UK television programmes (para 39).**

We agree with the Committee's comments on the importance in supporting and promoting investment in UK originated content on television. We recognise that UK-produced programmes are highly valued by British viewers and, with over £2.3 billion spent by the five main PSB channels in 2009 on first-run, UK-originated programmes in 2009 contribute significantly to the UK economy. We also recognise the contribution of foreign broadcasters in the UK with over £400m of original content per annum.

**182. We were encouraged by ITV plc's desire to re-invest revenue in more diverse programmes which were not necessarily aimed at securing the highest rating. However, we are conscious of the pressures of commercial realities and if the television advertising regime is to be changed, we would wish to see binding undertakings in place. These undertakings would ensure that ITV plc invests an appropriate proportion of any additional ITV1 advertising revenue in moving beyond its basic contractual obligation to public service broadcasting by developing a range of high quality UK-produced programmes. This should be rigorously enforced by Ofcom (para 47).**

We would welcome any increase in ITV investment in more diverse programming. We note that the report suggests undertakings should be offered and enforced by Ofcom. However, we recognise that ITV already has a number of obligations which are PSB-related, requiring ITV to produce 35% of programming outside London and 25% of programming from independent producers. Therefore any extra undertakings would need to be fully justified and balanced and we would not necessarily wish to be unduly prescriptive. Moreover, there are potentially a number of practical problems around introducing new undertakings, for example: how does one clearly define high-quality programming in this context? How to avoid “deadweight”, ie that the additional resources are used to make programmes that may have been made anyway?

Our belief is that ITV, as a commercial company, must be allowed a degree of autonomy to decide how it targets its audience and invests its income to ensure it meets its PSB obligations.

**183. We do not consider a possible very slight increase in the cost of some goods and services which are advertised on television to be a significant impediment to any revision of the television advertising industry regulations. It is in the public’s interest to increase investment in quality UK originated programming and this far outweighs the contested—and marginal—detriment that might follow from advertisers paying slightly higher prices to broadcasters (para 52).**

We agree that increased investment leading to more quality UK originated programming is in the public’s interest. However, we are not convinced by the method of obtaining additional revenue from advertisers paying slightly higher prices to broadcasters. These higher prices would either be passed on to consumers, or mean that advertisers do not increase their budgets but instead cut back on their advertising. If the effect of the changes proposed by the Committee would have a limited effect on advertisers, it is hard to see where the resources for additional investment would come from. Also the effect of changes to the CRR could be to reduce advertising revenue to other broadcasters and hence reduce their ability to produce quality UK originated programming.

**184. We agree with the Competition Commission that ITV plc retains a competitive advantage as a legacy of the 2003 merger of Carlton and Granada. As a result we recognise that some form of regulation is necessary in order to curb ITV’s ability to exploit its competitive advantage to the detriment of the industry and the television watching public (para 80).**

We note this recommendation.

**185. We are persuaded that in the light of changes in the market for television advertising the CRR undertakings appear to be overly detrimental to ITV plc. They should be abolished. However, although ITV1’s competitive advantage has reduced since 2003 as a result of the increase in the number of broadcasters within the industry, it has not reduced to the extent that the CRR undertakings could be abolished without the provision of alternative binding undertakings (para 101).**

There are a range of opinions about the CRR undertakings. On the one hand Ofcom have stated that if CRR were relaxed and ITV took advantage of the situation, it would probably be able to increase its revenues, but that there was no guarantee this 'additional income' would be used for investments and programming. The advertisers cited in their evidence that they would be concerned about an increase in advertising costs should CRR be removed. It was argued that this is likely to be at the expense of other broadcasters since advertisers remain reliant on ITV1 as a means of reaching large audiences quickly. The Committee itself recognises in recommendation 184 that there has to be a "curb" on ITV's ability to exploit its competitive advantage. On the other hand ITV complained that CRR has artificially suppressed its ability to gain advertising revenue, and that this had had a highly distorting impact on the UK media market.

We note this range of views and agree with the Competition Commission (CC) and the Committee that a wider review of the advertising market is required. We further note the CC says that the way in which television airtime is currently sold has a significant influence on the need to retain CRR. We therefore welcome the announcement by Ofcom on 17 March that it intends to undertake a review of the way TV advertising is traded. If Ofcom find a cause for concern during the course of the review, they may make a market investigation reference to the Competition Commission, or they could also accept remedies in lieu of a reference. It is a highly likely outcome of this analysis that Ofcom will pass the matter to the CC which will carry out a more formal review of competition in TV advertising market as part of a market investigation. In instigating this review Ofcom hope to complete their assessment as quickly as possible.

We are conscious of the time it may take to investigate properly this very complex market and encourage Ofcom and the CC to work closely together. The results of this review will feed into our work on a new Communications Bill. In addition, if at any time during this market investigation it becomes obvious that legislative changes are required, we have asked Ofcom and the CC to notify the Department at the earliest stage so that it can be fully taken into account in a timely fashion. However, any formal recommendations would not become available until after the final report is published.

**186. In order to address the concerns of the non-consolidated channel 3 licensees (STV, UTV and Channel TV) and ISBA on the bundling and withholding of ITV plc's advertising airtime we recommend that if CRR is removed the airtime sales rules, recently revoked by Ofcom, be reintroduced (para 109).**

We note the concerns that if CRR was removed there would be greater confusion and complexity when determining how much revenue goes to ITV plc in comparison to STV, UTV and Channel TV. STV also made a point that there should be sufficient transparency to see how ITV plc represents and sells ITV1 in isolation from the other Channel 3 licence holders.

When Ofcom lifted the Airtime Sales Rules (ASR) they said it was appropriate to do so in the context of sector developments and CRR continuing to exist. In addition, Ofcom said that in the event that CRR was lifted they would look again at the need to reinstate ASR.

**187. We welcome ITV plc's recommitment to public service broadcasting in the light of a possible removal of the CRR undertakings. It is essential that ITV plc are accountable for the commitments which they made to us on increasing investment in programming; in particular on the provision of funding for additional quality UK originated programmes and a new focus on investing in training (para 116).**

This recommendation is difficult to comment on, since CRR remains in place, and there is no alternative provision. However, in the event that CRR had been removed, we would welcome ITV's recommitment to public service broadcasting, but note concerns that there was no obvious mechanism for ensuring ITV would spend more on original content.

**188. We recommend that ITV plc puts forward a proposal to the Competition Commission and the Secretary of State for Culture, Olympics, Media and Sport for alternative undertakings to meet the Secretary of State's approval. These should address any competition concerns which would remain if CRR were to be removed and include a commitment by ITV plc to invest an appropriate proportion of any additional revenue raised following the removal of CRR in quality UK original programming and training. The proposed undertakings should be binding on ITV plc, and on any other future owners of the channel 3 licence. The new undertakings should be as simple as possible. ITV plc would then be accountable to Ofcom for complying with the undertakings (para 117).**

It is for ITV to consider whether to put forward proposals for alternative undertakings. However, it should be noted that any undertakings to address competition concerns are the responsibility of the competition authorities, not DCMS.

**189. We recommend that an appeals process for handling disputes between advertisers and commercial television broadcasters should be maintained (para 122).**

The appeals adjudicator deals with disputes over CRR, but we note the recommendation that even if CRR was to be removed that the appeals adjudicator should remain.

**190. We recommend that binding undertakings are sought from ITV plc on the investment in quality UK original content and training before CRR is removed (para 125).**

The government does not currently have the power to remove CRR or to set new undertakings, but we note the recommendation.

**191. We note that the Government believes that primary legislation would be required in order to remove the CRR undertakings. However, if a means of doing so is possible, it would be desirable to address the issue of CRR before the next Communications Bill (para 126).**

The CRR undertakings were offered by Carlton and Granada at the time of the merger under the Fair Trading Act 1973. The OFT has a duty to keep undertakings under the

Fair Trading and Enterprise Acts under review; powers to vary or release the CRR undertakings lie with the Competition Commission. Should the market change significantly and make it appropriate to remove the undertakings, the most suitable route would therefore be via the Competition Commission, following advice from the OFT. In our view, the proposed review of the wider TV sales market offers the best opportunity for the removal or modification of the CRR but if other routes are proposed we agree that the Communications Act provides a useful vehicle.

**192. We recommend that the COSTA rules should be harmonised at analogue switch off so that all commercial television channels should be allowed to show the same average number of advertisements in any given clock hour (para 140).**

*AND*

**193. As there is no appetite from the general public for an increase to the quantity and frequency of television advertising, especially on PSB channels, we recommend that a lower figure be applied across all channels. We recommend that, subject to further detailed research by Ofcom on the impact of any changes, the Code on Scheduling of Television Advertising should be amended after the completion of digital switchover in 2012 so that the number of permissible minutes of advertising is harmonised down to an average of seven minutes per hour on average across all channels. This would ensure that the viewer experience was not impaired by lengthy advertising breaks during and between programmes. It is important that an appropriate peak time limit should also be determined on the same basis following further Ofcom research (para 164).**

We note your recommendations on the harmonisation of minutage, which is a matter for Ofcom to consider. Indeed, Ofcom explained on 17 March that this was an area where they needed to do more work before taking a decision to move away from the status quo.

Ofcom CEO Ed Richards said any changes to advertising minutes per hour must be rooted in a clear understanding of how the relevant public interest objectives in Ofcom's statutory remit should be weighed against each other – alongside more specific analysis of different options.

**194. We agree with the Competition Commission and the Office of Fair Trading that it is time for a wholesale review into the television advertising trading market. The Competition Commission called for a wider review of the television advertising market as long ago as 2000 and a review is even more essential today. A more transparent method of trading television advertising airtime is needed and it is unfortunate that the industry has been unable to produce their own solution. Under those circumstances we call on the Secretary of State for Culture, Olympics, Media and Sport to initiate this review before the end of March 2011 (para 173).**

We have noted previous calls for a wholesale review into the television advertising market. We also note that the CC has felt its review of CRR had been restricted by the scope it can work in. We agree with the recommendation that a fuller market

investigation of the way advertising is traded will therefore allow the CC to take a wider considered look at how CRR affects the market. As noted above, we are pleased to note that Ofcom has announced it is to start this review by undertaking an initial investigation and may then make a market investigation reference to the CC for a more detailed investigation.

**195. The television advertising industry needs a transparent trading system which enables fairness, flexibility and certainty. We therefore recommend that a review of the television advertising market considers the following issues:**

- **the efficacy of current television advertising regulations.**
- **how the advertising trading system might be made more open and transparent, including the possibility of an online auction as a trading mechanism.**
- **whether any best practice can be transferred from television advertising trading systems in other countries.**
- **the appeals process for television advertising airtime trading to ensure that all players in the market have a remedy if they believe they have been unfairly treated (para 174).**

As set out above, Ofcom has announced the wider review of the advertising market. Ofcom are in the process of defining the scope of the review.

**196. We do not believe Ofcom is the most appropriate body to conduct a review of the television advertising market. Rather, we recommend that a focussed review is conducted by a small expert panel (para 179).**

As the expert regulator in this area, we believe that Ofcom does have the necessary independence and expertise to initiate this review, and then refer to the CC as necessary. We are assured that the Ofcom review will be quick as possible and that the CC has made a public commitment to aim, where appropriate, to complete future market investigations in 18 months, or more quickly if possible.

**197. Despite the broad remit of this inquiry we see no reason why such a review should be unduly protracted and we recommend that the panel be given no more than six months to report. This is to ensure that the advertisers, broadcasters and media agencies are not faced with a lengthy period of uncertainty while the review is taking place. It would also ensure that any conclusions from this review could be fed in to the policy development process around the next Communications Act (para 180).**

It has been noted that this is a very complex market. We are keen for the review to take place in as short a time as possible. However, the underlying principle is that we must obtain a full, proper and considered investigation into all the issues for it to be of any value. As stated above, if it becomes clear at any stage of the review that the government needs to act, Ofcom and the CC will approach DCMS immediately, before any formal recommendations are published. In other words, it will not be the case that useful outputs from the review will only become available at the very end of the process.











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