

Modifications to Channel 3 networking arrangements

Summary

- 1.1 Ofcom has approved changes to the Channel 3 networking arrangements submitted by the existing Channel 3 licence holders.¹ The modified arrangements provide for ITV plc to devise the network schedule, which it would make available to the other licensees as affiliate members of the network.

Background

- 1.2 Section 290 of the Communications Act 2003 ('the Act') requires the holders of the 15 regional Channel 3 licences ('the Channel 3 licensees') to conclude a set of networking arrangements ('NWA'), approved by Ofcom, that enable them to work together to produce a national television service. The scope of such arrangements are set out in section 290(4) of the Act which defines NWA as arrangements that:
 - 1.2.1 apply to all the holders of regional Channel 3 licensees;
 - 1.2.2 provide for programmes made, commissioned or acquired by or on behalf of one or more of the Channel 3 licensees to be available for broadcasting in all the regional Channel 3 services; and
 - 1.2.3 are made for the purpose of enabling regional Channel 3 services (taken as a whole) to be a nationwide system of services which is able to compete effectively with other television programme services provided in the UK.
- 1.3 As part of our responsibilities under the Act, we have a duty to consider the modifications submitted to us by the Channel 3 licensees for our approval. In assessing whether it is appropriate for us to approve the proposed modifications, we need to consider a range of factors which are set out in Schedule 11 of the Act:
 - 1.3.1 whether the proposed NWA are a satisfactory means of achieving the purpose set out above;
 - 1.3.2 the likely effect of the NWA on the ability of the licensees to maintain the quality and range of regional programming or programming which contributes to the regional character of the services;
 - 1.3.3 whether the NWA would be likely to prejudice the ability of any of the Channel 3 licensees to comply with their public service remits; and
 - 1.3.4 whether the NWA satisfy the competition tests set out in section 6 of schedule 11 of the Act.

¹ The 11 regional English and Welsh licences are currently held by ITV Broadcasting Ltd. The regional licence for the Channel Islands is held by Channel Television Ltd. ITV Broadcasting Ltd and Channel Television Ltd are wholly owned subsidiaries of ITV plc. The two Scottish licences are held by STV Central Ltd and STV North Ltd, both subsidiaries of STV Group plc ('STV'). The licence in Northern Ireland is held by UTV Ltd ('UTV').

Documentation submitted by the Channel 3 licensees

- 1.4 On 2 March 2012, the Channel 3 licensees submitted a set of documents, known as the Network Affiliate Agreements ('NAA'), to replace and to simplify the previous approved NWA.
- 1.5 Under the previous arrangements, each of the Channel 3 licence holders was a member of ITV Network Ltd, a company that acted as the licensees' agent in the purchase, commissioning and administration of the Channel 3 network schedule.
- 1.6 Although each of the Channel 3 licensees were members of ITV Network Ltd, ITV plc, as holder of over 90% of the voting rights in the company, had de facto control over all of the network's decisions.
- 1.7 Under the NAA, ITV plc (through its subsidiary ITV Rights Ltd) will become solely responsible for acquiring programme rights and devising a network schedule. It will also take on initial responsibility for programme compliance. ITV plc will make the network schedule available to each of the regional licensees on an affiliate basis, in return for a pre-determined fee.

Representations from other parties about the new arrangements

- 1.8 Ofcom has an obligation under Schedule 11 of the Act to bring possible changes to the NWA to the attention of parties who, in our opinion, are likely to be affected. Ofcom is then required to allow a reasonable time for representations before deciding whether or not to approve the modifications proposed.
- 1.9 In the 2006 review of the NWA,² we concluded that an appropriate approach to conducting future NWA reviews, including modifications, would be to consult initially the most directly interested parties on an informal basis and then decide whether formal consultation was appropriate. We defined the directly interested parties as the Channel 3 licensees themselves, the Producers' Alliance for Cinema and Television ('PACT') as the representatives of the independent production sector, and the Office of Fair Trading ('OFT').³
- 1.10 As the Channel 3 licensees submitted the documents collectively, we did not consider there was any further need to invite comments from them.
- 1.11 We consulted the OFT on competition matters. The OFT raised no issues or concerns in relation to our assessment of whether the NAA satisfied the competition tests in paragraph 6 of Schedule 11 of the Act.
- 1.12 We also consulted PACT, who pointed out that the NAA did not explicitly require the licensees to comply with a code of practice for commissioning from independent producers. Although it is not necessary for such codes to form part of the NWA, each

² See Ofcom, *Review of ITV Networking Arrangements 2006* (13 March 2007), section 4, http://stakeholders.ofcom.org.uk/binaries/consultations/itv_network/statement/statement.pdf

³ Schedule 11 of the Act places a duty on Ofcom to consult the OFT before making a decision as to whether proposed modifications to the NWA satisfy the relevant competition test.

of the licensees, as the providers of a licensed public service channel, are required to draw up and comply with such a Code.⁴

- 1.13 In light of PACT's comment, the Channel 3 licensees submitted an amendment to the NAA on 7 June 2012 confirming that ITV Rights Ltd would commission programmes in accordance with – and that each of the Channel 3 licensees remained bound by – the Code of Practice currently in force.

Assessment of arrangements submitted by the Channel 3 licensees

- 1.14 In our 2009 review of the NWA⁵ we said that arrangements which satisfied the three criteria in s.290(4) of the Act – set out in paragraph 1.2 above – were directly related to the provision of the Channel 3 network service and therefore capable of being considered as NWA.
- 1.15 Applying these criteria, we consider that:
- 1.15.1 taken collectively, the NAA (as amended) apply to all of the Channel 3 licensees;
 - 1.15.2 the NAA (as amended) specify the terms under which the network schedule will be made available to the regional licensees for broadcast;⁶ and
 - 1.15.3 the NAA (as amended) are made for the purpose of enabling the Channel 3 licensees to provide a network service – including +1 and HD services – able to compete with other television programme services in the UK.
- 1.16 Accordingly, we consider the NAA (as amended) meet each of the criteria in s.290(4) of the Act and therefore constitute networking arrangements.
- 1.17 As noted in section 1.3 above, however, in order to approve networking arrangements, we must be content that the arrangements both represent a satisfactory means for securing the purpose set out in the Act, i.e. an effective nationwide system of Channel 3 services and satisfy the other relevant factors included in Schedule 11. We consider that:
- 1.17.1 The NAA (as amended) capture more accurately than the previous arrangements how, following licence consolidation, network programmes are typically acquired and commissioned for transmission across the regional Channel 3 services; and, accordingly,

⁴ See section 285 of the Act, which requires Public Service Broadcasters (including the Channel 3 licensees) to draw up and comply with Codes of Practice for commissioning from independent producers.

⁵ See Ofcom, *Review of ITV Networking Arrangements: Cost sharing between licensees – a consultation* (28 July 2010), section 4.4: <http://stakeholders.ofcom.org.uk/binaries/consultations/itv-networking/summary/itv-networking.pdf>

⁶ The NAA relate only to linear television services, i.e., they explicitly excluding new media rights, including VOD rights, which are typically included in rights packages obtained by broadcasters. We understand, however, that the licensees have agreed new terms for the exploitation of new media rights, although these fall outside the scope of the NWA.

- 1.17.2 The NAA (as amended) will simplify the structure for the day-to-day provision of an effective system of networked regional services.
- 1.18 Further, in relation to the other relevant factors set out in Schedule 11 of the Act, we note that:
- 1.18.1 each of the licensees considers that they will be able to maintain a level of regional programming broadly comparable to existing levels under the new arrangements;
- 1.18.2 each of the licensees considers that the NAA (as amended) provide a sustainable basis for remaining as regional Channel 3 licence holders and able to comply with their public service remits; and
- 1.18.3 we consider the NAA (as amended) satisfy the relevant competition tests. These collective arrangements between the licensees in relation to the acquisition and production of television programming are a necessary and proportionate condition of securing a nationwide broadcasting service able to compete effectively with other television services in the UK, as required by section 290 of the Act. Further, in relation to the centralised provision of compliance services, we note that there is no significant existing competition between the licensees following the acquisition of Channel Television Limited by ITV plc.⁷ Even if the NAA could have an impact in this regard (which we doubt), we consider that centralisation could help to increase efficiency and consistency of programme compliance and so satisfy the second competition test in Schedule 11.

Conclusion

- 1.19 Ofcom has concluded that the NAA (as amended) meet the criteria for NWA specified in the Act. Accordingly, Ofcom has determined that the NAA (as amended) are approved as NWA in accordance with Schedule 11 of the Act, with effect from 1 July 2012.

⁷ See *Channel TV Change of Control Review* at http://licensing.ofcom.org.uk/binaries/tv/ccrs/Channel_TV_CCR.pdf