



Change of Control of the Channel 3 Licence for Northern Ireland

Review under S. 351 of the Communications Act
2003

Statement

Publication date:

4 May 2016

About this document

This document sets out Ofcom's review and conclusions of the change of control of the Regional Channel 3 licence for Northern Ireland following the transfer of ownership of UTV Limited ("UTV"), a subsidiary of UTV Media plc (now Wireless Group plc) to ITV Broadcasting Limited, a subsidiary of ITV plc ("ITV"). This review was initiated after Ofcom was formally notified on 26 November 2015 that a change of control would occur.

Under the Communications Act 2003 ("the Act") Ofcom is required to review the effects or likely effects of the change of control of the Regional Channel 3 licence on a number of matters set out in the Act, including the future delivery of regional programmes (broken down into regional news, current affairs and non-news programming), programmes which contribute to the regional character of the service, the proportion of regional programmes made in the region, employment in the region, and the extent to which managerial and editorial decisions are taken in the region.

As part of our review we requested information from UTV, about their performance in the year prior to the launch of our review, and ITV, about their future plans. During the course of our review we also approved a proposal from ITV to increase UTV's regional current affairs quota from 26 minutes per week to 33 minutes, and varied the licence accordingly.

We have concluded that the change of control is not likely to be prejudicial to the matters set out in the Act.

Contents

Section		Page
1	Executive summary	1
2	Ofcom's review and conclusions	2

Section 1

Executive summary

- 1.1 In November 2015, Ofcom was formally notified about a prospective change of control of the Channel 3 Licence for Northern Ireland as a result of the acquisition of UTV Limited (“UTV”), a subsidiary of UTV Media plc, by ITV Broadcasting Limited, a subsidiary of ITV plc (“ITV”). The change of control (“CoC”) formally took place on 29 February 2016.
- 1.2 Under the Communications Act 2003 (“the Act”) Ofcom is required to review the effects or likely effects of the change of control of the regional Channel 3 licence on a number of matters set out in the Act, including the future delivery of regional programmes, programmes which contribute to the regional character of the service, the future delivery of network programmes, the proportion of regional programmes made in the region, employment in the region, and the extent to which managerial and editorial decisions are taken in the region.
- 1.3 As part of our review, we requested information from UTV about their performance in the year prior to the launch of our review (‘the benchmark period’), and ITV, about their future plans in relation to the matters set out in the Act.
- 1.4 Our analysis in Section 2 shows that UTV notably over-delivered against its regional current affairs quota and, to a lesser extent, its regional news quota. Our review has considered carefully whether the change of control might be prejudicial to the future delivery of these important genres given the current levels of output are not guaranteed by quotas.
- 1.5 ITV told us that it has no intention to make any significant changes to either the volume or the quality of UTV’s output across each genre. It argued against increasing UTV’s regional news quota, suggesting over-delivery was largely due to the need to have a margin of scheduling safety against the licence requirements. ITV often over-delivers against the regional news requirements placed on many of the licences it controls.
- 1.6 ITV recognised the importance of regional current affairs to viewers in Northern Ireland and, noting the levels of historic over-delivery, voluntarily proposed a change in the current affairs element of UTV’s non-news quota, from 26 minutes to 33 minutes per week. We accepted ITV’s proposal and varied the licence accordingly.
- 1.7 We believe that the base level of provision secured by the regional news and the revised regional current affairs quotas ensure a high level of provision but allow the licence holder flexibility to meet audience needs. As such, we do not believe the change of control to be prejudicial in relation to these matters.
- 1.8 With respect to the other matters that Ofcom is required to consider in its review, ITV already provides the network programming that meets UTV’s licence commitments, including original programming, and national and international news and current affairs. This will not change as a result of the change of control and as such is not prejudicial. We have not found any evidence that the change of control is likely to be prejudicial in any of the other areas considered during our review. We are therefore not proposing to vary the UTV licence as a result of this review.

Section 2

Ofcom's review and conclusions

Introduction

- 2.1 Since its launch in 1959, UTV Media plc (now Wireless Group plc) has operated the Channel 3 licence for Northern Ireland. It has built a strong reputation with audiences, providing a wide range of local programming including news and current affairs.
- 2.2 Ofcom was informed in November 2015 that a change of control would occur in respect to the Channel 3 licence for Northern Ireland ("the UTV licence"), as a result of a proposed acquisition by ITV of UTV Ltd, UTV Media plc's television business. This triggered a CoC review under Section 351 of the Act.
- 2.3 Ofcom has now completed its review. As part of our review we requested information from UTV, about their performance in the year prior to the launch of our review, and ITV, about their future plans. This document constitutes the report of this review, which Ofcom is required to publish under the Act.

Relevant legislation

- 2.4 In accordance with Condition 24(1) of the Northern Ireland Regional Channel 3 licence¹, Ofcom was formally notified on 26 November 2015 that a change of control was to take place as a result of the acquisition of UTV by ITV.
- 2.5 Section 351 of the Act requires Ofcom to review "the effects or likely effects" of any relevant change of control on the Regional Channel 3 licence on the matters listed in subsections 351(4) - (7) of the Act. These include: the future delivery of network programmes, regional programmes, programmes which contribute to the regional character of the service, the proportion of regional programmes made in the region, employment in the region, and the extent to which managerial and editorial decisions are taken in the region.
- 2.6 Under Section 352 of the Act, if it appears to Ofcom that the relevant change of control would be prejudicial to one or more of the matters mentioned in subsections (4) to (6), Ofcom must vary the Regional Channel 3 licence in accordance with Section 352(2) of the Act. In addition, under Section 352 of the Act, if it appears to Ofcom that the relevant change of control would be prejudicial to matters mentioned in subsection (7), Ofcom may vary the Regional Channel 3 licence in accordance with Section 352(3) of the Act.
- 2.7 Ofcom will not serve a notice of variation under Section 352 unless it has given the licensee on whom it is served a reasonable opportunity to make representations on any proposed licence variations.
- 2.8 Section 352(5) of the Act further specifies that a licence cannot be varied in accordance with the above unless the proposed new condition would have been

¹ The UTV licence applying at the time of the notification of the Change of Control is available at the following link: <http://licensing.ofcom.org.uk/binaries/tv/itv/ulster/utv-notice-of-variation-no14.pdf>; the schedule is available here: <http://licensing.ofcom.org.uk/binaries/tv/itv/ulster/utv-attachment-to-variation-no.14.pdf>

satisfied by the licence holder throughout the twelve months immediately before the date of the relevant change of control or, if earlier, the date on which Ofcom exercise its powers under Section 352.

- 2.9 Ofcom carried out a review of this change of control in accordance with the Act. This document constitutes the report of this review, which Ofcom is required to publish under Section 351(9) of the Act.

Response to Ofcom's information request and licence variation

- 2.10 We sent an information request to UTV, asking for levels of delivery of the specified matters (set out below) in the previous 12 months, and ITV, asking for the intended delivery levels following the change of control. For this purpose, Ofcom has taken the year 1 December 2014 to 30 November 2015 as the benchmark period.

Level and nature of the provision of network programming

- 2.11 Section 351(4) of the Act requires Ofcom to consider the likely effect of the change of control on the level of provision – in peak-time and non-peak-time hours – of original programming, news programmes and current affairs programmes.
- 2.12 Section 351(5) of the Act, requires Ofcom to consider the likely effect of the change of control on the level and range of provision of programmes made outside the M25 area; and the extent of the expenditure referable to programme production at different production centres outside the M25 area and the range of such production centres to which that expenditure is referable.
- 2.13 UTV complies with these requirements by broadcasting network programming controlled by ITV². As such, compliance with these quotas will not be affected by the change of control. ITV has confirmed to Ofcom that it "will continue to provide the same level of network programming available to UTV following the change of control".

Level and nature of the provision of regional programming

- 2.14 This section discusses our assessment of the impact of the change of control on the level of provision of regional programmes on UTV, which Ofcom is required to consider under Section 351 (6) and (7) the Act.

Quality and range of regional programmes and other programmes which contribute to the regional character of the service

- 2.15 Sub-sections 351(6)(a) and (b) of the Act require Ofcom to consider the likely effect of the change of control on the quality and range of regional programmes included in the service and of other programmes which contribute to the regional character of the service.
- 2.16 In its submission, ITV stated that it:

"...has no intention to make any significant changes to either the volume or the quality of UTV's output across each genre, and it is our ambition that

² Under the Networking Arrangements currently in force, ITV is solely responsible for devising a network schedule (see: Ofcom, *Channel 3 networking arrangements: 2015 Review*, 28 September 2015 (<http://stakeholders.ofcom.org.uk/broadcasting/tv/channel-3-review2015/>)).

viewers will be able to discern very little difference in what they see on screen after the acquisition is completed.”

- 2.17 We consider that ITV will have similar incentives to UTV to appeal to viewers in Northern Ireland, which is likely to result in the provision of a range of high quality regional programmes. Therefore, we do not consider the change of control to be prejudicial in relation to this matter.

Provision of programmes made available to the nationwide Channel 3 service

- 2.18 Section 351(6(c)) of the Act requires Ofcom to consider the likely effect of the change of control on the quality and range of programmes made available by the licence holder for the purpose of inclusion in the nationwide Channel 3 service.
- 2.19 In the benchmark period, none of the regional programmes shown on UTV was shown on the nationwide Channel 3 network. Therefore, Ofcom considers that the change of control would not be prejudicial in relation to the provision of programmes made available to the nationwide Channel 3 service.

The level of provision of (i) regional programmes and (ii) to programmes which contribute to the regional character of the service

- 2.20 Sub-sections 351(7)(a)(i) of the Act require Ofcom to consider the likely effect of the change of control on the amount of time given, in the programmes included in the service, to regional programmes.
- 2.21 The table below shows the level of provision of these programmes on UTV during the benchmark period, as compared with the relevant licence requirements which UTV was subject to at the time of the formal notification to Ofcom regarding the change of control.

Table 1 – UTV’s delivery against its regional programming requirement during the benchmark period

	<i>Licence requirement (weekly average, hh:mm)</i>	<i>Delivery by UTV during the benchmark period (weekly average, hh:mm)</i>	<i>Variance</i>
News³	03:50	04:16	+00:26 (+11%)
Other	02:00	02:05	+00:05 (+4%)
(of which, current affairs)	00:26	00:51	+00:25 (+96%)

- 2.22 As Table 1 shows, during the benchmark period UTV notably over-delivered against its regional current affairs quota and, to a lesser extent, its regional news quota.

³ The UTV licence specifies that UTV must provide a weekly average of 4 hours of regional news when averaged over a calendar year *excluding* Bank Holidays and the Christmas Period. Instead, when averaged over a full calendar year which *includes* Bank Holidays and Christmas, the regional news quota is 3 hours and 50 minutes. (see: Ofcom, *Ulster Regional Channel 3 Licence, Annex Part 1 to the Schedule, Section 7*). All the data on UTV’s provision against its regional news quota used in this note is based on a full calendar year which *includes* Bank Holidays and Christmas.

2.23 Ofcom’s Advisory Committee for Northern Ireland (“ACNI”) advised that UTV’s news and current affairs output is highly valued by audiences. Our review has considered carefully whether the change of control might be prejudicial to the future delivery of these important genres given the current levels of output are not guaranteed by quotas.

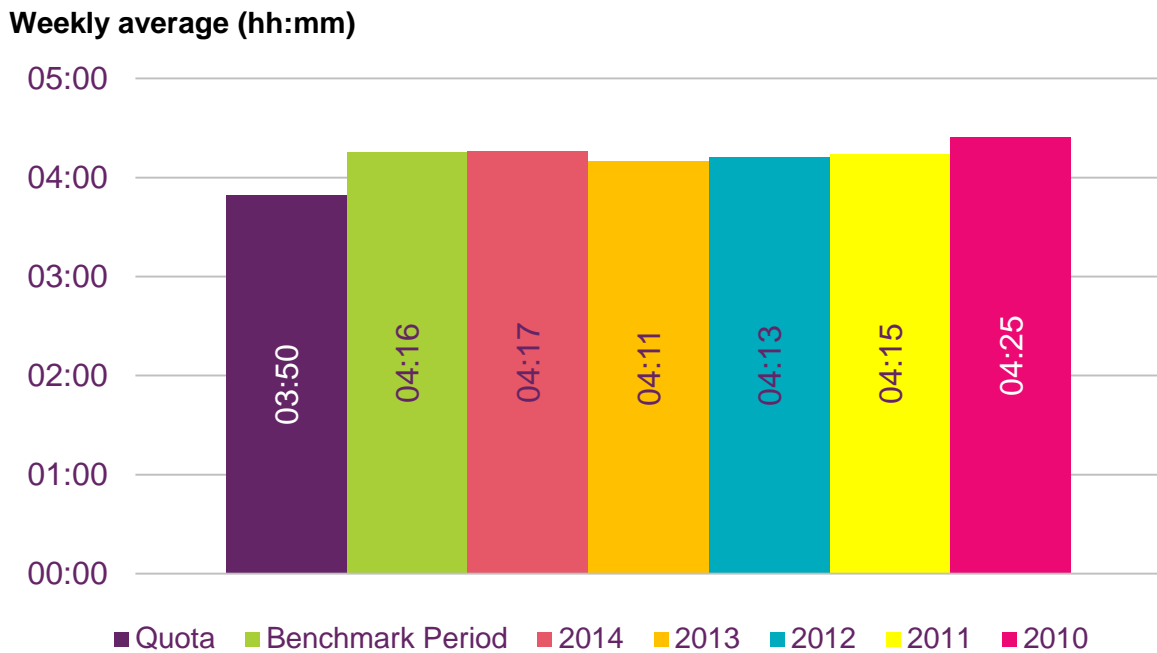
2.24 In assessing whether the change of control might be prejudicial we considered:

- a) whether the over-delivery in the benchmark period was part of a longer-term trend or potentially a single period with unusually high levels of output. In the event that the delivery against quotas in the benchmark period was simply an anomaly, a reduction to ‘normal’ levels might not be prejudicial;
- b) the factors influencing UTV’s historic approach, possible future commercial incentives on ITV and its plans for the future.

The long term trend

2.25 The chart at Figure 1 shows UTV’s level of provision of regional news in the benchmark period and in the five previous years, against its licence requirement. It shows that UTV has consistently over-delivered against its regional news quota.

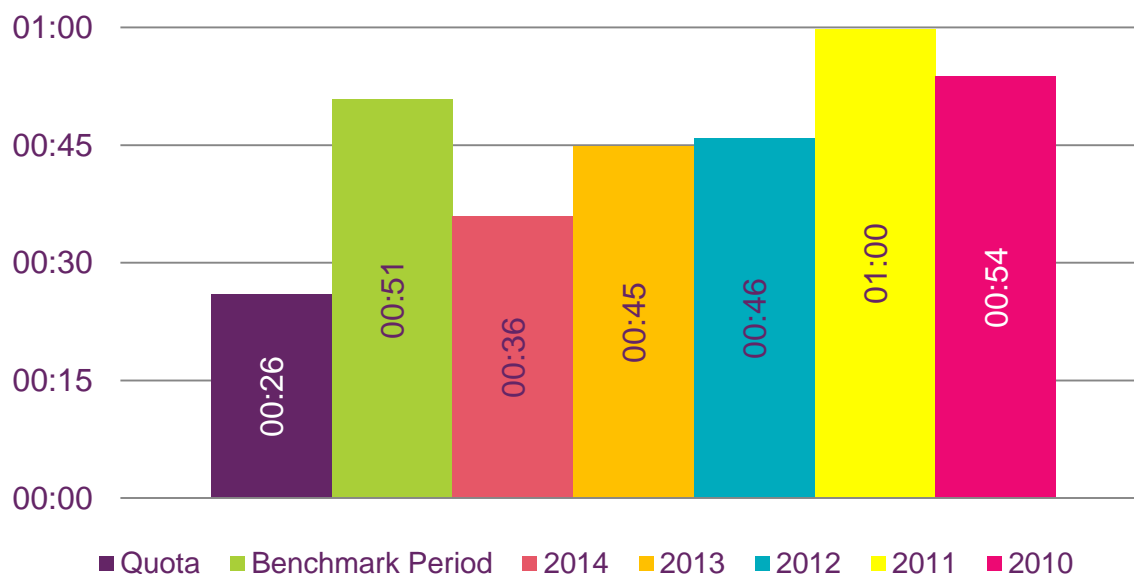
Figure 1 - Average weekly provision of regional news on UTV, 2010-Nov 2015



2.26 Figure 2 below shows that UTV has also regularly over-delivered against its regional current affairs requirement over the past few years.

Figure 2 - Average weekly provision of regional current affairs on UTV, 2010-Nov 2015

Weekly average (hh:mm)



2.27 Specifically, between 2010 and November 2015, the amount of regional current affairs shown on UTV has been between 10 and 34 minutes higher than the 26-minute quota (38% and 131% higher respectively).

2.28 Given the over-delivery in the benchmark period is part of a long-term trend – as evidenced by the data in the chart at Figure 2 above – we consider why this might be occurring.

Likely future delivery

Minimum output guaranteed by quotas

2.29 Throughout our review ITV has been keen to emphasise its commitment to the continued provision of news and current affairs. In its initial letter it stated that:

“ITV plc has no intention to make any significant changes to either the volume or the quality of UTV’s output across each genre [...]. We are, of course, fully committed to meeting our licence obligations, and in practice we expect to operate at very similar levels at present.”

Licence variation

2.30 Quotas in Channel 3 licences provide an important guaranteed minimum level of news and current affairs output. ITV recognised the importance of regional current affairs to viewers in Northern Ireland and, noting the levels of historic over-delivery, voluntarily proposed a change in the current affairs element of UTV’s non-news quota, from 26 minutes to 33 minutes per week.

2.31 Ofcom noted that such variation would bring the regional current affairs quota for the Channel 3 licence for Northern Ireland in line with the regional current affairs quotas in the Scottish licences (33 minutes) and slightly below that in the Wales licence (47

minutes). Ofcom welcomed this commitment and, having given the Licensee a reasonable opportunity to make representations on the variation pursuant to section 3(4)(b) of the Broadcasting Act 1990, varied the licence accordingly by notice to the Licensee. The notice of variation was served on the licensee on 21 April 2016⁴.

- 2.32 ITV did not propose to amend UTV's news quotas where they argued that, because the level of over-delivery is less pronounced, higher quotas would require higher levels of output than that delivered by UTV in order to maintain a margin of safety in the schedule (an argument explored in more detail below).

Potential for provision beyond quota minimums

- 2.33 We have also considered the extent to which ITV might continue to provide news and current affairs beyond the minimum required by its quotas. There are a number of factors that suggest ITV is likely to continue to provide a level of news and current affairs above quota levels.

- 2.34 Firstly, audiences expect Channel 3 services to cover important one-off events. In responding to this demand, channels often provide a level of output above the minimum required. Figure 1 above suggests that higher levels of regional current affairs are provided in election years (2010, 2011 and 2015). UTV explained that, in the benchmark period, about 11 minutes per week on average were devoted to regional current affairs programmes covering the 2015 General Election. This represents about 44% of the over-delivery against the regional current affairs quota in the benchmark period.

- 2.35 Secondly, there may be commercial incentives to maintain provision. ACNI advised that the success of UTV was rooted in the channel's local feel and focus, rather than the volume of output alone. It is therefore also likely that part of the over-delivery is explained by the channel's commercial strategy to appeal to local audiences. Given the importance of UTV's news and current affairs output to the overall performance of the channel it appears likely that ITV will remain incentivised commercially to deliver a strong news and current affairs package.

- 2.36 Finally, ITV argued that:

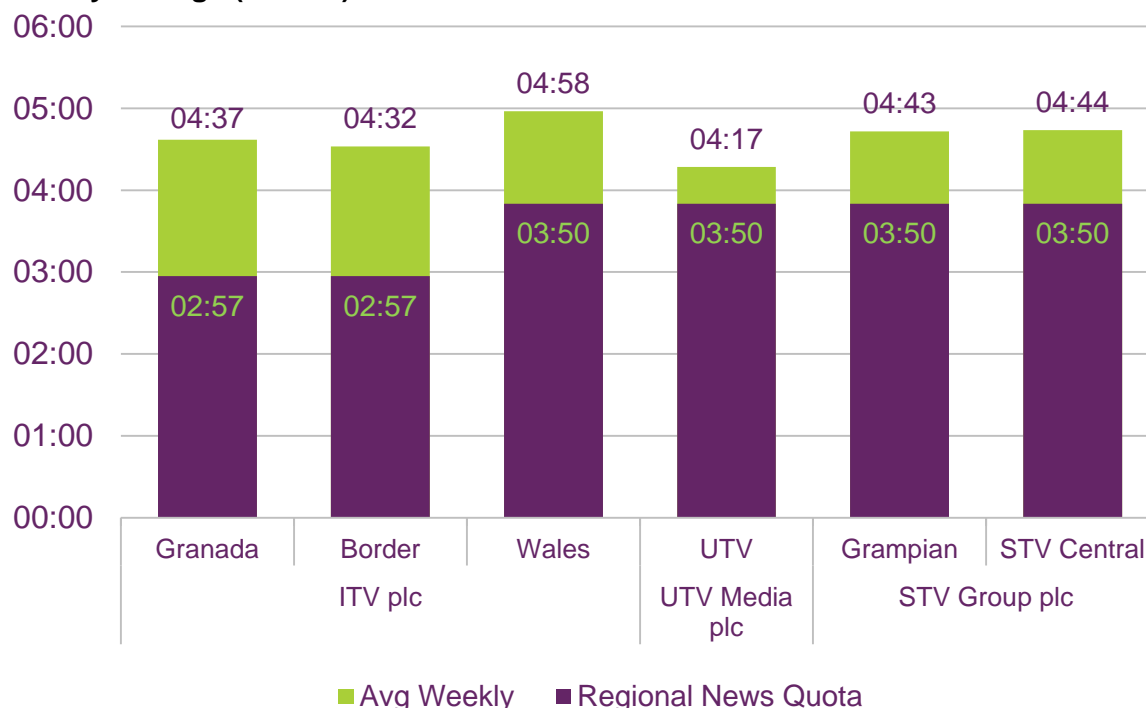
“any excess in the number of hours of regional news [...] provided by UTV is largely due to the need to have a margin of scheduling safety against the licence requirements [...]. This reflects ITV's own experience regional commitments, in which we try to build in a margin of safety (which is not always needed) in order to protect against any unexpected scheduling changes.”

- 2.37 We accept that it is sensible to maintain a margin of safety in the level of provision of regional programming in order to ensure compliance. Our own analysis confirms that ITV over-delivers against the regional programming requirements placed on many of the licences it controls, as exemplified by the first three columns in Figure 2 below.

⁴ see Notice of Variation 14 at <http://licensing.ofcom.org.uk/binaries/tv/itv/ulster/utv-notice-of-variation-no14.pdf>

Figure 2 - Performance against regional news quota on selected ITV Regional licensed services, on UTV and on STV Regional licenced services (2014)

Weekly average (hh:mm)



- 2.38 The chart shows that in 2014 ITV over-delivered against its regional news quota on ITV Wales to a greater degree than UTV. This approach is not unique to ITV, with the level of delivery on the licences controlled by STV also comfortably above the quota levels.
- 2.39 We believe that the base level of provision secured by the news and the revised current affairs quotas are sufficient, ensuring a high level of provision but allowing the licence holder flexibility to meet audience needs. As such, we do not believe the change of control to be prejudicial in relation to these matters.
- 2.40 Section 351(7)(a)(ii) of the Act also requires Ofcom to consider the likely effect of the change of control on the amount of time allocated to programmes contributing to the regional character of the service.
- 2.41 Ofcom interprets the latter to mean locally-scheduled, part-networked programmes of regional interest shown across a sub-set of Channel 3 licences in a particular geographic area. We are not aware of any such programming shown on UTV during the benchmark period. Therefore, we do not consider that the change of control would be prejudicial in relation to this matter.

Proportion of regional programmes made in Northern Ireland

- 2.42 Section 351(7)(b) of the Act requires Ofcom to consider the likely impact of the change of control on the proportion of regional programmes included in the service which are made within the area for which the service is provided (Northern Ireland, in this case).
- 2.43 In the benchmark period, 100% of the regional programming shown on UTV was made in Northern Ireland. ITV told us that

"...it is our intention that the vast majority of UTV's regional programming will continue to be made in Northern Ireland, and certainly more than the minimum of 90% of programming by time."

- 2.44 Under the UTV licence, in each calendar year at least 90% per cent of all regional programmes broadcast by time must be made in Northern Ireland, guaranteeing a high base level of provision.

Employment in Northern Ireland

- 2.45 Section 351(7(c)) of the Act requires Ofcom to consider the likely impact of the change of control on the use, in connection with the service, of the services of persons employed (whether by the licence holder or any other person) within the licensed area (Northern Ireland, in this case).
- 2.46 UTV told Ofcom⁵ that UTV Limited currently employs a total of 149 people in Northern Ireland, 50 of which work in news and current affairs, and that UTV frequently uses the services of freelancers.
- 2.47 Although ITV has not taken any final decisions in relation to staffing in Northern Ireland, it appears likely that ITV's plans would maintain a high level of employment in Northern Ireland. Therefore, we do not consider that the change of control would be prejudicial in relation to the use, in connection with the Channel 3 regional service, of the services of persons employed in Northern Ireland.

Managerial and editorial decisions in Northern Ireland

- 2.48 Section 351(7(d)) of the Act requires Ofcom to consider the likely effect of the change of control on the extent to which managerial or editorial decisions relating to programmes to be included in the service are taken by persons so employed within the licensed area (Northern Ireland, in this case).
- 2.49 In December 2015, UTV informed Ofcom that all managerial and editorial decisions for UTV were taken by the Television Management team based in Belfast.
- 2.50 Although ITV has not taken any final decisions in relation to the operational model for UTV, it appears likely that ITV's plans would maintain the managerial and editorial presence in Belfast. Therefore, we do not consider that the change of control would be prejudicial in relation to the extent to which managerial or editorial decisions are taken by persons employed in Northern Ireland.

Conclusion

- 2.51 UTV has consistently met its quotas for regional programming during the past five years, over-delivering against its news quota and substantially over-delivering against its current affairs quota. The ACNI advised us that UTV's news and current affairs output is highly valued by audiences. Our review has considered carefully whether the change of control might be prejudicial to the future delivery of these important genres given the current levels of output are not guaranteed by quotas.
- 2.52 We believe that the base level of provision secured by the current quotas are sufficient, ensuring a high level of provision but allowing the licence holder flexibility to meet audience needs. ACNI advised that the success of UTV was rooted in the

⁵ In a letter dated 18 December 2015, prior to ITV completing the acquisition of UTV

channel's local feel and focus, rather than the volume of output alone. It would not therefore appear to be in ITV's commercial interests to make radical changes. Indeed, ITV has indicated that it has no plans to make significant changes to UTV's output, and expects to over-deliver against its quotas in order to maintain a safety margin against unexpected schedule changes. As such, we do not believe the change of control to be prejudicial in these matters.

- 2.53 In a range of other areas, ITV already provides the network programming that meets UTV's licence commitments, including original programming, and national and international news and current affairs. This will not change as a result of the change of control and as such is not prejudicial. We have found no evidence that the change of control is likely to be prejudicial in any of the other area considered during our review. We are therefore not proposing to vary the UTV licence as a result of this review.
- 2.54 In view of the above, Ofcom has concluded that the change of control of UTV would not be prejudicial to the matters set out in subsections (4) to (7) of Section 351.