

[redacted]

From: SMITH, Adam
sent: 18 June 2010 15:15
To: Fares, David
Subject: RE: Time to chat today?

Manic today preparing for oral questions on Monday. Can we catch up after those?

From: Fares, David [mailto:[redacted]]
Sent: 18 June 2010 10:57
To: SMITH, Adam
Subject: Time to chat today?

Adam,

I hope all is well. I have had a crazy travel schedule but am back for 2 whole business days. Do you have time for a quick catch-up call today?

Best,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [redacted]
London: [redacted]

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[Redacted]

From: SMITH, Adam
Sent: 09 August 2010 19:06
To: 'DFares' [Redacted]
Subject: Re: Time to chat tomorrow?

Sure. Although not much has changed from our end I don't think

From: Fares, David <DFares [Redacted]>
To: SMITH, Adam
Sent: Mon Aug 09 18:54:48 2010
Subject: Time to chat tomorrow?
Adam,

Do you have time for a quick chat regarding costs tomorrow?

Hope all is well.

Thanks,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [Redacted]
London: [Redacted]

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[Redacted]

From: SMITH, Adam
Sent: 11 August 2010 09:21
To: Fares, David
Subject: RE: Are you free to speak at 19:00 this evening?

Just left a message of your mobile – am around all day to speak.

From: Fares, David [mailto:DFares@news.com.au] [Redacted]
Sent: 10 August 2010 18:15
To: SMITH, Adam
Subject: Are you free to speak at 19:00 this evening?

David Fares
Senior Vice President, Government Relations
News America Corporation
Tel: NY: [Redacted]
London: [Redacted]

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[Redacted]

From: SMITH, Adam
Sent: 16 August 2010 15:54
To: Fares, David
Subject: RE: Costs Follow-up

Only that I'm not sure anything will have changed Jeremy's mind but as I say I can't say much more until he's back.

From: Fares, David [mailto:DFares@ [Redacted]]
Sent: 16 August 2010 14:24
To: SMITH, Adam
Subject: RE: Costs Follow-up

No worries and thanks. Did you have any preliminary thoughts?

From: SMITH, Adam [mailto:Adam.Smith@ [Redacted]]
Sent: Monday, August 16, 2010 9:25 AM
To: Fares, David
Subject: RE: Costs Follow-up

I'm not going to be able to give a definitive position on this for a few days I'm afraid as Jeremy is on holiday.

From: Fares, David [mailto:DFares@ [Redacted]]
Sent: 16 August 2010 14:18
To: SMITH, Adam
Subject: Costs Follow-up

Adam,

Just wanted to check-in again to see if you had any thoughts on the information I sent you.

Thanks,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [Redacted]
London: [Redacted]

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[Redacted]

From: SMITH, Adam
Sent: 01 September 2010 12:05
To: Fares, David
Subject: RE: Will you be at IAB with Jeremy Tomorrow?

Not going to be there no. am having a half day to play cricket – that counts as a holiday in my book!

From: Fares, David [mailto:DFares@news.com] [Redacted]
Sent: 01 September 2010 11:49
To: SMITH, Adam
Subject: Will you be at IAB with Jeremy Tomorrow?

If so, I look forward to seeing you there.

Hope you were able to get a holiday in notwithstanding the madness.

David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [Redacted]
London: [Redacted]

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[Redacted]

From: SMITH, Adam
Sent: 25 October 2010 14:13
To: Fares, David
Subject: RE: Is Jeremy Heading to LA Next Week?

Don't think so

-----Original Message-----

From: Fares, David [mailto:DFares@
Sent: 25 October 2010 14:11
To: SMITH, Adam
Subject: RE: Is Jeremy Heading to LA Next Week?

Sorry, I meant on his agenda to discuss with the Fred and other studio reps in LA.

-----Original Message-----

From: SMITH, Adam [mailto:Adam.Smith@
Sent: Monday, October 25, 2010 9:12 AM
To: Fares, David
Subject: RE: Is Jeremy Heading to LA Next Week?

It is in that he's asked Ed to implement it. But he isn't actually involved in doing so.

-----Original Message-----

From: Fares, David [mailto:DFares@
Sent: 25 October 2010 12:29
To: SMITH, Adam
Subject: RE: Is Jeremy Heading to LA Next Week?

I am very sorry to be a pest, but is DEA implementation on Jeremy's agenda? Thanks so much for all of the information and apologies for the back and forth.

-----Original Message-----

From: SMITH, Adam [mailto:Adam.Smith@
Sent: Monday, October 25, 2010 7:12 AM
To: Fares, David
Subject: RE: Is Jeremy Heading to LA Next Week?

I don't know who's been involved at Fox - its being organised by UKTI. And its partly to do with abolition of Film Council but also just to reiterate our support for film industry in general.

-----Original Message-----

From: Fares, David [mailto:DFares@
Sent: 25 October 2010 11:47
To: SMITH, Adam
Subject: RE: Is Jeremy Heading to LA Next Week?

I lied, one last question. Is Jeremy's agenda focused on the abolition of the Film Council and how the Government plans to move forward? Thanks.

-----Original Message-----

From: SMITH, Adam [mailto:Adam.Smith@

Sent: Monday, October 25, 2010 6:45 AM
To: Fares, David
Subject: RE: Is Jeremy Heading to LA Next Week?

Sorry, prepping JH for oral questions. He's meeting Fred Baron from Fox. On wednesday.

-----Original Message-----

From: Fares, David [mailto:DFares@]
Sent: 25 October 2010 11:10
To: SMITH, Adam
Subject: RE: Is Jeremy Heading to LA Next Week?

Adam,

Just tried calling you and left a message with Will. It would be great if we could speak today regarding Jeremy's trip.

Thanks,
David

-----Original Message-----

From: SMITH, Adam [mailto:Adam.Smith@]
Sent: Monday, October 25, 2010 5:24 AM
To: Fares, David
Subject: RE: Is Jeremy Heading to LA Next Week?

He is yes. Reps from most of them I think. Final details still being organised though.

-----Original Message-----

From: Fares, David [mailto:DFares@]
Sent: 25 October 2010 10:01
To: SMITH, Adam
Subject: RE: Is Jeremy Heading to LA Next Week?

Thanks. Is he meeting with the studios?

-----Original Message-----

From: SMITH, Adam [mailto:Adam.Smith@]
Sent: Monday, October 25, 2010 4:49 AM
To: Fares, David
Subject: RE: Is Jeremy Heading to LA Next Week?

He is yes. Flies out this evening.

-----Original Message-----

From: Fares, David [mailto:DFares@]
Sent: 22 October 2010 15:28
To: SMITH, Adam
Subject: Is Jeremy Heading to LA Next Week?

Adam,

I hope all is well, it has been a while. Do you know if Jeremy is heading to LA next week?

Let's try to catch-up soon.

Best,



From: SMITH, Adam
Sent: 16 November 2010 10:56
To: Fares, David
Cc: Michel, Frederic (NewsInt); JONES, Will
Subject: RE: Time to meet this week?

Hi David,

I'm sure I can find some time. Will can send over a few options.

Hope all is well.

Adam

From: Fares, David [mailto:DFares@news.com] [Redacted]
Sent: 15 November 2010 15:32
To: SMITH, Adam
Cc: Michel, Frederic (NewsInt)
Subject: RE: Time to meet this week?

Apologies, copying Fred.

From: Fares, David
Sent: Monday, November 15, 2010 10:31 AM
To: 'SMITH, Adam'
Subject: Time to meet this week?

Adam,

I hope that all is well. Fred and I would very much like to meet with you sometime this week to discuss outstanding issues regarding DEA implementation. I will make myself available at your convenience.

Looking forward to seeing you.

Best,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [Redacted]
London: [Redacted]

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[Redacted]

From: SMITH, Adam
Sent: 14 December 2010 15:39
To: Fares, David
Cc: JONES, Will
Subject: RE: MPA and DEA

Thanks David.

I've had a chat to Ed and he's very happy in principle to meet Bob in January. I'll pass your email on to his office so they can sort the logistics out. Shall I tell them to go through you to organise it?

From: Fares, David [mailto:DFares@news.com] [Redacted]
Sent: 10 December 2010 12:52
To: SMITH, Adam
Cc: JONES, Will
Subject: MPA and DEA

Adam,

Sorry to hear that you are not feeling well and hope you feel better soon.

I wanted to let you know that the MPAA Board (made-up of the CEOs of the studios) met last week and reaffirmed the organization's commitment to DEA implementation and participation in phase 1. Having said that, the board instructed MPAA President, Bob Pisano, to continue to work to address issues related to the appeals costs and to come to London to engage with senior Government officials on this matter. MPAA and the member companies are working on constructive and concrete proposals that are consistent with the Act and political realities. Our hope is that the Cost SI will not be submitted to Parliament until Bob has had the opportunity to discuss the proposals we devise with Government. Currently, Bob is scheduled to come to London from 10-12 January.

I would be happy to discuss further while I am traveling.

Thanks again for all of your efforts.

David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [Redacted]
London: [Redacted]

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[Redacted]

From: Adam Smith [Redacted]
Sent: 30 April 2012 08:34
To: OLDFIELD PAUL
Subject: Fwd: As discussed



Begin forwarded message:

From: Adam Smith [Redacted]
Date: 14 January 2011 17:54:52 GMT
To: Frederic Michel [Redacted]
Subject: As discussed

Thank you for getting in touch about the News Corp/BskyB transaction. I thought it would be helpful if I clarified the process that Jeremy Hunt is going through.

Ofcom delivered their report to the Secretary of State Jeremy Hunt on 31st December. He is now considering the report carefully. He has been clear that he will take as much time as necessary to come to a fully considered decision and he rightly believes that it is more important to come to the right decision rather than work to an arbitrary timescale. In taking this decision it is open to the Secretary of State to take representations however, it would detract from the decision making process to provide a running commentary on what, if any, discussions he is having. The Secretary of State will however, be publishing Ofcom's report but he has not taken a final decision about when this will happen. He has a statutory duty to publish it before or at the time of the announcement of his decision so it will be available for everyone to see at some point soon.

Due to the Secretary of State's quasi-judicial role it is not possible to provide any further details at the moment but needless to say he is committed to reaching a decision in a fair and even-handed way. Further details about this process will be announced once the Secretary of State's decision has been made public.

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[Redacted]

From: Adam Smith [Redacted]
Sent: 30 April 2012 08:33
To: OLDFIELD PAUL
Subject: Fwd: seen this?

Begin forwarded message:

From: Adam Smith [Redacted]
Date: 19 January 2011 09:55:17 GMT
To: [fmiche](#) [Redacted]
Subject: seen this?

Ivan Lewis Oxford Media Convention Speech January 2011

Check against delivery

When Ed Miliband appointed me to this position three months ago I promised to listen, learn and lead.

While this remains my approach I have come to realise that the media world moves at such a pace that induction is a luxury if not an indulgence.

In that short period we have seen the BBC Licence Fee Settlement, News Corp's bid to acquire Sky referred to Ofcom, the impact of the Daily Telegraph's undercover investigation into the way senior Lib Dems view the Conservative led Government and the suspension of a senior News International journalist in connection with ongoing phone tapping allegations.

But more important than any one issue or moment in time we have a revolution taking place in our global media environment. Industry innovation, convergence and changing consumer demand are resulting in exciting new opportunities and ask new questions of industry and Government. BBC iPlayer, Facebook, Twitter, Skype, Mumsnet, YouTube; all platforms which are revolutionising the way people communicate with each other and access content.

Today - I want to touch on the importance and potential of our Creative Industries, News Corp's bid for BSkyB and the future of the BBC.

Creative industries

As we reflect on the lessons of the global financial crisis it is clear that Britain's economy was over-dependent on the financial services sector and in Government Labour should have pursued a more active industrial policy, not simply as a response to the crisis, but as an integral part of economic policy.

These lessons are particularly apposite as we consider the challenges and opportunities facing our creative industries – a great British success story but in serious peril of falling behind without Government leadership and industry cohesion.

The Conservative led Government has said repeatedly that it views the creative industries as a key driver of jobs and growth however every signal they are sending the industry is to the contrary. Not only has there been no growth strategy but there has also been a total lack of leadership. Instead on this Government's watch we have seen:

- Delay on the roll out of broadband
- Confusion over IP with the announcement of a new review
- No to a video games tax break
- The abolition of the Film Council
- The BBC steamrolled through a licence fee settlement
- No progress on the Digital Economy Act
- And having stripped Vince Cable of his responsibilities for media policy there is still little clarity on how the transfer of Civil Servants and key areas of responsibility from BISS to DCMS will work in practice.

This is why I have called on the Government to set up a cross Government group chaired at Cabinet level working with industry representatives to produce an action plan during 2011.

The action plan should cover issues such as:

- Seeking a UK and EU regulatory framework which is fit for this new era of format convergence and content globalisation
- Seeking clear and robust intellectual property rights in the UK and EU
- Clarity about accountability and project management for broadband roll out
- The development of a demand led education and skills system
- Access to finance and business support for start-ups and innovation
- Tax policy in the context of global competition
- A strategy for accessing developing countries markets
- The interaction between public and private sector funding

In the period ahead I intend to be a champion for the Creative Industries – we “got it” in Government and we get it in opposition - that jobs and growth in our creative sector is integral to the future success of our economy.

NewsCorp's bid for BSkyB

I now want to touch on News Corp's bid for total ownership of BSkyB and be clear about where Labour stands:

We believe that media pluralism is essential to the integrity of our democracy. No single voice should dominate and all significant changes of ownership should be subject to a robust public interest test.

I called on Vince Cable last month to refer News Corp's proposed acquisition of BSkyB to Ofcom because there is a case to answer. His referral was right but

subsequent judgement so flawed that the whole process has been brought into disrepute.

A process which is further undermined by a Secretary of State now charged with this decision who is on the record as having a prejudicial view.

Jeremy Hunt could rebuild some confidence by releasing Ofcom's report with immediate effect. This would provide a basic level of transparency and clarify the legitimacy of any meetings he is having with interested parties.

The Secretary of State should act in the public interest, no more no less.

Unlike Vince Cable, I do not wish to declare war on Rupert Murdoch – in many ways Sky and News International have been pioneers in responding to the aspirations of consumers. For this they should be commended not condemned. They have a right to argue for a deregulated media with a lesser role for the state and a right to compete vigorously in a rapidly changing market.

But let me be clear, in Britain no commercial interest however big or small has a right to make the law or break the law.

That must be the non negotiable principle of our democracy – any democracy worthy of the name.

On plurality that means applying the public interest test free of political prejudice.

On phone hacking it means proper investigation by the CPS and the police of very serious allegations and the full cooperation of News International until the truth is finally established and justice prevails.

BBC

Turning to the BBC let me be unequivocal; the BBC is a force for good in our country and on behalf of our country.

The integrity of its global news coverage, the quality of its original content and its parenting of much of our creative innovation are a source of national pride.

It is clear that the British people have a similar affinity to a licence fee funded BBC as to an NHS free at the point of use funded through direct taxation. That is why successive Conservative Governments, despite their ideological instincts, have been unable to unpick the fundamental principles of these two unique British institutions.

However, that doesn't mean the BBC can count on unconditional public support without reform. The digital age has transformed the relationship between the media and citizens. People want more control and choice over their sources of information. Public service broadcasting should respond to this new dynamic. This is why I am keen to explore a radical change to governance which would lead to the BBC becoming a mutual organisation. Empowered licence fee payers could have an equal stake as members of the BBC. They could have the right to be consulted on BBC policy and strategy and elect some of the members of the BBC Trust. This would ensure a more accountable and responsive BBC. More representative of the citizens who pay the bills and use the service. 21st century public service broadcasting would benefit from more active citizens having a real stake in the future of the BBC.

I intend to explore this option as part of Labour's policy review process.

In the short-term I have proposed that the two candidates who will soon be nominated as suitable to be Chairman of the BBC Trust should be subject to scrutiny by the Culture, Media and Sport Select Committee prior to a decision by the Secretary of State. I hope the Government will see the virtues of an approach which will reduce the risk of political bias and ensure a more transparent appointment process.

In the period ahead Labour will defend the BBC against political interference and ideologically motivated attacks. We expressed serious concerns about the heavy handed way the Government railroaded the licence fee settlement.

But we will be a critical friend.

- Demanding maximum value for money including transparency on remuneration.
- Scrutinising the corporation's choices as it embarks on an unprecedented cuts exercise.
- Supporting the BBC's right to be at the cutting edge of the digital revolution and engage in commercial activities but also to recognise the need for consolidation and focus.

Conclusion

I want to end by saying this. I passionately believe that a diverse, innovative media is an integral part of our democracy. It is important to the success of our economy but it is far more important than that. It defines the character of our country. That is why I fundamentally disagree with Mark Thompson's view that a Fox News equivalent would be ok in the UK. We need to hold onto certain non-negotiable principles. But equally, we cannot afford to stand still as the digital revolution transforms the choices of consumers and the challenges faced by all media organisations. In the months and years ahead Labour will hold the Government to account but we will also work with you to develop a policy framework which strengthens our democracy and meets the economic challenges of the future. It will be an important part of how we make the transition from Opposition to being a credible alternative Government.

Ends

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[redacted]

From: SMITH, Adam
Sent: 01 February 2011 15:40
To: Fares, David
Subject: RE: DEA

No specific one but we're not expecting them to get something back to us for a month or so.

From: Fares, David [mailto:DFares@redacted]
Sent: 01 February 2011 15:37
To: SMITH, Adam
Subject: Re: DEA

Is there a deadline for OFCOM's review? Thanks.

From: SMITH, Adam [mailto:Adam.Smith@redacted]
Sent: Tuesday, February 01, 2011 05:30 AM
To: Fares, David
Subject: RE: DEA

Yes indeed. We've managed to keep all of the DEA out of the Bill. This is essentially the compromise for doing so.

From: Fares, David [mailto:DFares@redacted]
Sent: 01 February 2011 10:27
To: SMITH, Adam
Subject: Re: DEA

Perfect and thanks. So, section 17 is still being saved from the Great Repeal Bill?

From: SMITH, Adam [mailto:Adam.Smith@redacted]
Sent: Tuesday, February 01, 2011 05:16 AM
To: Fares, David
Subject: RE: DEA

available this afternoon if you want to give me a bell then. Essentially its nothing to worry about and we remain committed to site blocking as a measure but just want to check what we have drafted is workable. It's a very narrow and technical review. I will send over the release when its out.

From: Fares, David [mailto:DFares@redacted]
Sent: 01 February 2011 10:11
To: SMITH, Adam
Subject: Re: DEA

Adam,

Thanks so much for the heads-up. I am traveling today but would love to discuss further, either later today or tomorrow. Should we try to schedule a time to speak?

Thanks again,
David

From: SMITH, Adam [mailto:Adam.Smith@redacted]
Sent: Tuesday, February 01, 2011 04:56 AM

To: Fares, David
Subject: DEA

David,

Just a quick update about something we are putting out later this morning on the DEA. Following the Your Freedom exercise (where you'll know the DEA came near the top of things that respondents wanted scrapped) we are going to get Ofcom to do a quick piece of work on whether the site blocking measures are practical. Jeremy's quote very clearly sets out that we think site blocking as a measure is a useful tool in tackling online copyright infringement but we want to check that the Act as drafted would actually be workable.

Happy to chat more about it if you want more info.

Adam



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[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:46
To: OLDFIELD PAUL
Subject: Fwd: OFT update - Privileged & Confidential
Attachments: Letter to Allen Overy 02.02.11.docx.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 2 February 2011 12:46:02 GMT
To: [Redacted]
Subject: FW: OFT update - "..."

"Please consider the environ

The Newspaper Marketing Age

www.nmauk.co.uk

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2 February 2011

Allen & Overy LLP
One Bishops Square
London
E1 6AD

Chief Technology Officer

Direct line:

steve.unger@ofcom.org.uk

Dear

News Corporation/BSkyB merger

As you know, on 27 January 2011, the Secretary of State asked the Office of Fair Trading ("the OFT") and Ofcom to advise him on the undertakings offered by News Corporation in lieu of a reference to the Competition Commission ("UILs") in relation to its proposed merger with BSkyB.

He asked the OFT under section 93 of the Enterprise Act 2002 for their views on the practical and financial viability of the proposals set out in the UILs, anticipating that the OFT might require Ofcom's assistance with this. The OFT has informed us that it does require assistance from Ofcom in light of its sectoral knowledge. He also asked Ofcom, in accordance with section 106B of the Act, for advice on the extent to which we think the UILs address the potential impact on media plurality identified in our report. The Secretary of State asked Ofcom and the OFT to respond to him by Friday, 11 April 2011.

In order to provide the assistance and advice sought the OFT and Ofcom require a full detailed understanding of News Corporation's proposed undertakings. The OFT and Ofcom have considered the most effective way of carrying out the Secretary of State's request to them, and agreed that it is essential, in order to be able to advise within the time stated, that we work together through a collaborative process. We also met DCMS to explain this process to them.

This collaborative process will be unworkable unless the OFT and Ofcom can communicate with one another on the basis of a consistent set of information. We understand from the OFT that your client objects to information provided to the OFT being shared by the OFT with Ofcom in this process on the basis that the information is confidential.

In light of the roles that Ofcom has been asked to fulfil in this context we can see no basis for News Corporation objecting to the OFT and Ofcom sharing any information which News Corporation considers is relevant to a full understanding of its proposed undertakings. Ofcom of course as a statutory regulator has strict obligations of confidentiality. In order for Ofcom to

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London SE1 9HA

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fulfill its functions of assisting the OFT and advising the Secretary of State as set out above it needs to consider the same information as the OFT.

We assume in proposing undertakings in lieu of a reference your client is keen to engage as proactively as possible with the OFT and Ofcom in the short time available.

That being so, please confirm that the OFT may share with us any information relevant to a full detailed understanding of your client's proposed undertaking which your client has provided to it.

Yours sincerely

[Redacted signature box]

Steve Unger

CC: [Redacted CC box]

[redacted]

From: Adam Smith [redacted]
Sent: 27 April 2012 09:45
To: OLDFIELD PAUL
Subject: Fwd: Restricted: Newscorp / BSKyB
Attachments: Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - cover letter to News covering questions 1 February 2011.pdf; ATT00001..htm; Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - questions for News 1 February 2011.pdf; ATT00002..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[redacted]>
Date: 2 February 2011 12:45:52 GMT
To: [redacted]
Subject: FW: Restricted: Newscorp / BSKyB

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OFFICE OF FAIR TRADING

[Redacted]

Allen & Overy LLP

Your ref [Redacted]

Direct line [Redacted]

Our ref

Fax (020) 7211 8916

Date 1 February 2011

Email Sheldon.Mills [Redacted]

Dear [Redacted]

News / BSkyB

Information request

Further to our conversation earlier today, and your presentation to us yesterday on the proposed undertakings in lieu (UIL) offered by News Corporation (News) to the Secretary of State in relation to the above matter, I attach a list of questions for News in relation to the UIL.

These questions are designed to assist the OFT in preparing its advice to the Secretary of State under section 93 Enterprise Act 2002 (EA 02) and in particular responding to the request in the Secretary of State's letter of 27 January 2011 to the Chief Executive of the OFT that the OFT discover whether the UIL would be practically and financially viable. I would also note that Ofcom has been asked to provide any assistance the OFT may require in considering the UIL, as well as advising the Secretary of State on the potential impact of the UIL on the concerns they raised about media plurality in their report of 31 December 2010.

Given the short time period within which we are required to report to the Secretary of State, we would be grateful for a response to these questions as soon as reasonably possible. It would greatly assist us if you were able to provide what information you can by **midday on 3 February 2011**, following up with the remaining responses as soon as possible afterwards.



INVESTOR IN PEOPLE

Disclosure of information

We have discussed today the question of whether News would be willing to consent to the OFT disclosing to Ofcom information provided by News to the OFT. This is an issue that I have also discussed directly with Andrea Appella at News this afternoon.

We note your position as set out in your email to me of this evening.

Having regard in particular to the fact that the Secretary of State has asked Ofcom to provide any assistance the OFT may require in considering the UIL, we will revert to you in due course in relation to any specific information that will need to be disclosed in order to facilitate the exercise of our own functions under section 93 EA 02 and/or Ofcom's functions under 106B EA 02.

As you have agreed today, we look forward to receiving from you confidential and non-confidential versions of your responses to the attached questions, the latter version of which may be freely disclosed by us to Ofcom.

We note that your email of this evening states that News '*has legitimate concerns about confidentiality of the information shared with you which [it] would only want to be circulated on a need-to-know basis and not discussed widely in intra-government communications*'. However, in relation to any specific information or category of information that is redacted from your responses, we would ask you to set out the reasons why you believe that disclosure of that information to Ofcom would be detrimental to News, having regard to the fact that Ofcom would itself be bound by restrictions on the use and further disclosure of such information.

Yours sincerely



Sheldon Mills
Director, Mergers

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PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

QUESTIONS RE UNDERTAKINGS IN LIEU PROPOSAL (1)

1 FEBRUARY 2011

1. Introduction

- 1.1. The OFT sets out below questions it has in relation to the undertakings in lieu offered by News Corporation (News) in relation to its proposed acquisition of the remaining shares in BSKyB Group plc (Sky) (the UIL).
- 1.2. The questions below are based on the draft text UIL offer submitted to the Secretary of State, the memorandum explaining the UIL offer of Allen & Overy of 18 January 2011 and the presentation and commentary provided by News to the OFT at the meeting on 31 January 2011.
- 1.3. These questions are designed to assist the OFT in preparing its advice to the Secretary of State under section 93 Enterprise Act 2002 and in particular responding to the request in the Secretary of State's letter of 27 January 2011 to the Chief Executive of the OFT, that the OFT discover whether the UIL would be practically and financially viable.
- 1.4. The OFT requests a response to these questions by midday on 3 February 2011.
- 1.5. References to 'slides' are to page numbers of the slide deck supplied to the OFT at the meeting on 31 January.

2. Revenue and costs for NewCo

- 2.1. Over what period are the revenue streams to Sky News likely to build up? Slide 8 states 'NewCo will be profitable from day one' but a comment in the meeting suggested that the income may not be immediately in place?

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2.2. Please clarify how the cost and revenue projections that are detailed in the presentation (slides 9 to 14) have been estimated in more detail. Specifically, supported by evidence:

2.2.1. where comparative figures are available, please provide detailed actual cost and revenue figures for the historic performance of Sky News over the last five years;

2.2.2. please provide details for the calculation of the carriage deal revenue;

2.2.3. please provide details of any charges to Sky News that will be renegotiated over the 10-year period;

2.2.4. please provide a detailed breakdown of last year's syndication and advertising revenue by component and compare this with previous years;

2.2.5. where some revenue or charges would be newly created by the creation of NewCo, please advise the detailed basis for the calculation;

2.2.6. please provide a more detailed breakdown of costs by category, comparing actual and projected costs;

2.2.7. if some of the actual or projected costs relate to intra-company charges, please explain the nature of the charges and the methodology for determining their size. How will these charges be determined in the future?;

2.2.8. where services are provided by Sky, have Sky agreed the bases for the projected costs? Who would be the appropriate contact in Sky to confirm these costs from their perspective?;

2.2.9. what proportion of the revenue and costs of NewCo will be determined by News Corp through its ownership of Sky?

3. Risks for NewCo

3.1. Slide 14 identifies events that could lead to a reduction in profitability through reduced income or increased costs. Please quantify and explain the events identified. Please also clarify the period over which the 5 per cent inflation assumption is made.

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- 3.2. Please detail any other contracts or agreement renewals that come up for renewal over the period and account for 5 per cent or more of costs or revenue, with a description of the contract, the associated cost or revenue and an indication of the likelihood, in your view, of different financial outcomes.
- 3.3. From a financial perspective, what circumstances could risk a shortfall in income or an increase in costs of £1m or more over the projected period and how big is the risk? We note that five items are identified in your slide 14.

4. Financial structure of NewCo – balance sheet perspective

- 4.1. Please clarify the expected balance sheet structure for NewCo when it is floated on AIM.
- 4.2. In the meeting, an initial cash injection of £20m was mentioned, but this did not seem to affect shareholders funds. Would the cash be provided as a loan or as an initial capital injection?
- 4.3. How would NewCo's balance sheet structure e.g. asset resources provide support for any loans NewCo chose to raise?

5. Long term viability of NewCo – the carriage agreement

- 5.1. Please provide evidence, by reference to equivalent examples, of why a 10 year carriage agreement will be of sufficient duration for NewCo to be said to be viable in the long term.
- 5.2. Please provide relevant evidence on the comparability of the overall value of the envisaged carriage fee agreement, relative to industry norms.
- 5.3. Please explain the assumptions for the pspm fees (see slide 11). How does this break down in expected real terms between basic, HD and HD exclusivity premium over the years projected? How does this compare with other third party channel deals you have entered?
- 5.4. Please provide details of the lengths of the carriage agreements that Sky currently has with other providers (see slide 18), including the three longest duration carriage agreements.
- 5.5. Please explain how NewCo's business model, viability and commercial position would be impacted by an expiry of the 10 year carriage

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agreement. In particular, whether the finite nature of the carriage agreement would:

- 5.5.1. affect NewCo's ability to attract and retain talent;
- 5.5.2. impact on NewCo's borrowing ability; and
- 5.5.3. otherwise impact on NewCo's ability to develop and expand its business.

In responding to the questions in this paragraph 5.5, please explain why NewCo's position under the UIL would be as strong as its current position within Sky.

- 5.6. What would be the impact for NewCo of Sky developing an alternative supplier of news programming during the carriage agreement?
- 5.7. Please specify precisely what would constitute a 'material breach' of the carriage agreement (paragraph 4.4(iii) of the UIL and slide 18).
- 5.8. How will any requirements for further supply of Sky News, e.g. to new media channels, be agreed? Are any additional requirements to be included in the contractual arrangements?

6. Brand licensing agreement

- 6.1. Please provide the brand licensing agreement with Sky Deutschland (see slide 19).
- 6.2. Please explain why the brand licensing agreement is structured in a 7 year + 7 year + 3 year format given the carriage agreement is for 10 years (see paragraph 4.5 of the UIL).
- 6.3. Please specify what would constitute a 'material breach' of the brand licensing agreement (paragraph 4.6(iii) of the UIL and page 19 of the presentation).
- 6.4. What specific terms in the brand licensing agreement would allow costs to increase and will any potential increase be capped?

7. Existing contracts relating to Sky News

- 7.1. Please provide a full list of third party consents that are required in relation to the transfer of Sky News to NewCo (see slide 17). Please

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also confirm the third party consents required for **each** of the contracts listed in paragraph 4.2 of the UIL.

- 7.2. Please confirm what is meant by 'the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering' in paragraph 4.2(iv) of the UIL.
- 7.3. Please provide the length and remaining duration of each of the contracts listed in paragraph 4.2 of the undertakings.
- 7.4. Please explain how the expiry of the existing capacity agreement with Arqiva in respect of the broadcast of Sky News on Freeview will impact upon the business of NewCo (para 4.2 (ii) UIL).

8. Operational agreements

- 8.1. Please provide details of the staff currently engaged principally in the Sky News business who will not transfer to NewCo (paragraph 4.1(ii) of the UIL).
- 8.2. Please comment on the absence of a non-solicitation obligation in relation to the staff transferred to Sky News.
- 8.3. Please explain which assets (including personnel, licences, contracts etc.) of the Sky News business will not be transferred to NewCo (paragraph 4.1(i) of the UIL).
- 8.4. Please comment on what is meant by 'Arrangements will also be made for NewCo to have the use of assets which are not used exclusively in the Sky News business on normal market terms if so requested by NewCo' (paragraph 4.1(i) of the UIL). Specifically:
 - 8.4.1. what assets are envisaged and how extensive are they?
 - 8.4.2. how are 'normal market terms' to be agreed?
 - 8.4.3. what is the position in the event that terms could not be agreed?
- 8.5. Please explain what would happen in the event that Sky and NewCo were unable to agree operational agreements as detailed on page 20 of the presentation and paragraph 5.1 of the UIL.

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- 8.6. Please explain how, in practical terms, NewCo will be independently viable given its physical proximity to Sky (in terms of the lease of the Sky News land and buildings).

9. Shareholding structure in NewCo

- 9.1. Please explain what you believe would be likely to happen to the shareholder profile of NewCo once it was admitted to trading.

9.1.1. Would the existing shareholders of Sky wish to retain shares in NewCo?

9.1.2. What could the impact be on NewCo of a large number of its shares changing hands soon after admission to trading?

- 9.2. Please provide the investment bank opinion confirming NewCo would be appropriate for admission to trading on AIM (referred to in slide 25).

- 9.3. Please explain what legal form the voting restriction in paragraph 3.1(i) of the UIL would take, other than the restriction in the UIL.

10. Governance of NewCo

- 10.1. Please explain what protection there would be against NewCo amending the protections detailed in page 21 of the presentation intended to be built into its Articles of Association (so as to provide superior corporate governance protections to those required by an AIM listing). (Note: NewCo would not be a signatory to the UIL).

- 10.2. Please comment on how the board of NewCo would be determined and appointed. Please confirm whether NC or Sky would have any representatives on the board.

11. Implementation of the UIL

- 11.1. Please explain why a 9 month period would be required in the event that the transaction is not recommended to effect the spin-off of Sky News into a publicly traded company (paragraph 2.1 of the UIL and slide 23). Please explain whether, and if so, why, this is the shortest time that is feasible.

- 11.2. Please explain why, in the event that the transaction is not recommended, no interim protection would be required for the period pending 'spin-off' of Sky News.



From: Adam Smith 
Sent: 27 April 2012 09:47
To: OLDFIELD PAUL
Subject: Fwd: Response to OFT questionnaire
Attachments: CO-#13383197-v6-Response_to_OFT_request_1_February.pdf; ATT00001..htm; CO-#13387996-v1-Annex_2
 -_Trade_Mark_Licence_Agreement_-_Sky_Sky_Deutschland.PDF; ATT00002..htm;
 CO-#13398062-v1-Annex_3
 -_Summary_of_licence_provisions_on_transfer_term_and_duration.PDF;
 ATT00003..htm; CO-#13398035-v1-Annex_4_-_AIM_Opinion_Letter.PDF;
 ATT00004..htm; CO-#13387963-v1-Annex_5_1_-_Sky_Voting_Agreement_dated_21
 _September_2005.PDF; ATT00005..htm; CO-#13388002-v1-Annex_5_2
 -_Sky_Memorandum_dated_19_October_2005.PDF; ATT00006..htm; CO-#
 13391685-v2-Annex_1_-_NewCo_Business_Plan.pdf; ATT00007..htm

Begin forwarded message:

MAY BE ANOTHER

From: "Michel, Frederic" <fmiche
Date: 4 February 2011 17:08:26 G
To: 
Subject: FW: Response to OFT q

ATTACHMENT

Please find attached the response to the Ol

ing.

Andrea

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12. News' future acquisition of shares in NewCo

12.1. Please explain why the fact that further acquisition of shares by News would be subject to the takeover code and could lead to a 'relevant merger situation' (slide 24) means that a non-reacquisition clause is not required to be included in the UIL. In providing your answer, please explain why the standard provision in OFT undertakings in lieu does not, in your view, apply in this situation.

13. Monitoring

13.1. Please explain your view that the structure of NewCo, and the obligations imposed on it, would reduce the monitoring burden on the OFT in terms of compliance with the UIL.

13.2. Please explain whether you believe there would be value in having a monitor appointed (potentially with an arbitrator function in relation to the obligation on News to agree further agreements).

14. Clear-cut standard for UIL

14.1. Please explain why you believe the UIL satisfy the 'clear cut' standard that the OFT applies in relation to UIL, in particular with regard to:

14.1.1. the dependence of NewCo on Sky for its principal revenue stream, having regard to the finite duration of the carriage agreement and the brand licensing agreement;

14.1.2. the fact that the brand licensing agreement is terminable in the event of a change of control of NewCo; and

14.1.3. the nature and extent of the ongoing links between Sky and NewCo.

15. Other queries on the UIL

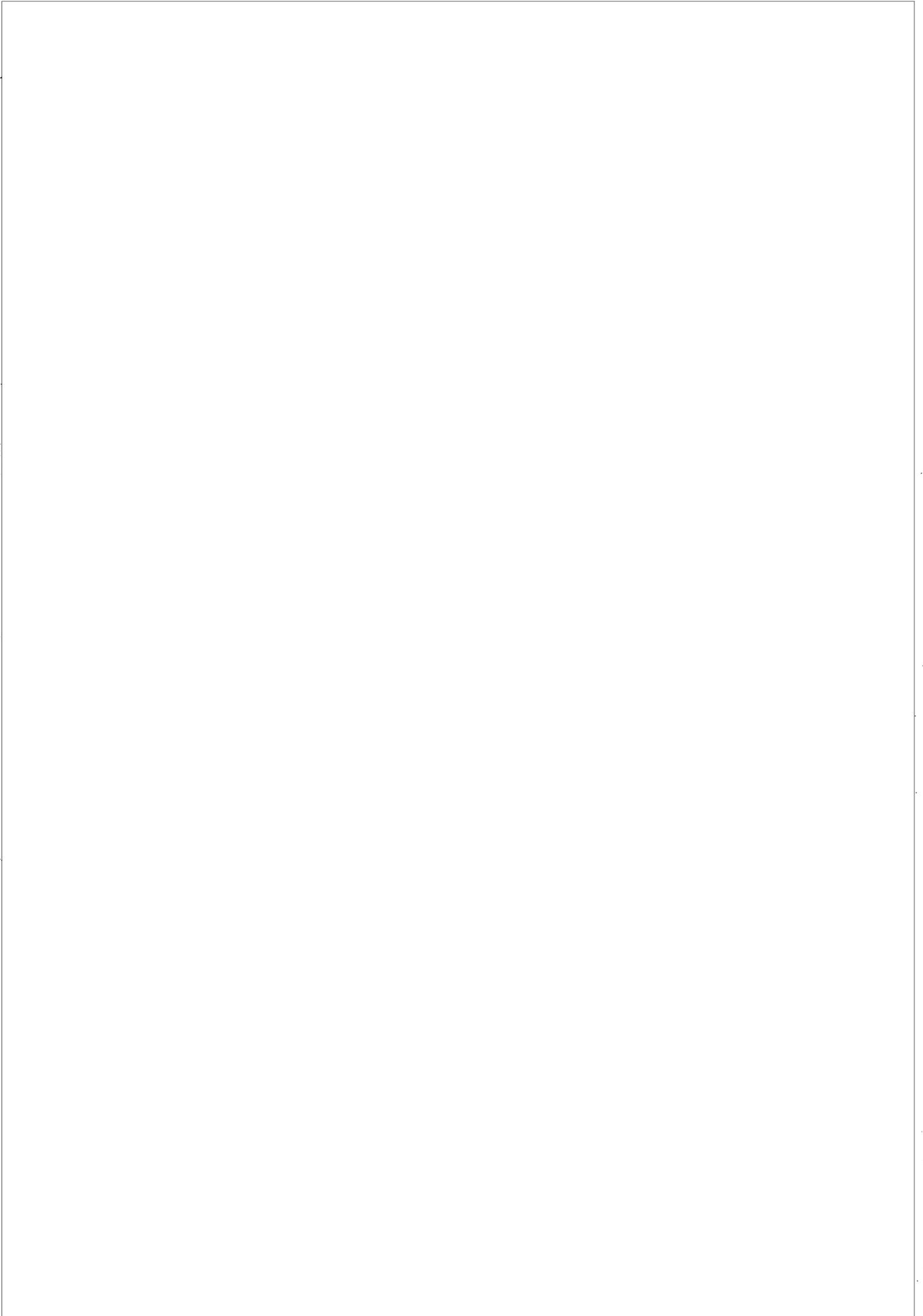
15.1. Please explain why post-closing, Sky should be treated as an 'Affiliate' of News for the purposes of paragraph 6.3 of the UIL.

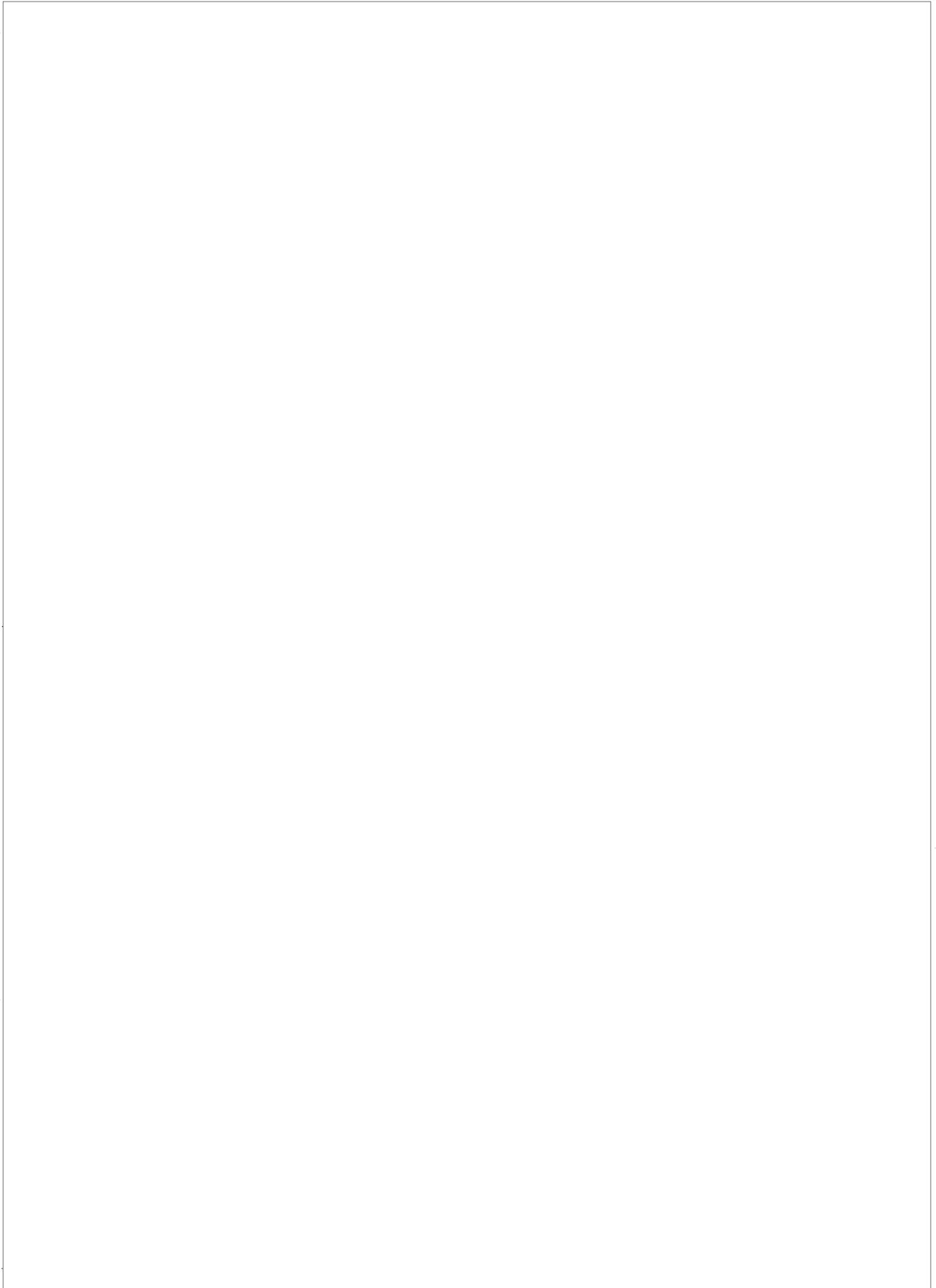
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1 February 2011

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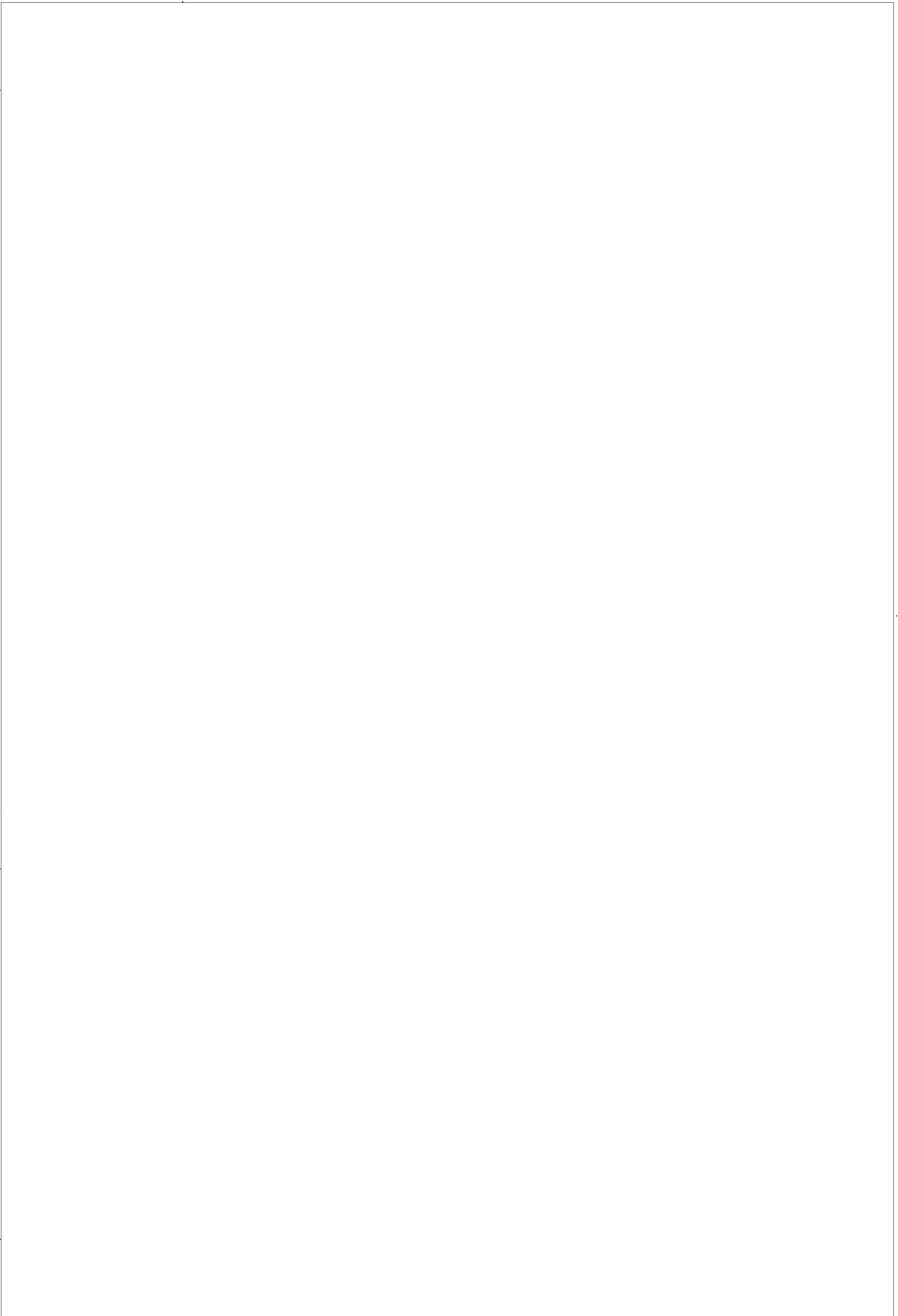
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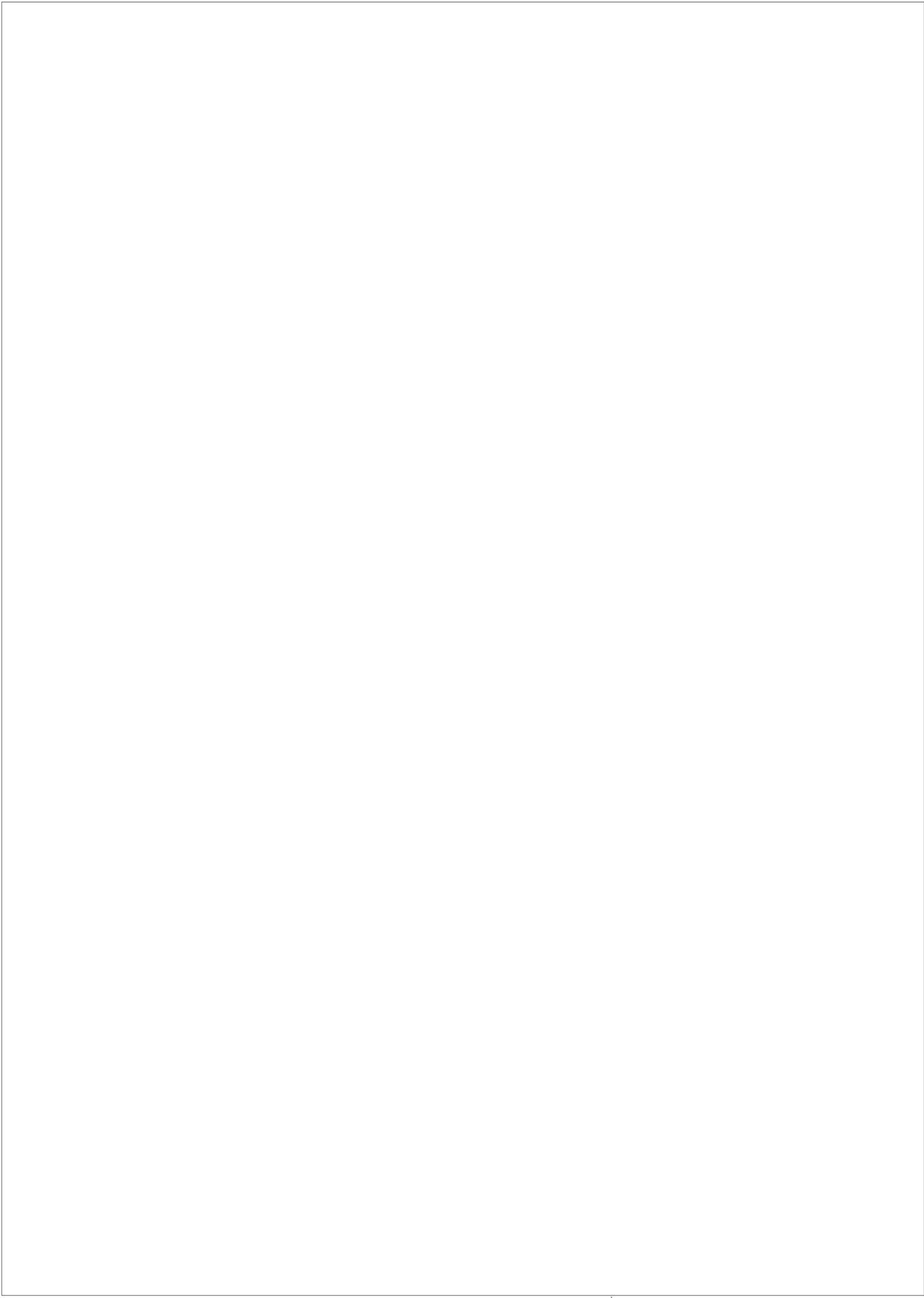


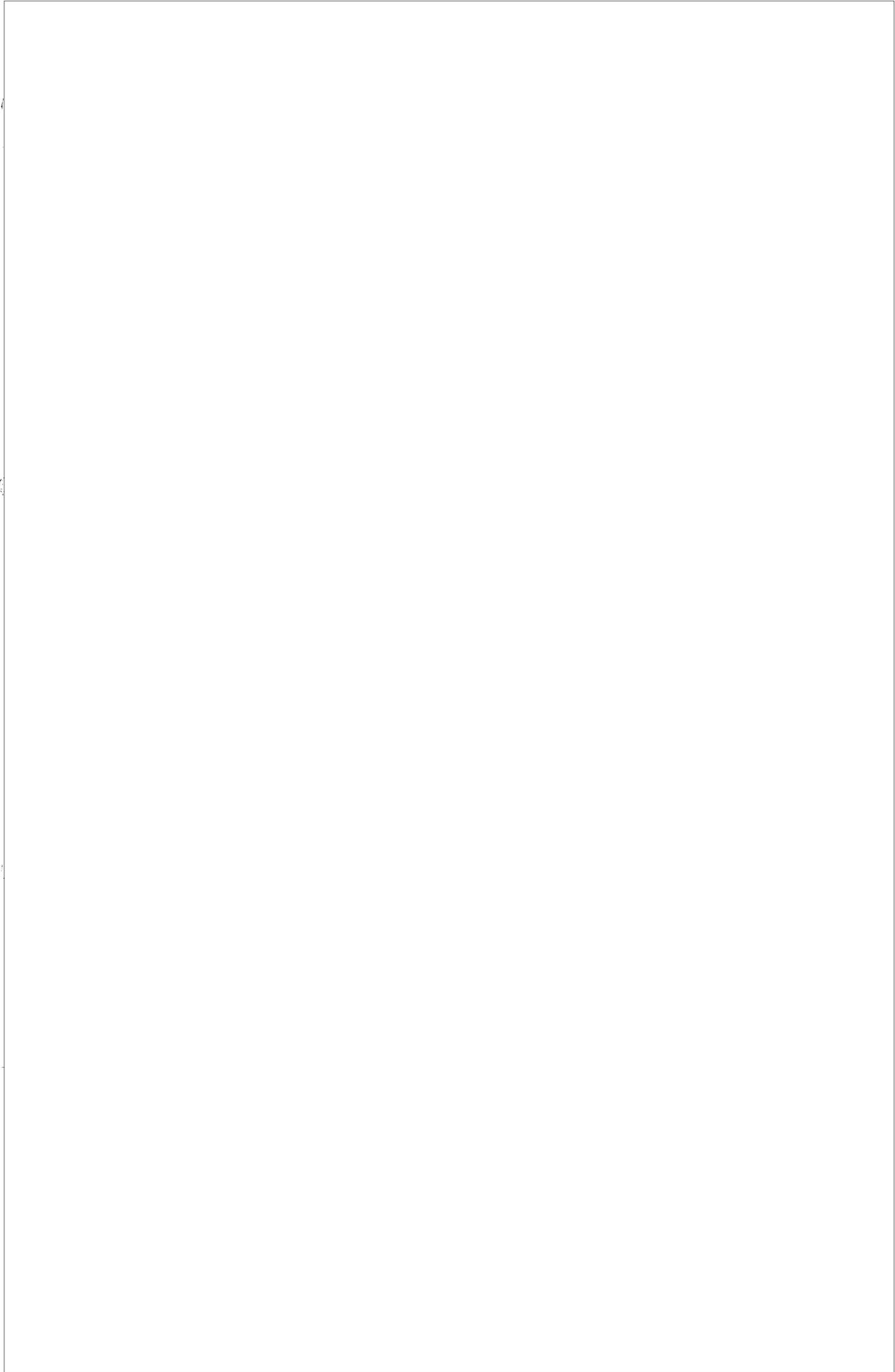


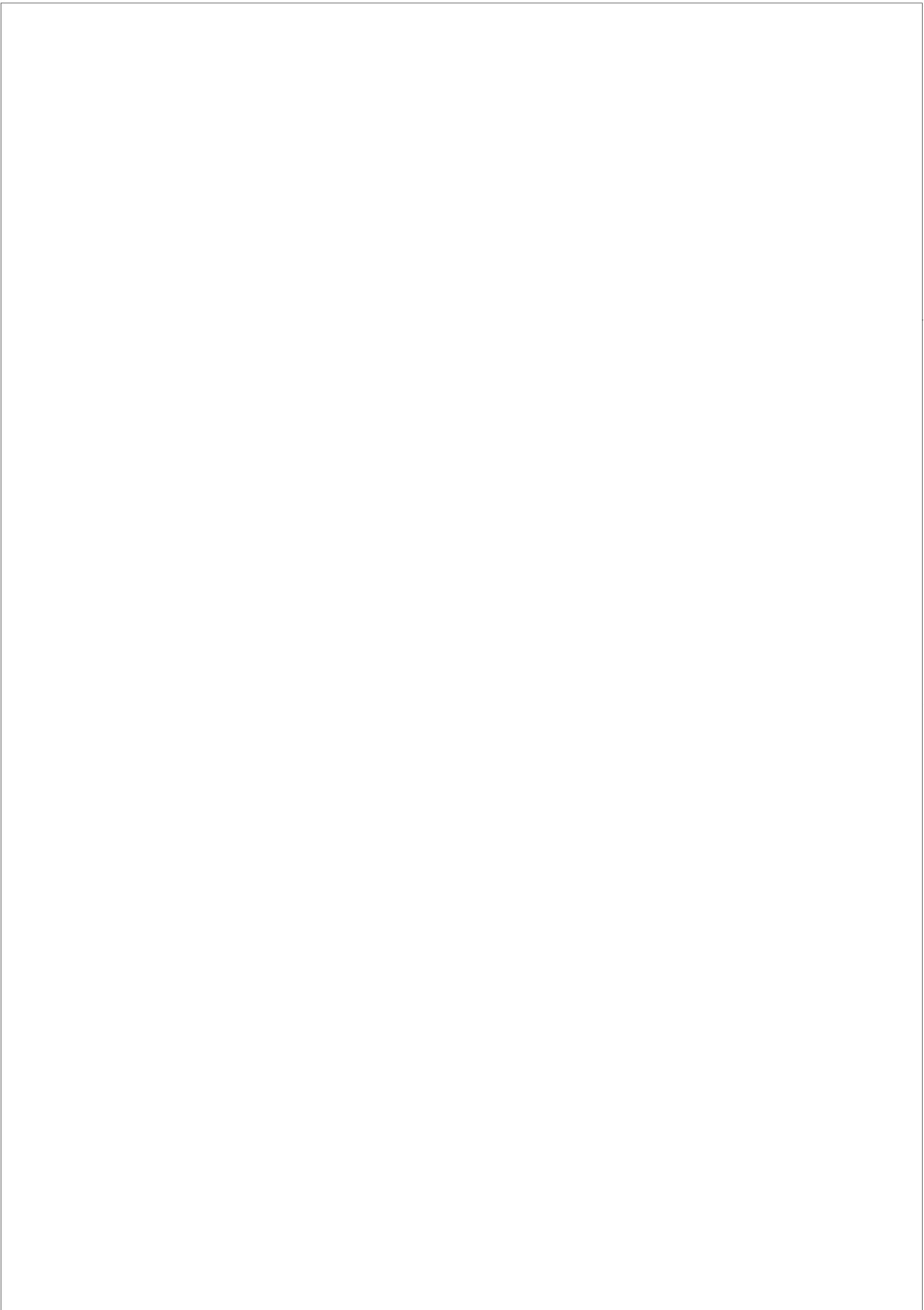


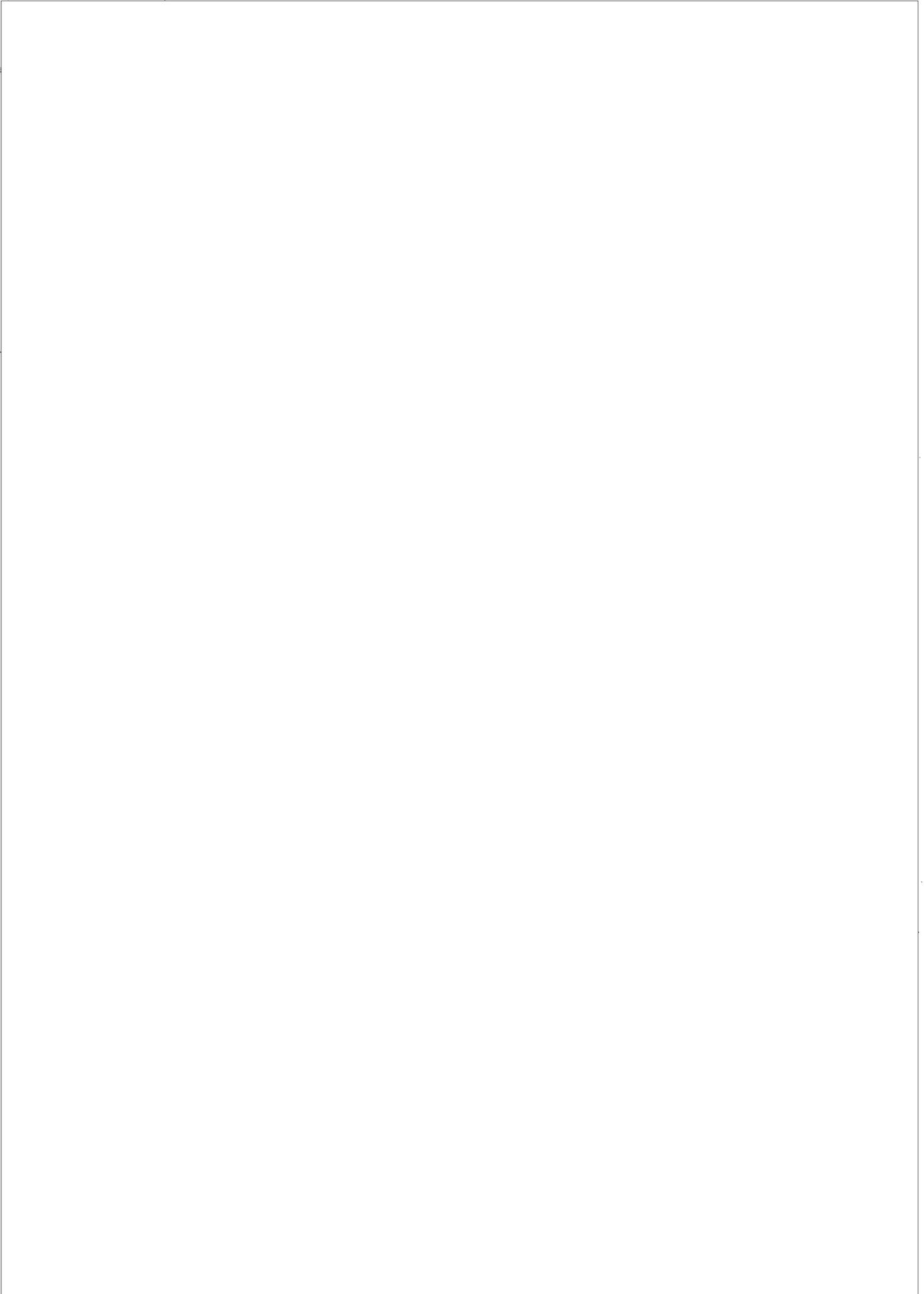
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3 February 2011







Deutsche Bank 

J.P.Morgan CAZENOVE

News Corporation
1 Virginia St.,
Wapping
London E98 1SN

3rd February 2011

PRIVATE AND CONFIDENTIAL

Dear

Re: Demerger of Sky News

As requested, we have reviewed the proposed corporate structure and governance arrangements for Sky News. We have also reviewed the proposed business plan, together with the assumptions underlying it, and the key commercial sensitivities. Based on these proposals we would expect that the key elements of the investment case for Sky News would be:

- a robust independently managed news provider;
- a stable and growing profit stream backed by long term carriage arrangements; and
- a high level of cash conversion to support future investment.

Based upon this review and on the assumption that the envisaged proposals are carried out and the AIM rules are complied with by Sky News (including the appointment of a NOMAD), as of today's date, we believe Sky News would be appropriate for admission to AIM.

Yours sincerely

For and on behalf of

Deutsche Bank AG

JP Morgan Cazenove

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21 September 2005

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BSKYB HOLDCO, INC

and

NEWS UK NOMINEES LIMITED

and

NEWS CORPORATION

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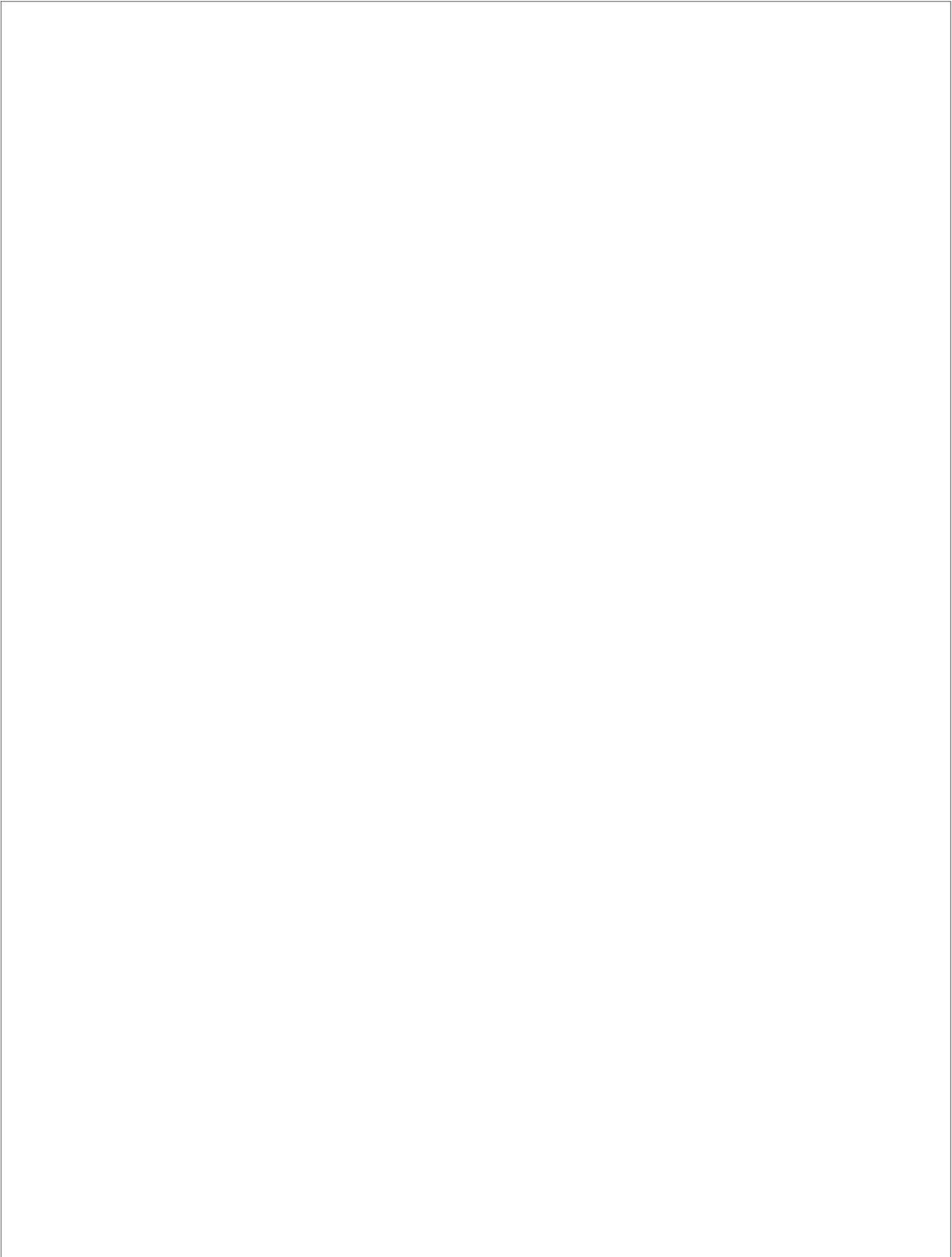
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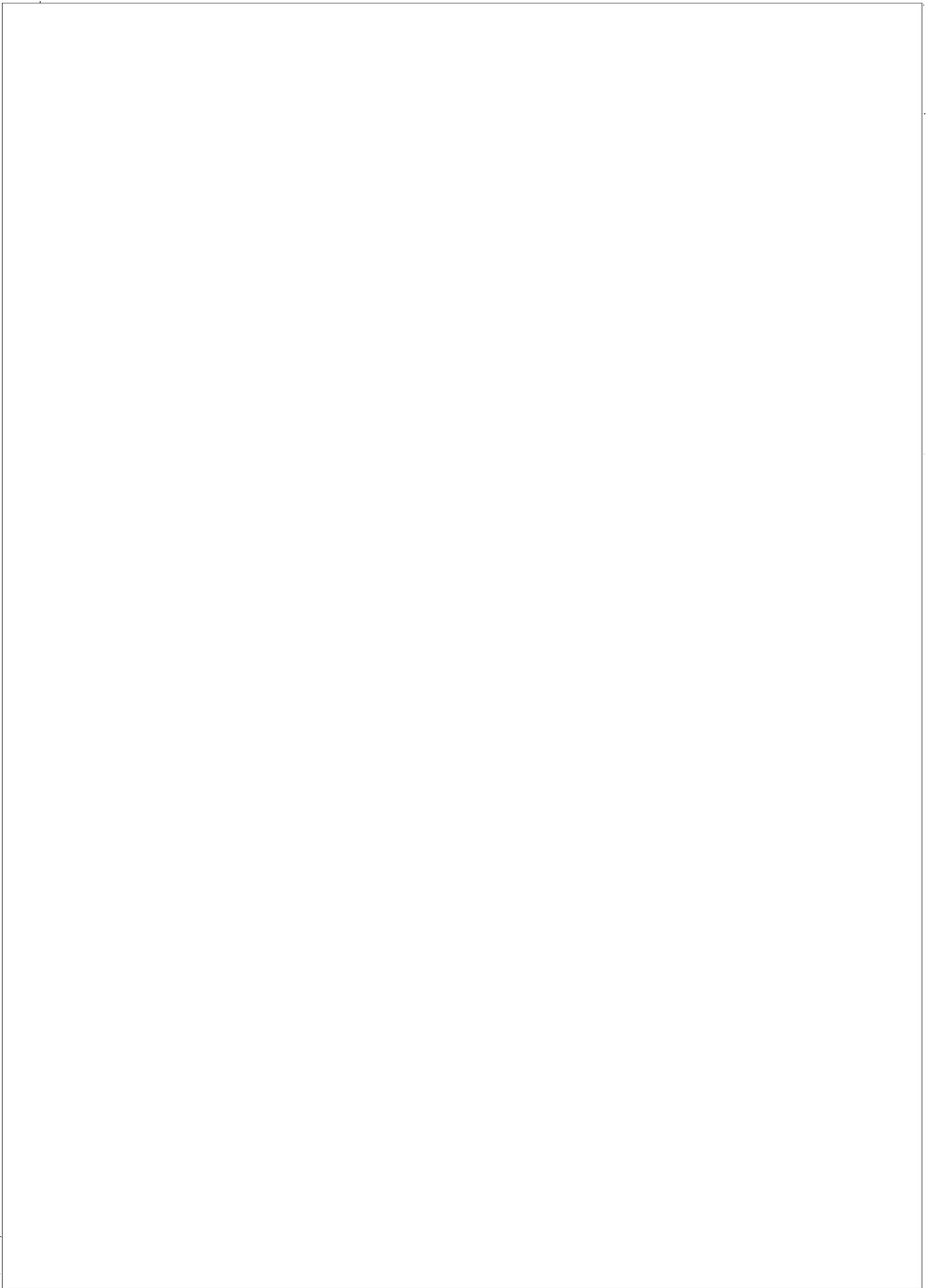
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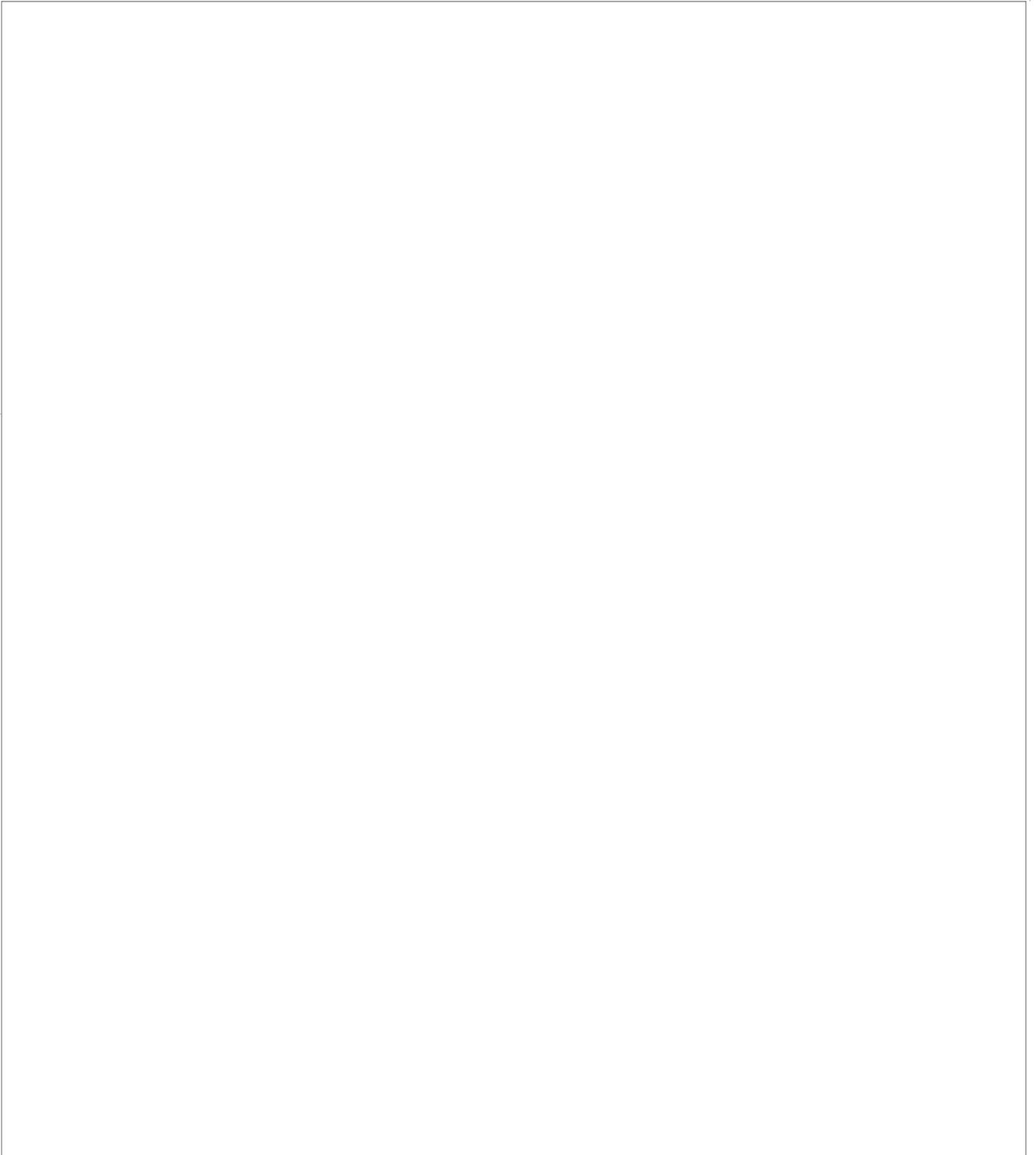
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CO2

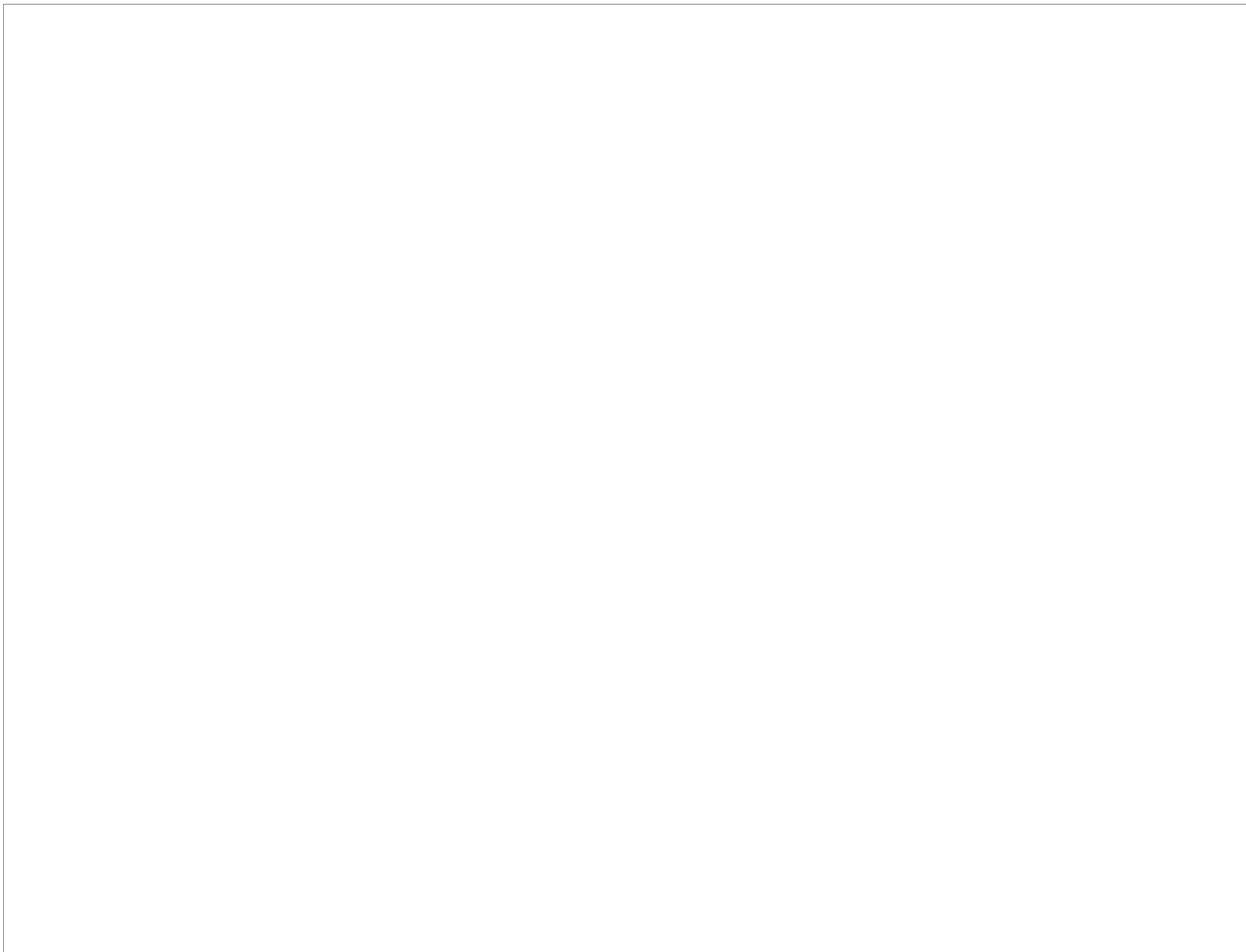








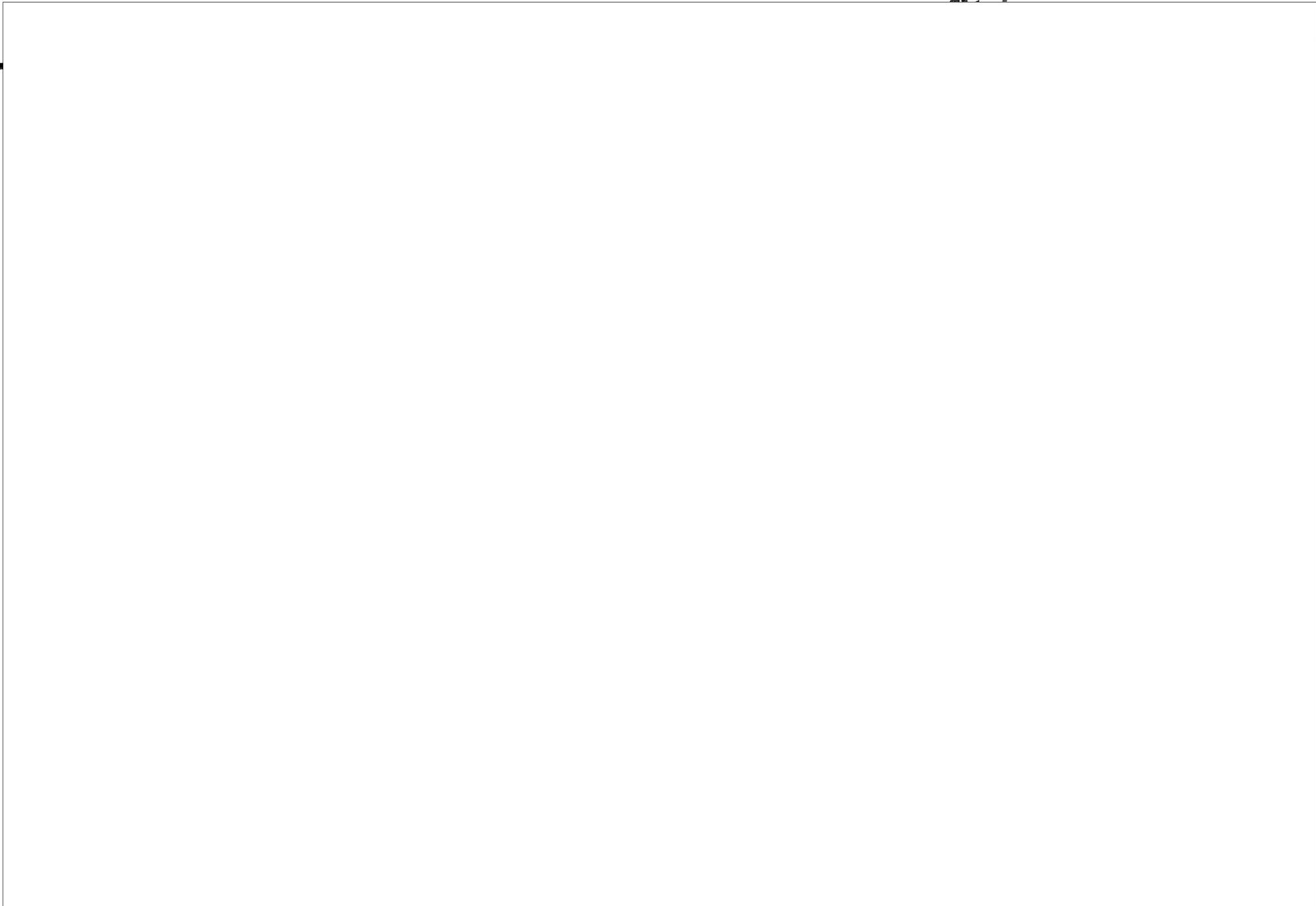
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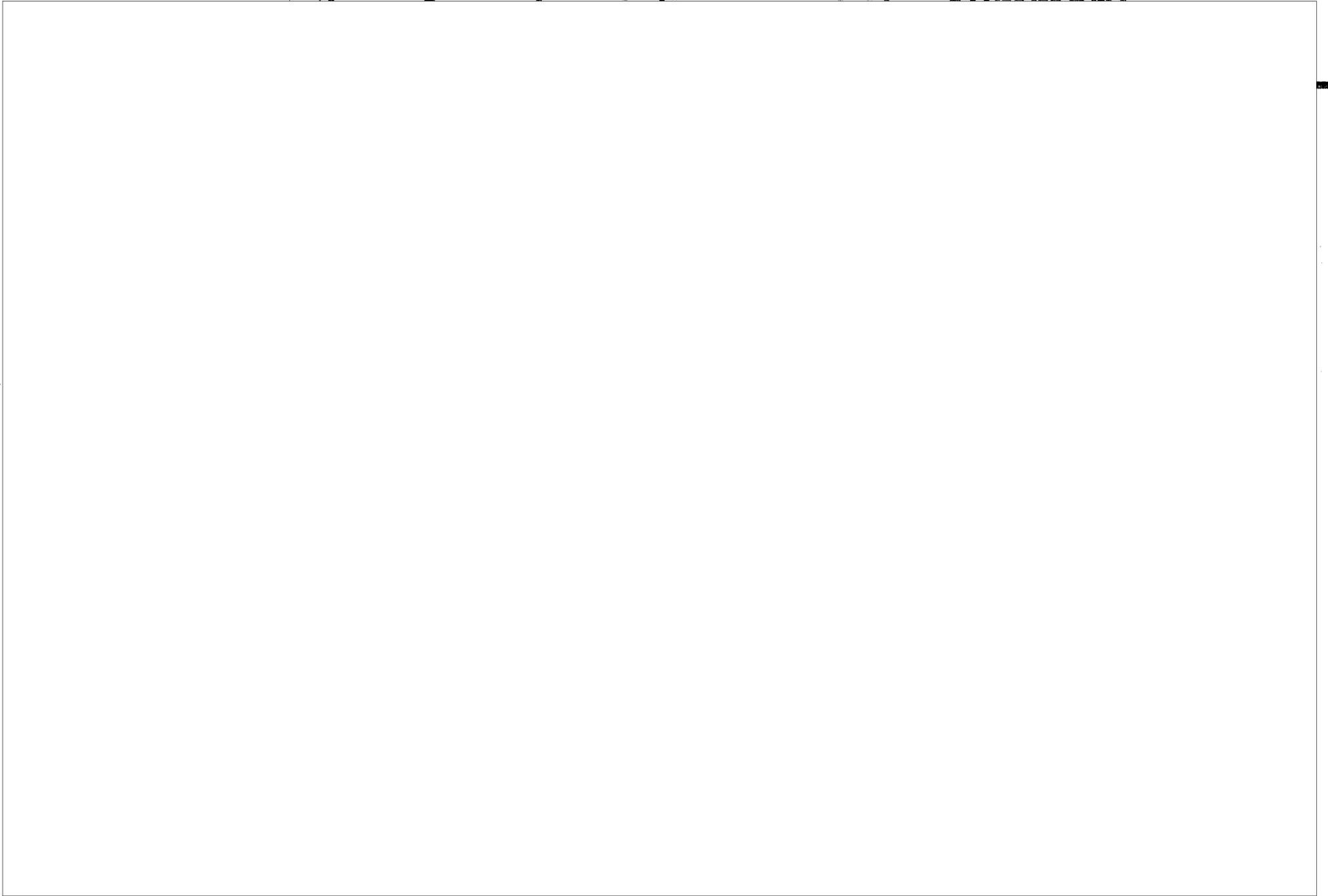
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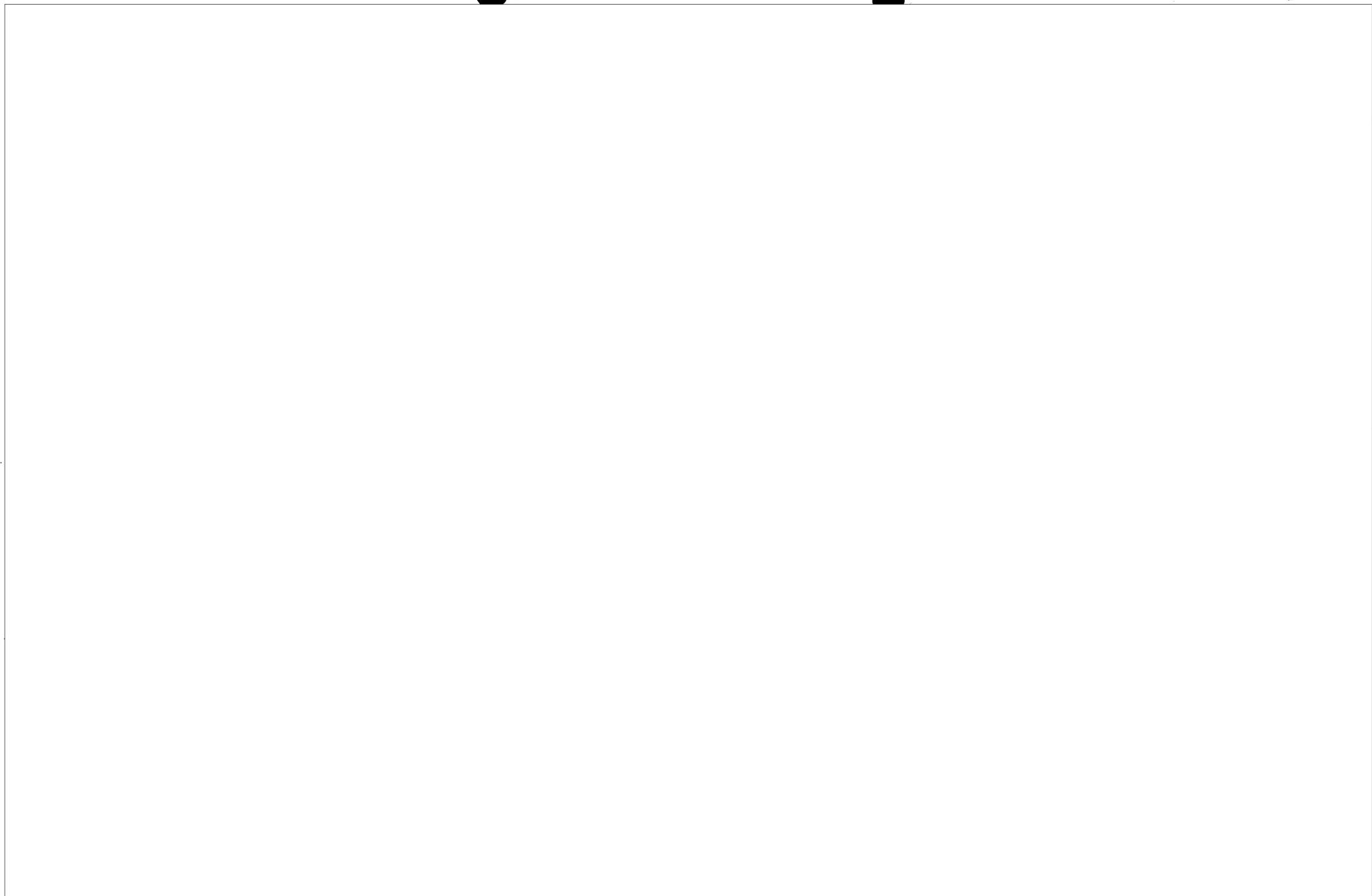


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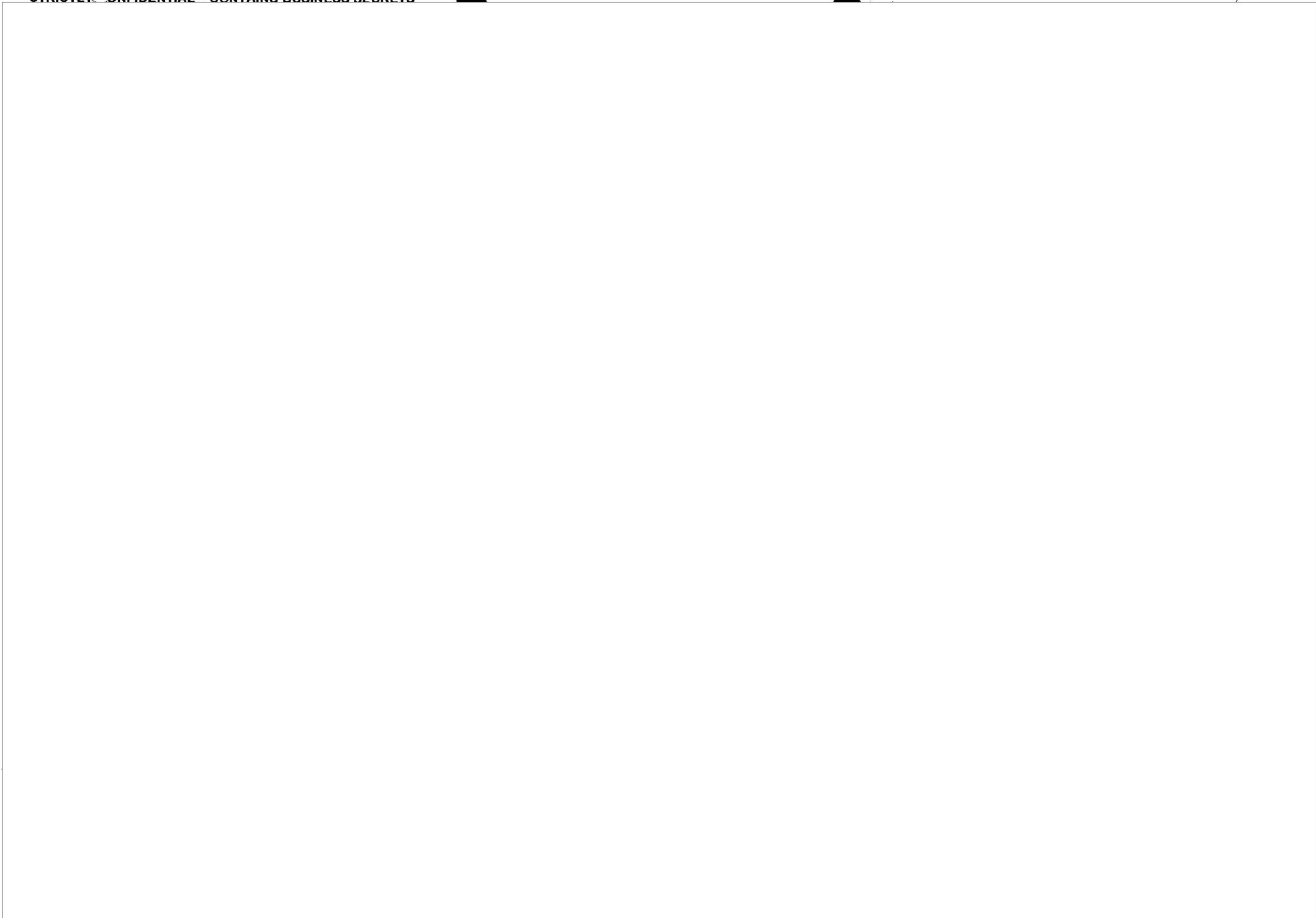
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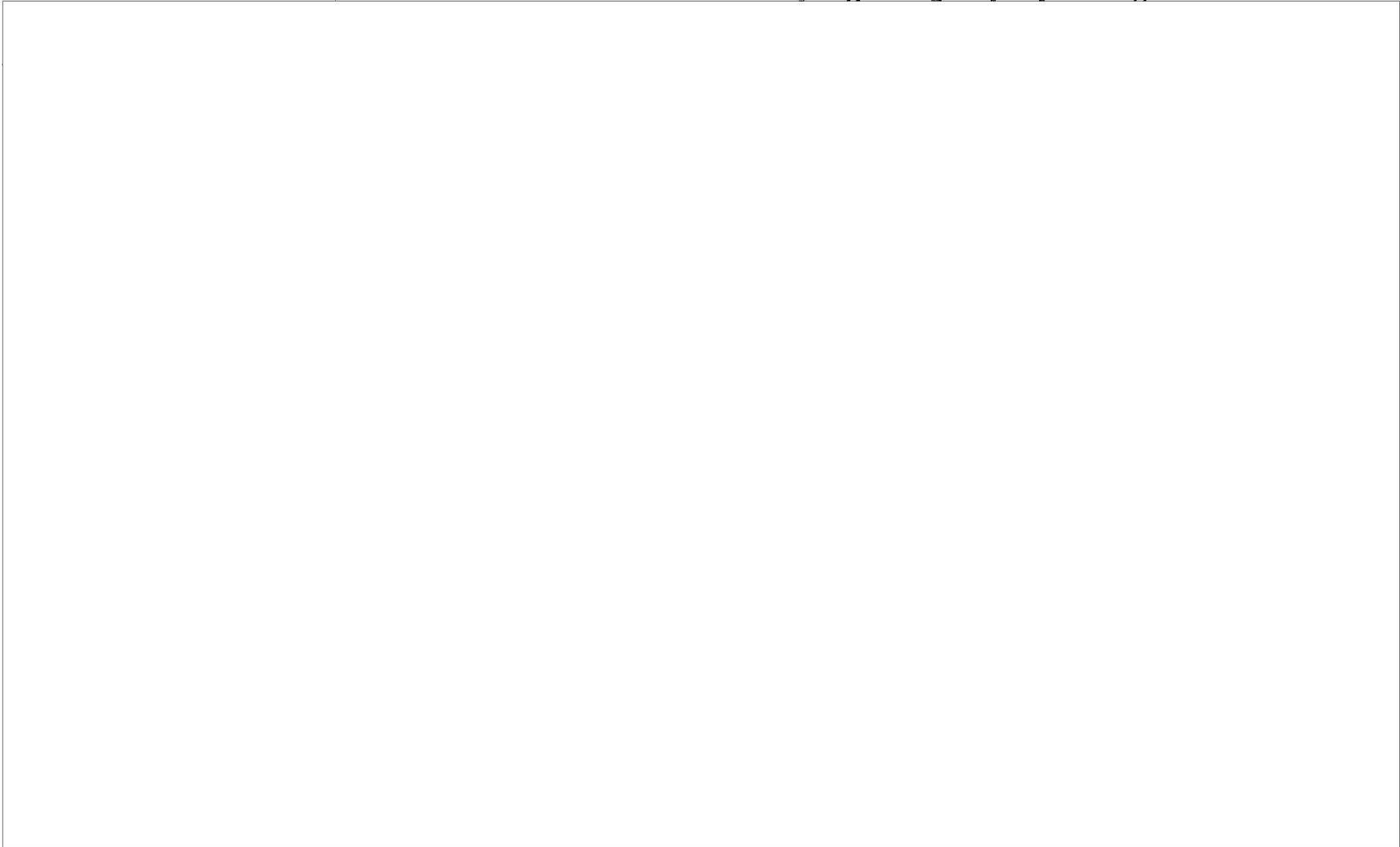
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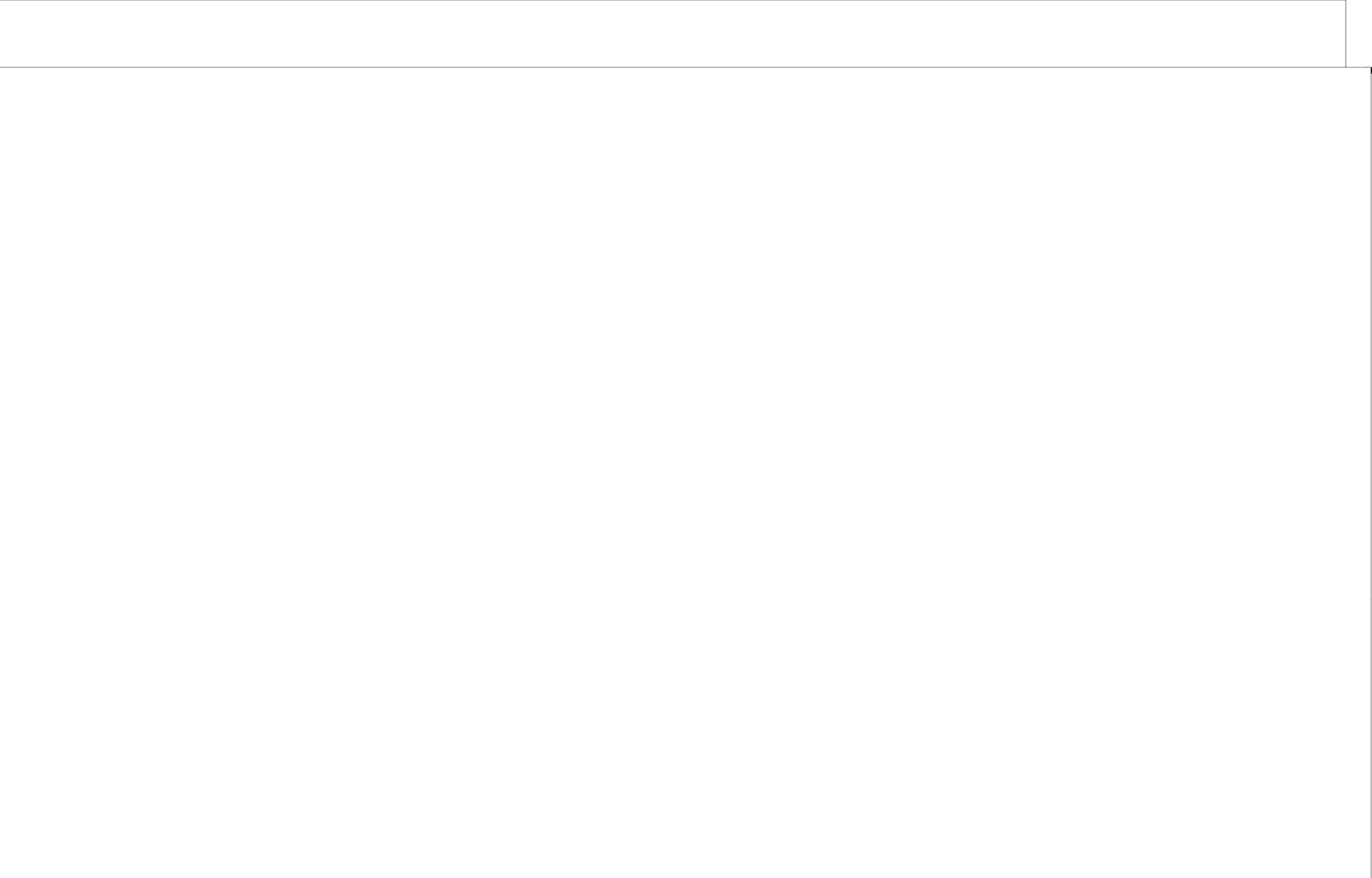


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[Redacted]
From: Adam Smith [Redacted]
Sent: 27 April 2012 09:47
To: OLDFIELD PAUL
Subject: Fwd: OFCOM request for information
Attachments: NC_Sky_UII_-_request_for_information_to_NC_03-02-2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 4 February 2011 17:08:45 GMT
To: [Redacted]
Subject: FW: OFCOM request for information

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3 February 2011



News Corporation
3 Thomas More Square
London
E98 1EX

STEVE UNGER
Partner: Strategy, Chief Economist
and Technology

Direct line:

Direct fax: 020 7981 3706



Dear Jeff,

News Corporation/BSkyB merger UILs – request for information

I am writing to request information in connection with Ofcom's assessment of the undertakings offered by News Corporation in lieu of a reference to the Competition Commission in respect of its proposed merger with British Sky Broadcasting plc ("BSkyB"). This request is made on an informal basis.

Background

On 27 January 2011, the Secretary of State asked the Office of Fair Trading ("the OFT") and Ofcom to advise him on the undertakings offered by News Corporation in lieu of a reference to the Competition Commission ("UILs") in relation to its proposed merger with BSkyB.

He asked the OFT under section 93 of the Enterprise Act 2002 for their views on the practical and financial viability of the proposals set out in the UILs, anticipating that the OFT might require Ofcom's assistance with this. The OFT has informed us that it does require assistance from Ofcom in light of its sectoral knowledge. He also asked Ofcom, in accordance with section 106B of the Act, for advice on the extent to which we think the UILs address the potential impact on media plurality identified in our report.

We are requesting information from you in order to inform this work.

Information requested

News Corporation is requested to provide Ofcom with the information specified in the annex. The specified information is requested to be provided in the manner and form specified, by sending it in electronic or hard copy format to Clive Carter or giving it to Clive Carter in person at: Ofcom, 2a Southwark Bridge Road, London, SE1 9HA. Please e-mail your response to clive.carter@ofcom.org.uk. Please provide the information by **midday on Monday 7 February 2011**.



Further information

If the questions we are asking do not capture any further information you consider of relevance to our work, please provide it.

Confidentiality

In the response please indicate out in a separate annex marked "Confidential information" any document or information which you consider to contain confidential information and supply a written explanation as to why it should be treated as such. You should also supply an edited paper and/or electronic version of the document or information or answer.

It is for Ofcom to determine whether or not the information is to be disclosed in accordance with Part 9 of the Enterprise Act 2002. Information provided will be disclosed to the OFT should we consider it relevant to their work.

Offences

I draw your attention to section 117 of the Enterprise Act 2002 (a copy of which is enclosed) which sets out the offences created by the Act in relation to the provision of false or misleading information to Ofcom in connection with its functions under Part 3 of the Act.

Yours sincerely,

[Redacted signature box]

Steve Unger

CC:

[Redacted CC list box]



Annex: Information request – News Corporation

A. Financial independence of Newco

1. Please specify the basis upon which you intend to calculate the “market rate” that you propose to be charged for the following revenue or cost items, explaining the basis for calculation if the charge is proposed to either above market rate (in terms of revenues) or below market rate (in terms of costs)
 - a. Carriage deal with Sky
 - b. Carriage deals with third parties
 - c. Sky Brand licence fee costs
 - d. Costs associated with land and building lease
 - e. Facilities and support costs
 - f. Broadcast & creative costs
 - g. Technology costs

2. Please provide detail on the proposed contractual terms for the following main revenue and cost agreements, with particular reference to the points below
 - a. Carriage agreement
 - i. How has the subscriber fee been calculated? Is it based on the total number of Sky subscribers, or on only those that have access to Sky News, or subscribers to a particular package sold to Sky customers? Is it based in any way on viewers on the DTT platform?
 - ii. To what extent would the carriage fee be affected by a fall in subscriber numbers? To what extent is the rise guaranteed as opposed to being dependant on specific market developments (e.g. rise in Sky HD subscribers)? Will there be a fixed fee component that would guarantee a minimum level of income, or some other form of minimum revenue guarantee?
 - iii. Would Newco be free to drop exclusivity on HD contractually? What would be the effect on total carriage revenue for Newco, under a non-exclusivity scenario, including possible other sources of revenue in your view e.g. third party carriage fees from other platforms?
 - iv. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered (e.g. new market / technical developments such as greater use of HD content on DTT, or 3DTV)?

 - b. Brand licensing agreement
 - i. How has the Brand licence fee of 5% been arrived at? How does this compare with similar market rates?
 - ii. What would be the rights and restrictions on the brand licensing agreement? Would it allow for example distribution of the Sky News channel on alternative platforms or to other platform operators internationally?
 - iii. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered?



- c. Ad sales agreement
 - i. What are the underlying assumptions made on the growth of TV advertising underpinning the assumptions on Newco advertising revenues?
 - ii. What would be the costs associated with the provision of ad sales services by Sky to Newco?
 - iii. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered?
 - d. Other revenues
 - i. What are the underlying assumptions (including volume assumptions) used in calculating revenue from other platforms including mobile TV and tablets?
 - ii. Please provide details in relation to the terms of the existing Sky News syndication agreements (duration, end date(s), including optional end-dates/options to extend, revenues associated) and assumptions used in the forward projection of syndication revenues in your model
3. Please provide details of any other anticipated limitation on Newco's ability to diversify future revenue sources, including but not limited to:
 - a. limitations to new contracts of wholesale news provision by Newco to third parties
 - b. limitations on international distribution of Sky News channel
 - c. limitations to content syndication
 - d. any non-compete agreements
 4. Please provide detail on the proposed terms for the following potential contracts between Newco and Sky:
 - a. Land and building lease (as identified in the UILs and in the slides sent to Ofcom on dated 2 February 2011)
 - b. Broadcast and creative services (as identified in slides to Ofcom)
 - c. Facilities and support costs ((as identified under the overall heading of overhead and corporate within slides to Ofcom)
 - d. Broadcast and technical services agreements (as identified in the UILs)
 - e. Production if there is any proposal for provision of services by Sky to Newco or use of Sky assets by Newco
 5. Please provide a detailed breakdown of the anticipated technology and production costs items (identified in slide 13 of the slides sent to Ofcom) for Newco, by
 - a. Payments to Sky, indicating the specific cost items
 - b. Payments to 3rd parties, indicating the specific cost items
 - c. Internal Newco costs, indicating the specific cost items
 6. Please provide details of platform access costs (for example, conditional access and EPG) for Newco access to Sky platform, and indicate which cost item they have been included in within the slides sent to Ofcom.
 7. Please provide the specific assumptions in relation to the projected marketing costs (included in the slides to Ofcom under 'overhead / corporate' on slide 10). How is it proposed to market the Newco service, and who will undertake this activity? What proportion of the total costs for marketing the Newco service will be funded by Newco itself as opposed to Sky?



8. How far are Sky News and Sky Sports News integrated today, and what barriers may there be in separating these out? What arrangements are going to be put in place for the sharing of assets and resources between Newco and Sky Sports News operations? What assets and resources are likely to be covered by these arrangements?
9. What will be the arbitration process for resolving any contractual disputes, related for example to contract variations or renegotiations?

B. Shareholding composition

10. Following the proposed share transfer, what would the structure of Newco shareholdings be, based on the current Sky shareholding structure? Which organisations would hold more than 1% of Newco shares, and what would their shareholding be?

C. Governance

11. Who would Chair the Newco Board? Would it be an independent director?
12. What would be the process to ratify the independence of Newco non-executive directors?
13. Would the Newco editor be a member of the Newco Board?
14. Would the Newco Board put in place specific arrangements to assume overall responsibility and accountability on editorial policies and decisions?
15. What would be the practical arrangements for appointment and removal of the editor and other senior editorial roles of Newco, as well as creation of new senior editorial roles in Newco?

[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:47
To: OLDFIELD PAUL
Subject: Fwd: <no subject>

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[redacted]>
Date: 5 February 2011 22:19:35 GMT
To: [redacted]
Subject: <no subject>

Ofcom BskyB bid data questioned
By Ben Fenton
Financial Times, 5 February 2011, p. 2

Opponents of News Corp's proposed bid for British Sky Broadcasting are using misleading figures to make the point that the combined company would have an overpowering position in the UK, a leading media figure said on Friday, writes Ben Fenton.

David Elstein, former chief executive of Channel 5 and before that, head of programming for BskyB, said numbers included in Ofcom's initial report on the bid showed the hypothetical merged company would hold a 23.7 per cent share of news consumption by UK adults, while the BBC held 43.5 per cent.

But he said that consumption of News Corp's UK newspapers should not be counted in the same way as TV news because much of what people read there was not news but features, puzzles or other material.

Revising those figures, and removing the services Sky News provides for independent radio stations and Channel 5, would leave the combined entity with 11.8 per cent and the BBC on 54.5 per cent, Mr Elstein said.

He was speaking at a seminar in London discussing the bid. There, lawyers agreed that the government's investigation of whether the takeover would reduce plurality - the diversity of voices in the UK media - below a sufficient level, would eventually be a subjective decision for politicians because there was no legal definition of "sufficiency".

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[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:50
To: OLDFIELD PAUL
Subject: Fwd: Response to OFT request for information
Attachments: CO-#13427570-v6-Response_to_OFT_questions_7_February.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmiche [redacted]>
Date: 8 February 2011 21:16:00 GMT
To: [redacted]
Subject: Fwd: Response to OFT request for information

See attached...let me know feedback...

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: [redacted]
Mob: [redacted]

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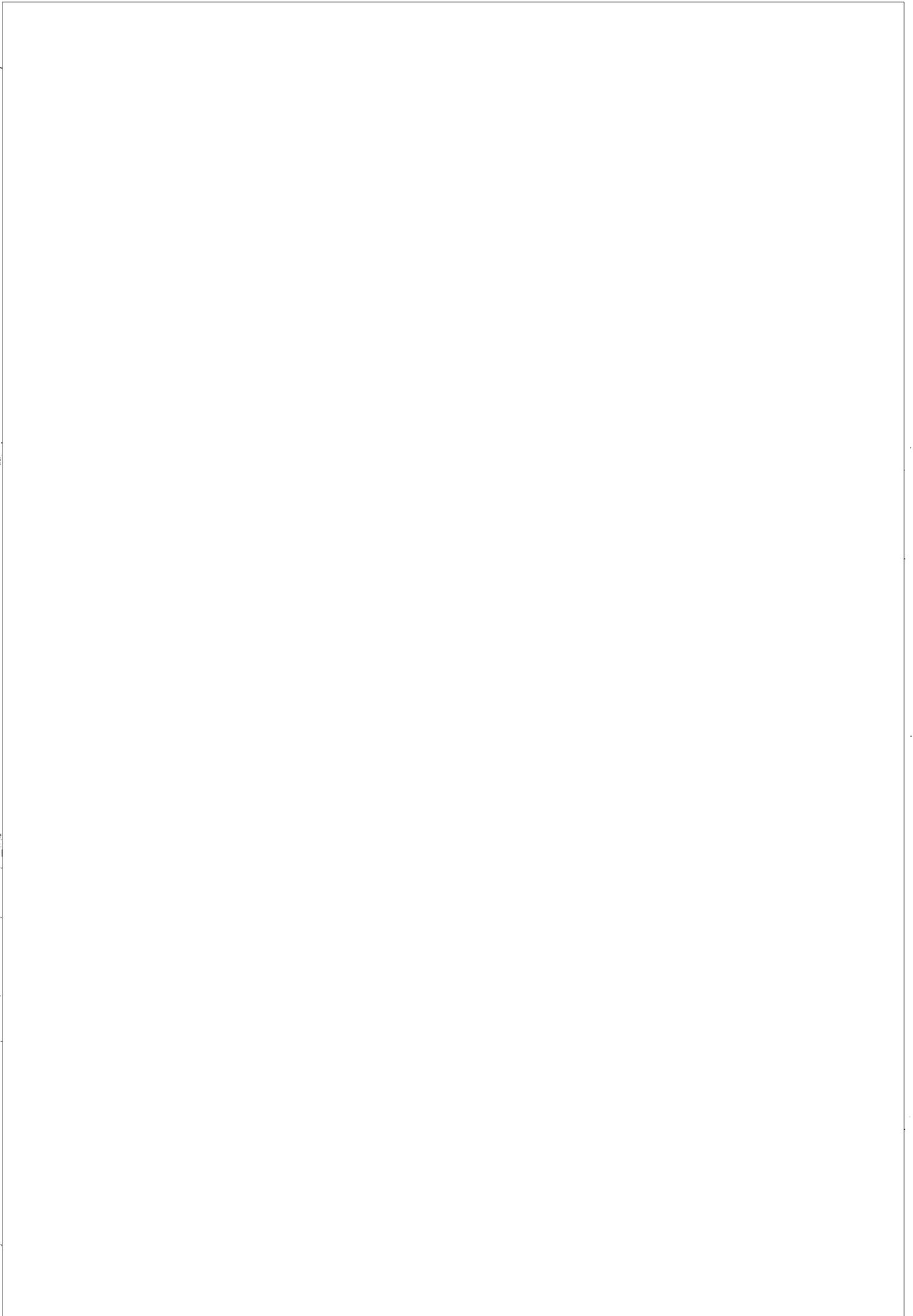
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[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:51
To: OLDFIELD PAUL
Subject: Fwd: News Corporation/BSkyB Merger UILs - letter from Steve Unger
Attachments: Letter to Jeff Palker 09.02.11.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 9 February 2011 17:35:51 GMT
To: [Redacted]
Subject: Fwd: News Corporation/BSkyB Merger UILs - letter from Steve Unger

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: [Redacted]
Mo: [Redacted]

From: Steve Unger [mailto:[Redacted]]
Sent: Wednesday, February 09, 2011 03:48 PM
To: [Redacted] (Newscorp)
Cc: [Redacted]
[Redacted]
Subject: News Corporation/BSkyB Merger UILs - letter from Steve Unger

Dear [Redacted]

Please find attached a letter from Steve Unger.

Yours sincerely

[Redacted Signature]

PA to Steve Unger, Group Head - SCET

[Redacted]

:: Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA



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9 February 2011

[Redacted]

News Corporation
3 Thomas More Square
London
E98 1EX

STEVE UNGER
Partner, Strategy, Chief Economist
and Technology

Direct line: [Redacted]
Direct fax: 020 7981 3706

steve.unger@ofcom.org.uk

Dear [Redacted]

News Corporation/BSkyB merger UILs

I am now writing to you with a number of issues which we consider to be central to our advice as requested by the Secretary of State on the extent to which we think the UILs address the potential impact on media plurality identified in our report.

In that context, we have considered News Corporation's various responses to the information requests from the OFT and Ofcom, including the latest response to the OFT's questions dated 7 February 2011.

Having carefully considered the proposed UILs and your responses, we remain concerned about the extent to which the proposed UILs address the impact on media plurality as identified in our report.

In meeting those concerns, it is our view that the proposed UILs need to include:

1. The board of Newco to consist of a majority of independent directors. "Independent directors" being directors which have no other News Corporation or News Corporation associated interest;
2. We would expect the board of Newco, including the independent non executive directors, to have a combination of both senior editorial and business experience/expertise;
3. The Chairman of Newco be an independent non executive;
4. The creation of a sub-committee of the board of Newco to deal with editorial matters ("the Board Editorial Committee"):
 - i) Members of the Board Editorial Committee to contain a majority of independent non executive board members, one of whom is the Chair of the Board Editorial



Committee. We would expect the Chair to have senior editorial experience and expertise.

ii) We would expect the terms of reference for the Board Editorial Committee to include:

- the editorial independence and integrity of Sky News
- the hiring, firing or replacement of the Sky News Editor and all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal)
- any changes to the authority, reporting relationship and consultation rights of the Sky News Editor

Please note that in the context of assisting the OFT with its advice to the Secretary of State there are a number of other issues which we consider to be significant which we understand the OFT are intending to address with you and this letter does not therefore cover any of these issues.

As you know the Secretary of State has requested our advice by Friday 11 February. We therefore need a response from you by midday tomorrow. We would be happy to meet to discuss these matters at any time if that would be useful.

Yours sincerely

A rectangular box with a thin black border, used to redact the signature of Steve Unger.

Steve Unger

CC:

A rectangular box with a thin black border, used to redact the list of recipients for the carbon copy (CC).

[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:51
To: OLDFIELD PAUL
Subject: Fwd: Restricted - News / Sky - letter on key points re UIL from OFT
Attachments: Restricted - News - Sky - letter on key points 9 January 2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmiche [Redacted]>
Date: 9 February 2011 17:36:58 GMT
To: [Redacted]
Subject: Fwd: Restricted - News / Sky - letter on key points re UIL from OFT

From: Nathan Hinchliffe [mailto:[Redacted]]
Sent: 09 February 2011 03:58 PM
To: [Redacted]
Cc: [Redacted]
Subject: Restricted - News / Sky - letter on key points re UIL from OFT
Importance: High
Sensitivity: Confidential

Dear [Redacted]

Please find attached a letter from Sheldon Mills:

Thanks

[Redacted]

[Redacted] Admin
Support to the Mergers Branch | Mergers | Office of Fair Trading |
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T:
[Redacted] F: 020 7211 8505

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OFFICE OF FAIR TRADING

[Redacted]

Allen & Overy LLP
By email

cc. Steve Unger, Ofcom

Your ref [Redacted]

Direct line [Redacted]

Our ref [Redacted]

Fax (020) 7211 8916

Date 9 February 2011

Email [Redacted]

Dear [Redacted]

Proposed acquisition of B SkyB by News Corp

I refer to the proposed undertakings in lieu (UIL) offered by News Corporation (News) to the Secretary of State in relation to the above matter, as well as your responses to our questions of 1 February and 7 February.

The OFT has considered carefully your responses to both sets of questions in terms of determining what advice it should provide to the Secretary of State under section 93 Enterprise Act 2002 (EA 02) in particular as to whether the UIL would be practically and financially viable and effective over the medium and long term.

Given the limited time remaining in which the OFT is required to report back to the Secretary of State, the OFT does not propose to engage in a detailed consideration of revised wording for the UIL. However, the OFT believes it is appropriate at this point for it to identify to News a number of key areas where the OFT has concerns that the UIL may not be practically and financially viable over the medium and long term.



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1. Absence of a non-reacquisition obligation

Firstly, the OFT is concerned at the lack of a non-reacquisition clause in the UIL. In your response to the OFT questions of 7 February (paragraph 2.16), you gave the following reasons why you believed that such an obligation was not justified:

- (i) the proposed UIL seeks to preserve the status quo including all the regulatory protections provided for by the EA 02;
- (ii) an outright ban on future acquisitions of shares would go beyond what is necessary to protect the sufficiency of plurality, creating a discriminatory and unjustifiable regulatory asymmetry against News;
- (iii) this case must be distinguished from the ordinary example of a merger where there is a competition issue for two reasons: (i) News already has a 39.14 per cent shareholding in Sky; and (ii) there would be no competition issue raised by the Transaction so that protections ordinarily needed to preserve the commercial freedom of a fully independent competing business need not apply; and
- (iv) any further acquisition of NewCo shares by News would lead to a "relevant merger situation" with consequent statutory regulatory approvals under the EA 02.

In relation to each of these points in turn:

- (i) in a very literal sense, UIL normally involve a change to the status quo, in so far as they normally contain a non-reacquisition obligation which was not present previously; in relation to the EA 02 situation, see (iv) below;
- (ii) the OFT's concern about reacquisition is based on the practical viability of the UIL over the medium and long term, not on the protection of plurality;
- (iii) neither of the factors that News uses to distinguish this case from the ordinary example of a merger where there is a competition issue are meaningful; the fact that News already has a shareholding in Sky is irrelevant: the non-reacquisition obligation would take account of that fact; the fact that there are no competition issues does not mean that the UIL do not need to be practically viable over the medium and long term in order to operate to protect plurality; and

(iv) the existence of jurisdiction under the EA 02 (in particular given the share of supply test) would frequently be the case in relation to competition UIL; this does not obviate the need for a non-reacquisition clause.

The OFT would also note that News' response ignores the practical justification for such a restriction. A key reason why such restrictions are inserted as 'standard' obligations in UILs is to prevent the improper use of public resources on a repeated public investigation. The OFT sees no reason why this reason is not applicable here. In other words, the obligation would be intended to prevent a further public investigation into the acquisition by News of the business that it has divested (in this case, spun-off). It is clear to the OFT that the absence of a non-reacquisition obligation is a practical issue that could undermine the operation of the UIL in the event of an attempt by News to re-acquire Sky News after the UIL have been accepted. The OFT notes in this respect that the Secretary of State has asked the OFT whether the UIL would be effective over the 'medium and long term'.

As News will be aware, such clauses are normally drafted as being 'subject to OFT prior written consent'. To the extent that News wished in the future to increase its shareholding in Newco, it would therefore be free to seek OFT approval to do so on the basis that there had been a change in circumstances meriting a waiver of the obligation.

Please confirm whether News' final position remains that it would not be willing to provide any form of non-reacquisition obligation in the UIL.

2. Non termination of the carriage and brand licensing agreement

Secondly, the OFT has concerns at the absence of any ongoing commitment to the Secretary of State in relation to the continued performance of News' obligations under the carriage agreement and brand licensing agreement foreshadowed respectively in paragraphs 4.3 and 4.5 of the UIL.

In your response to the OFT questions of 7 February (paragraph 2.16), you gave a number of reasons why you believed that such an obligation was unnecessary:

- (i) there is no reason to believe that NewCo would not be in a position to enforce its contractual rights;

- (ii) News is prepared to commit to a more specific dispute resolution mechanism if the OFT considers that an ad hoc mechanism is needed;
- (iii) these mechanisms will be more than sufficient to enable NewCo to protect its own interests; and
- (iv) News does not believe that it would be appropriate for the OFT to have an ongoing monitoring role in this context where there is every reason to believe that News' compliance with its contractual commitments will be effectively self-policing.

The OFT understands these arguments. The OFT considers that a dispute resolution mechanism would be important in the UIL in order to facilitate resolution of contractual disagreements. However, these arguments do not detract from the essential proposition that the ongoing practical and financial viability of Newco is dependent on the carriage and brand licensing agreements with News. The OFT therefore considers that it would be appropriate to ensure the performance of those agreements for the period contemplated in the UIL. Specifically:

- (i) in comparison to News, Newco would be a small business with limited resource to engage in an extended dispute with News; given the importance of the carriage and brand licensing agreement to the UIL, the OFT believes it is questionable whether it would be sufficient for the success of the UIL to rest solely on Newco's ability to enforce its contractual rights; and
- (ii) although the OFT understands the point about News' ongoing incentives as regards Sky News, it is clearly impossible to guarantee that such incentives would not change in the future; here again, it may be appropriate to 'insure' against a change in News' incentives going forward.

The OFT therefore believes that it may advise the Secretary of State that it is appropriate – in this particular case – to require News to undertake to him that it would not terminate the carriage agreement or the brand licensing agreement without prior OFT consent (to be given only in the event of a material breach that could not be cured).

The OFT notes that, in the context of a first phase remedy in lieu of a detailed investigation, it would need to be confident about the success of the UIL. The OFT would note also that, given News' submissions on its incentives as regards Sky News, we do not

understand why News would be unwilling to provide such an undertaking. For the same reason, the OFT would also envisage that any monitoring obligation on the OFT would be minimal.

Please confirm whether News' final position remains that it would not be willing to provide any form of non-termination undertaking in relation to the carriage agreement and brand licensing agreement in the UIL.

3. Absence of interim protection regarding Sky News

The OFT notes that the UIL do not contain any interim protection in relation to the Sky News business pending spin-off in the event that the offer is not recommended.

News argued in its response to the OFT questions of 1 February that no such protection was required because there was no risk of a loss of plurality in the short term and there was no risk of News inflicting long-term damage on the Sky News business given that they would not be competing post spin-off (paragraph 11.2).

The OFT's concern in this regard is not in relation to an interim impact on media plurality. The OFT's concern focuses on the fact that, notwithstanding News' contention that it would not be competing with Sky News post spin-off, this contention is wholly reliant on the assertion that News' incentives are to preserve Sky News and that it does not have any incentive to frustrate the intended outcome of the UIL.

The OFT considers that it may be appropriate for News to provide undertakings as to the preservation and continued operation of Sky News pending its spin-off in order to provide an assurance that the Sky News business to be spun-off will not be materially different to the Sky News business today. Such an assurance would be in similar terms to those typically provided in UIL.

The OFT would note also that, given News' submissions on its incentives as regards Sky News, the OFT does not understand why News would be unwilling to provide such an undertaking.

Please confirm whether News' final position remains that it would not be willing in the UIL to commit to any form of interim protection in relation to the Sky News business pending spin-off.

4. Finite duration of the carriage agreement and brand licensing agreement

The OFT notes the finite duration of the carriage agreement and brand licensing agreement, on which Newco is dependent for its ongoing financial viability. The OFT has been asked to advise the Secretary of State on whether there are practical issues which could undermine the effective operation of the UIL, and whether the UIL would be effective in the medium and long term. Given the dependence of Newco on the carriage agreement for the majority of its revenue, the OFT has concerns that the UIL offered do not propose any mechanism for ensuring the viability of Newco beyond ten years.

News provided an explanation in response to the OFT's questions of 1 February as to why it believed that the UIL were clear-cut, notwithstanding the finite duration of the carriage agreement and brand licensing agreement (paragraph 14.1.1). However, News' response does not engage substantively with the question of how Newco would expect to derive its principal revenue stream once the carriage agreement (at ten years duration) has ended.

Please provide any further representations on the medium and long term viability of the UIL given the finite duration of the carriage agreement and brand licensing agreement or alternatively any further proposals to ensure the viability of Newco over the medium and long term.

I would be grateful for a response on these points by midday tomorrow. Equally, I would be happy to discuss with you, and News, by telephone today.

Yours sincerely



Sheldon Mills
Director, Mergers

[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:52
To: OLDFIELD PAUL
Subject: Fwd: Letter sent to Ofcom
Attachments: DOC110211.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmiche [redacted]>
Date: 11 February 2011 13:27:18 GMT
To: [redacted]
Subject: FW: Letter sent to Ofcom

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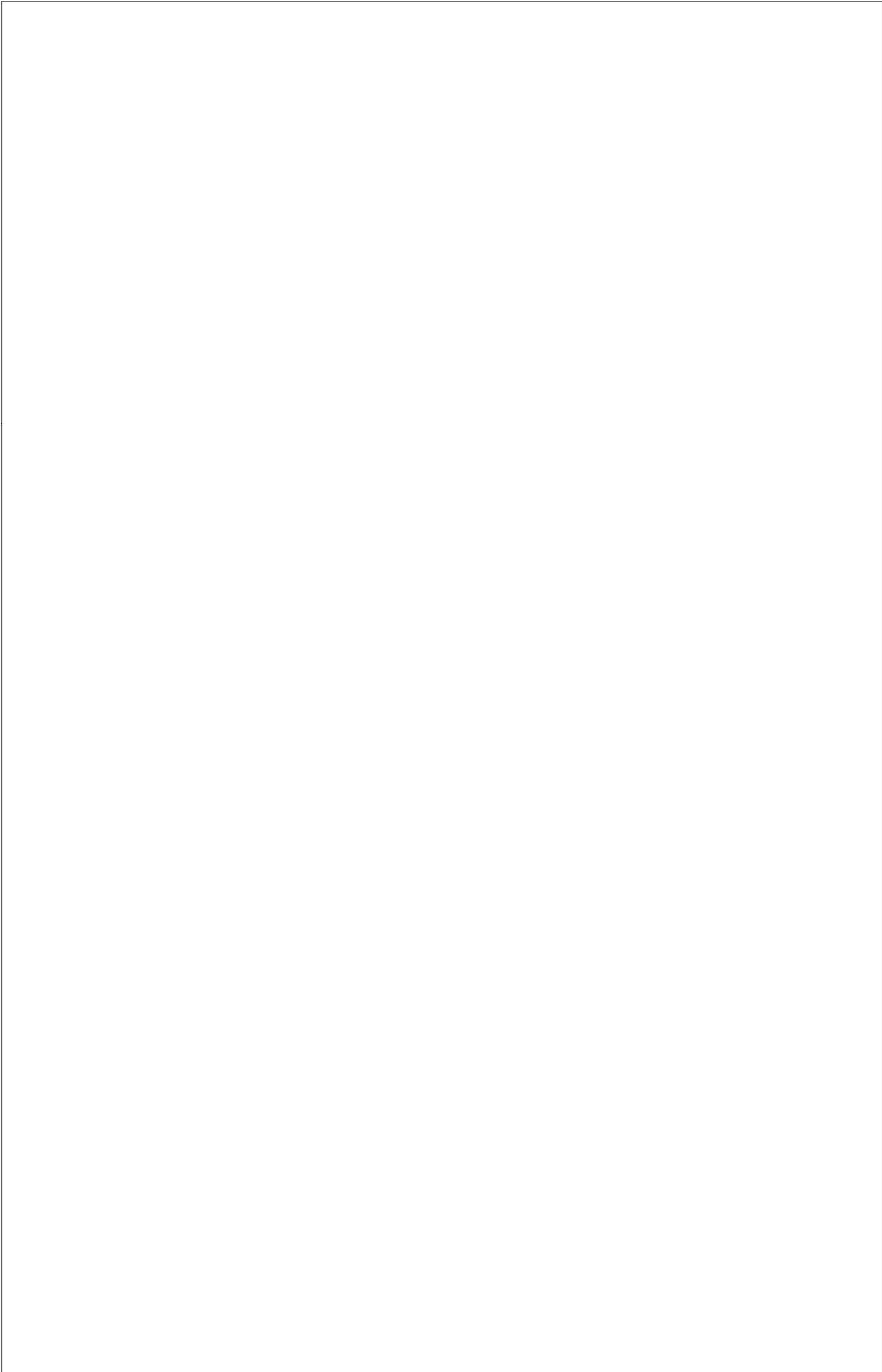
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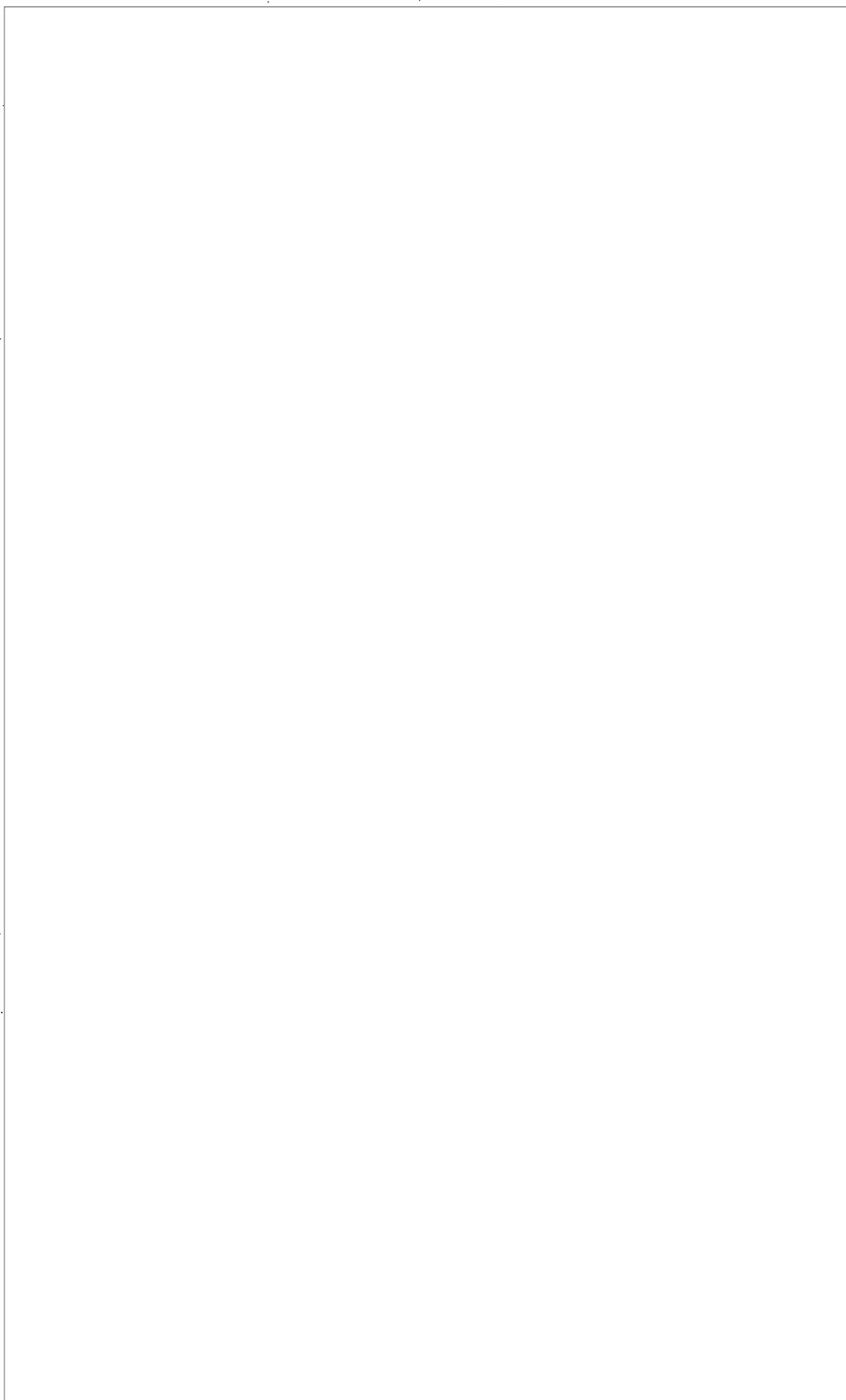




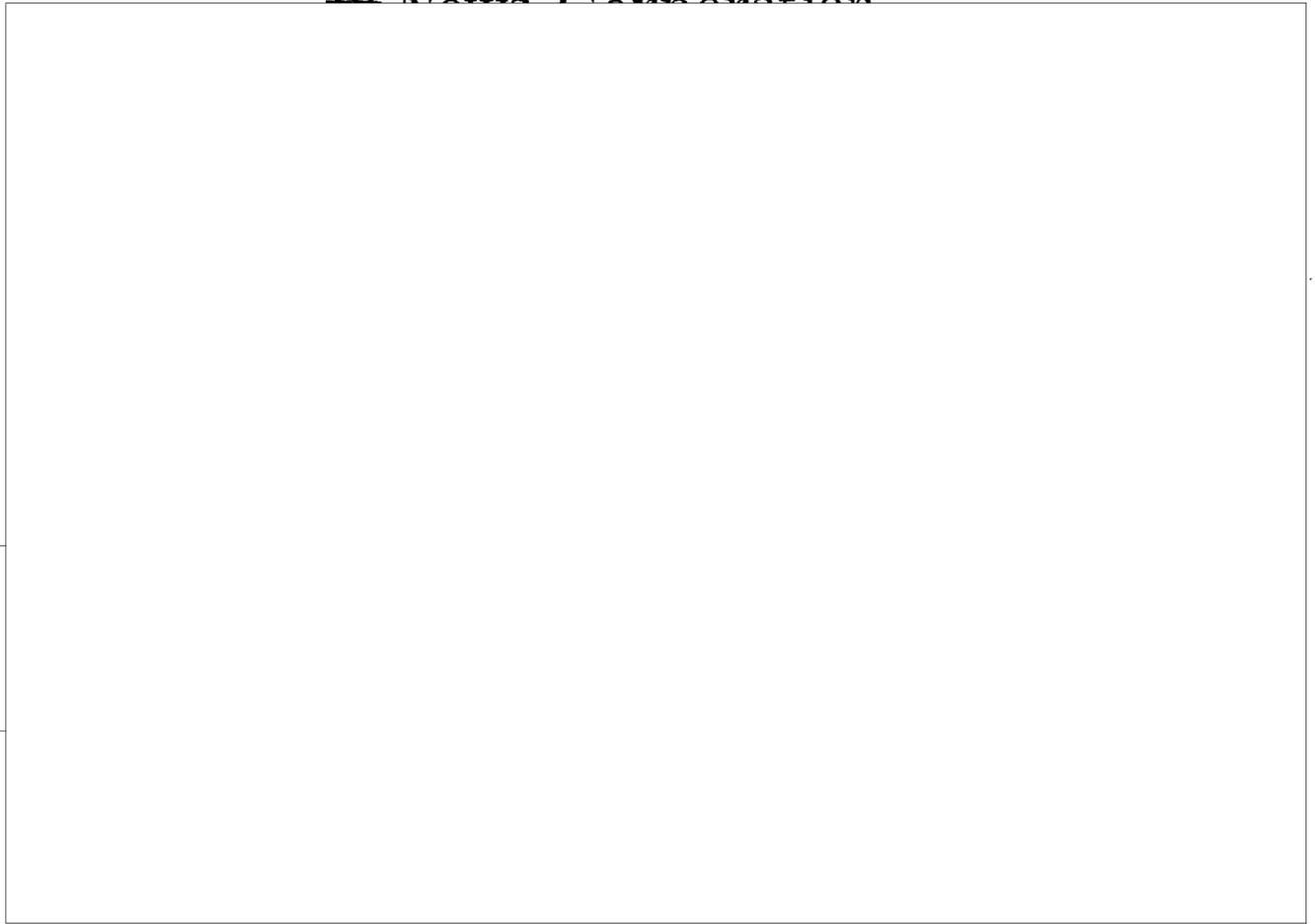
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 News Corporation



 News Corporation



[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:53
To: OLDFIELD PAUL
Subject: Fwd: UIL: OFT and OFCOM
Attachments: Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - cover letter to News covering questions 21 February 2011.pdf; ATT00001..htm; PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - questions for News 21 February 2011.pdf; ATT00002..htm; Ofcom_letter_to_News_Corporation_21_Feb_2011.pdf; ATT00003..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 22 February 2011 08:45:35 GMT
To: [Redacted]
Subject: FW: UIL: OFT and OFCOM

This arrived late last night. We are looking into it.

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OFFICE OF FAIR TRADING

[Redacted]
Allen & Overy LLP

Cc Steve Unger, Ofcom

Cc [Redacted]

Your ref [Redacted]

Our ref

Date 21 February 2011

Direct line [Redacted]

Fax [Redacted]

Email [Redacted]

Dear [Redacted]

News / BSkyB

[Large redacted area]



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PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

QUESTIONS RE REVISED UNDERTAKINGS IN LIEU PROPOSAL

21 FEBRUARY 2011



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[redacted]

From: Adam Smith [redacted]
Sent: 27 April 2012 09:53
To: OLDFIELD PAUL
Subject: Fwd: UIL: Ofcom and OFT responses
Attachments: CO-#13505572-v6-Response_to_OFT_questions_of_21_February_2011.pdf; ATT00001..htm; CO-#13506201-v1-Second_Revised_Draft UIL.pdf; ATT00002..htm; CO-#13505573-v4-Response_to_Ofcom_questions_of_21_February_2011.pdf; ATT00003..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[redacted]>
Date: 22 February 2011 23:25:46 GMT
To: [redacted]
Subject: UIL: Ofcom and OFT responses

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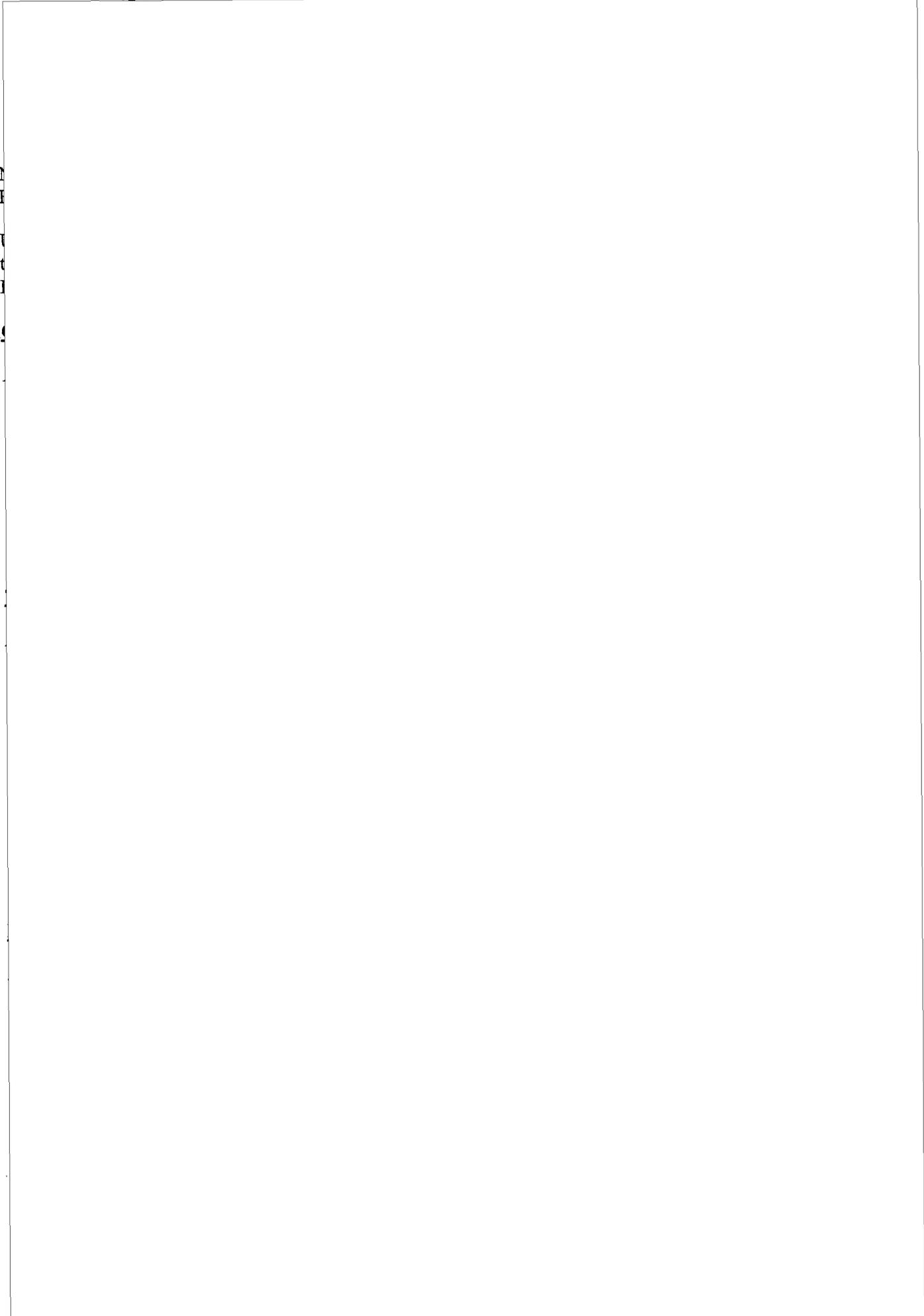
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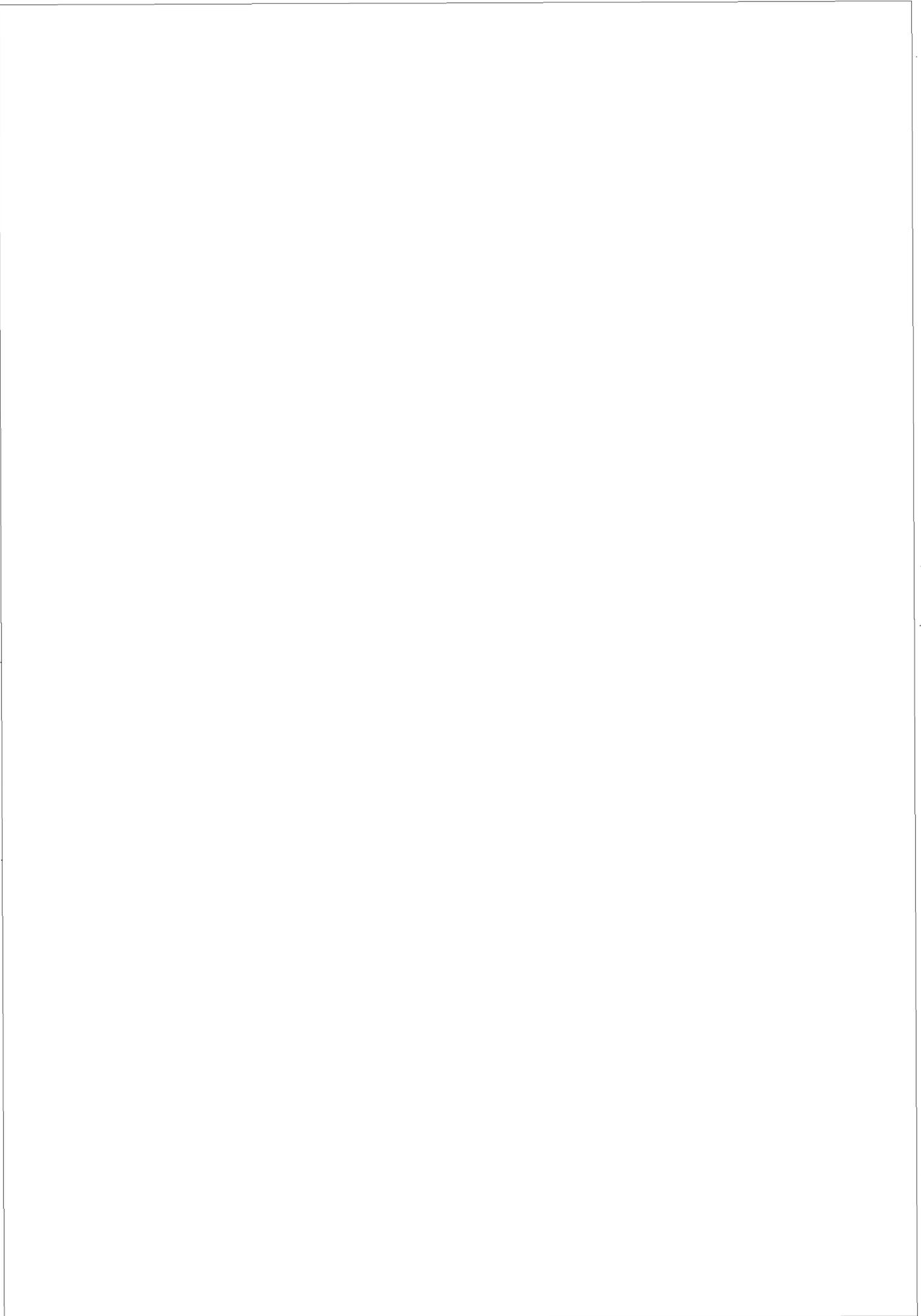
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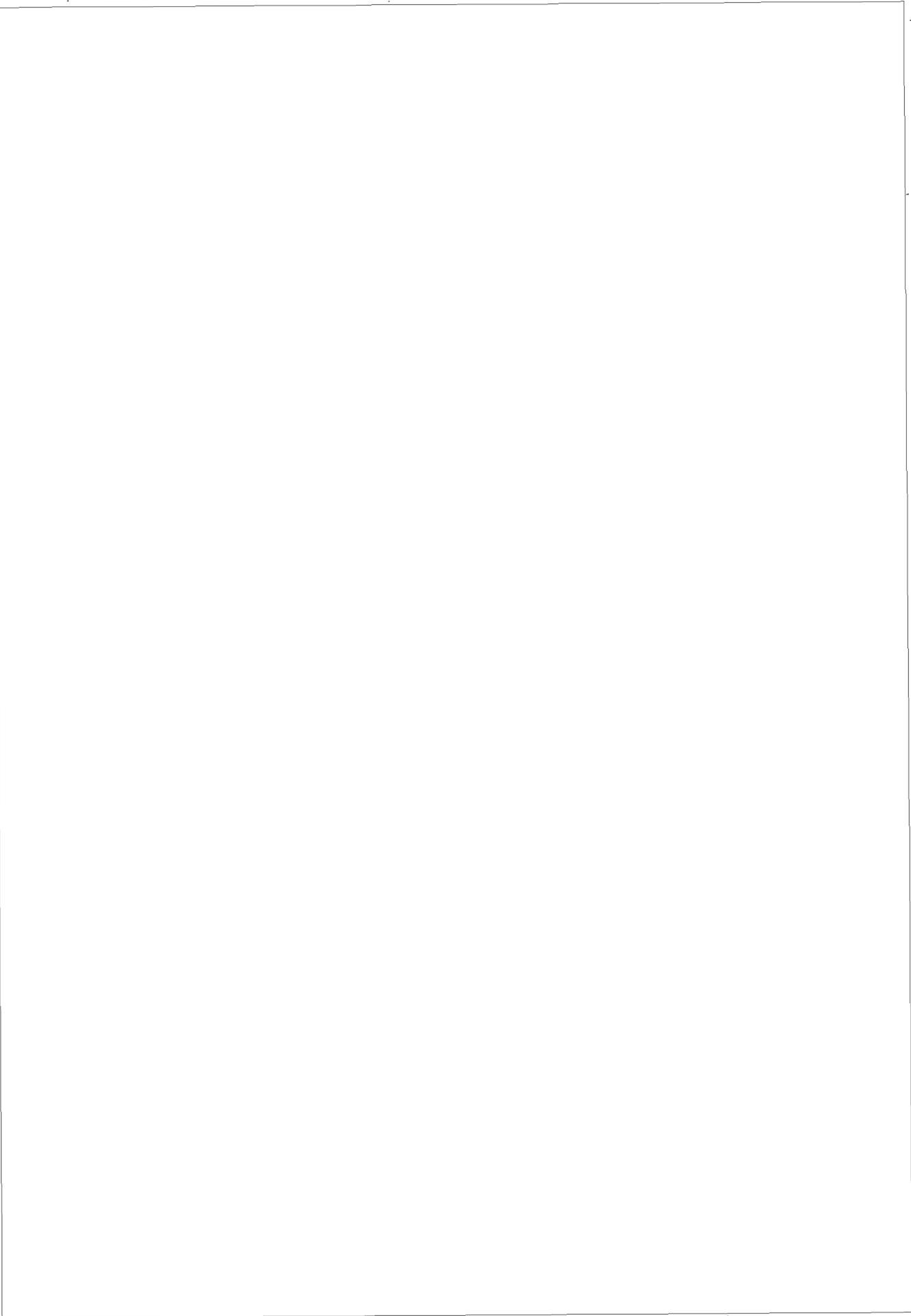
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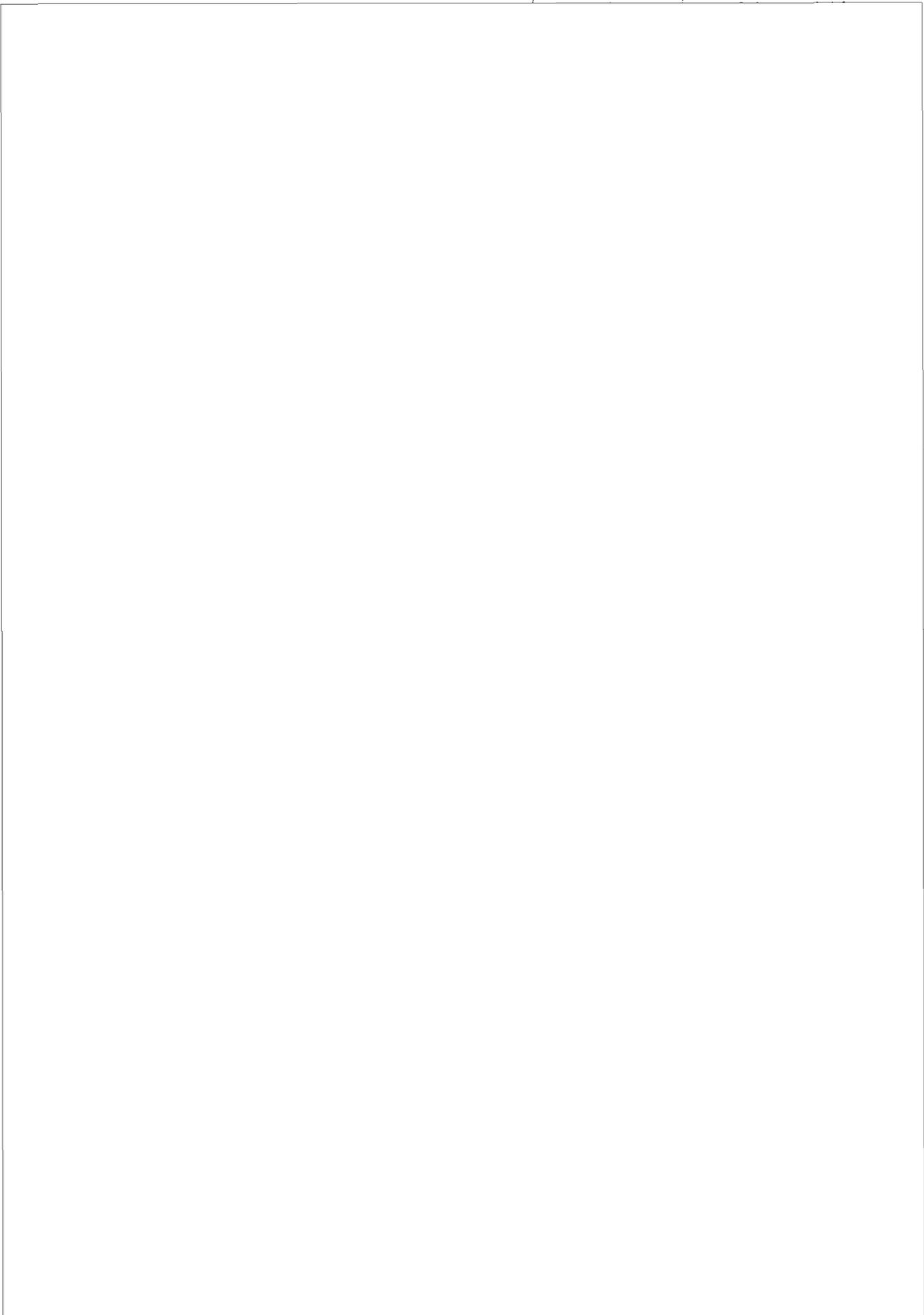
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consistent with the business plan. News notes in any event that given News' response to question 9

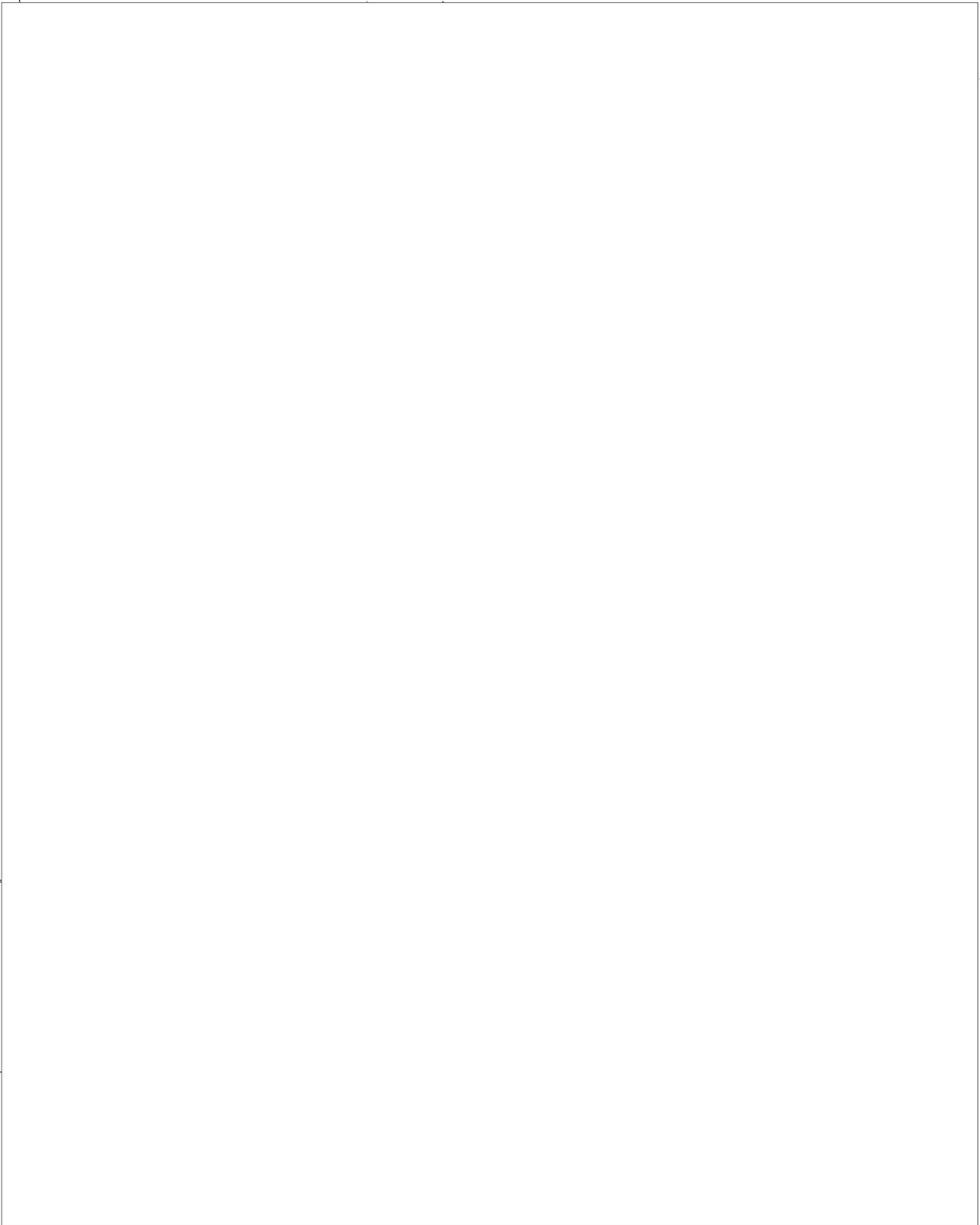




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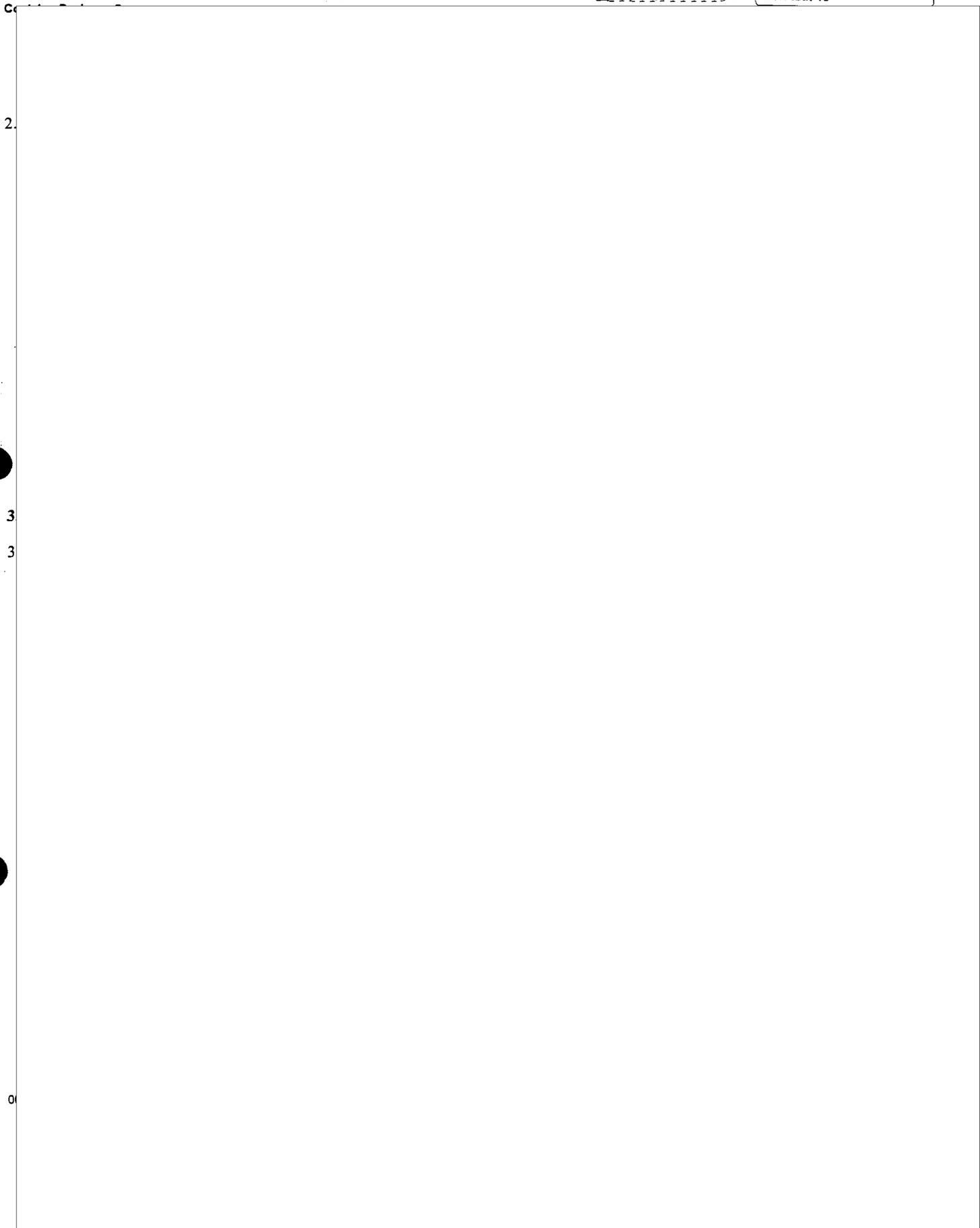
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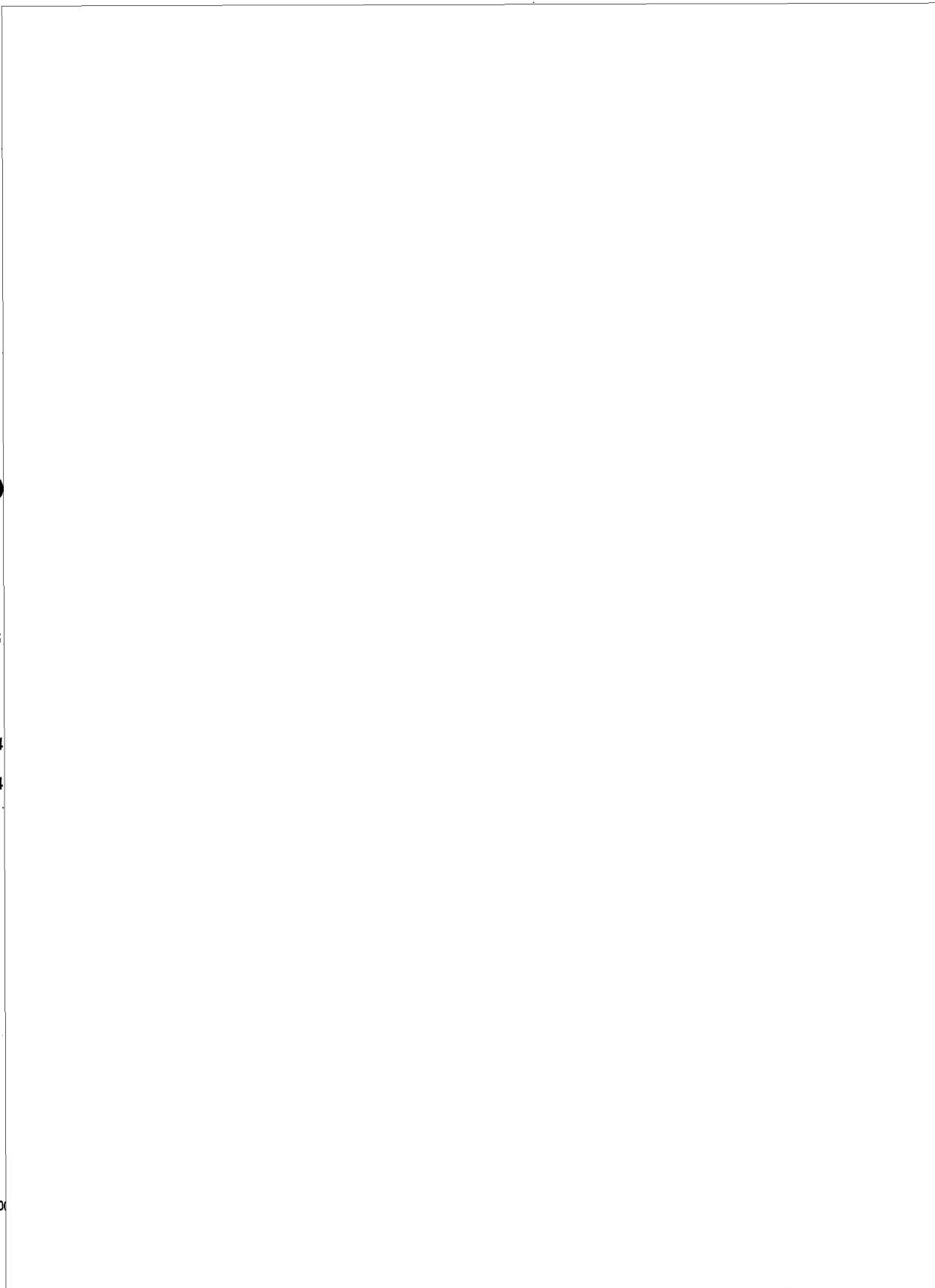
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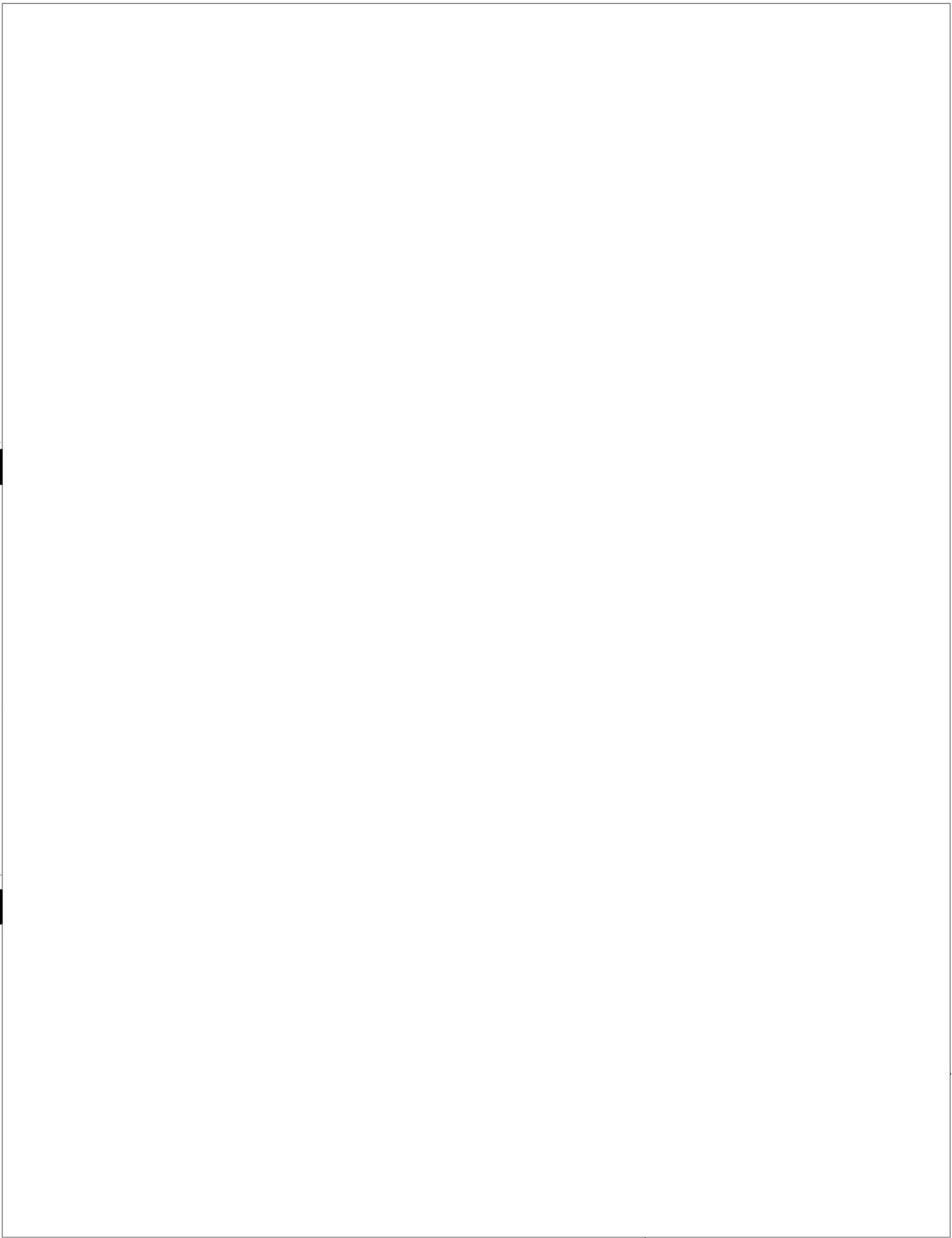
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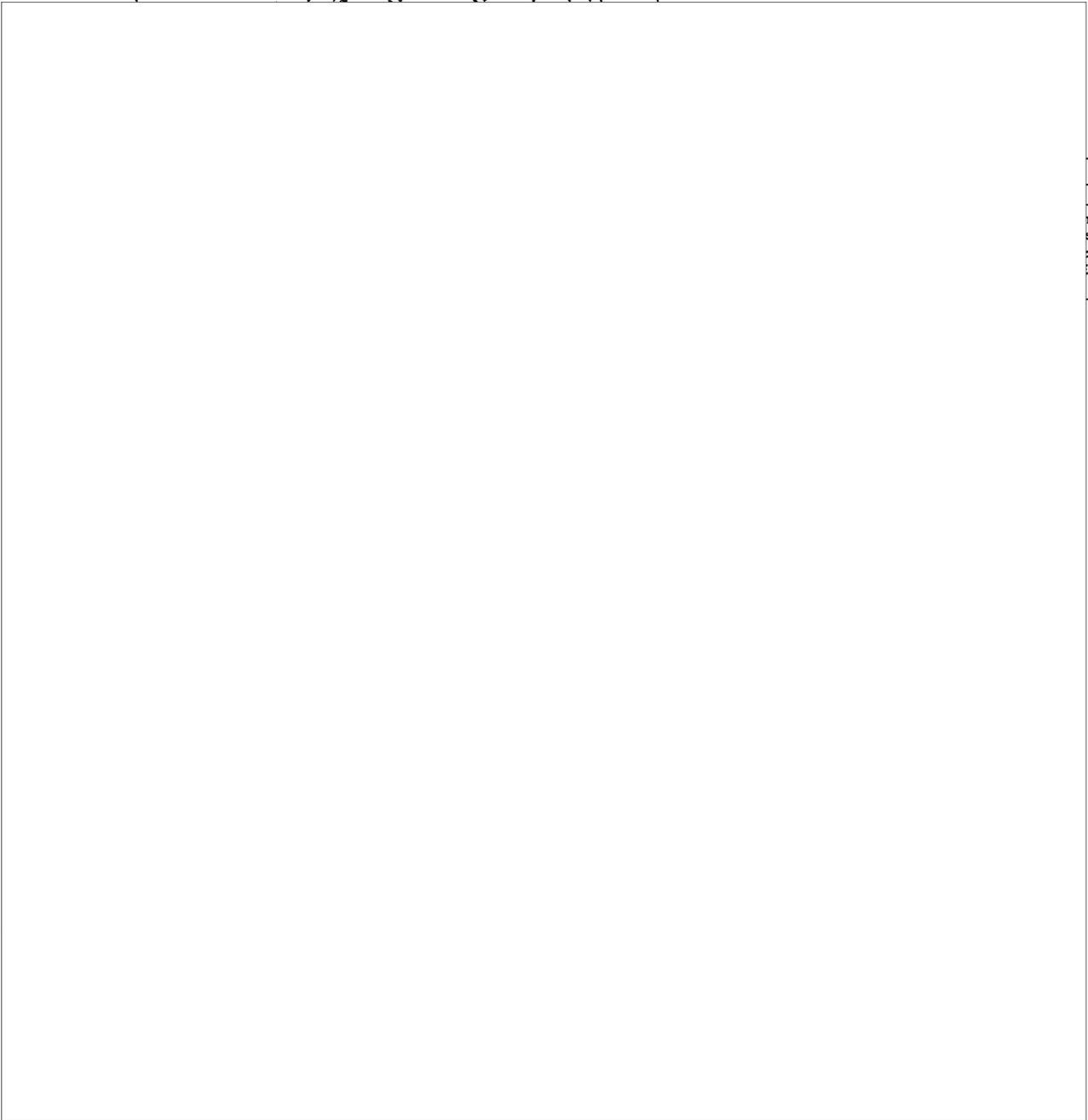
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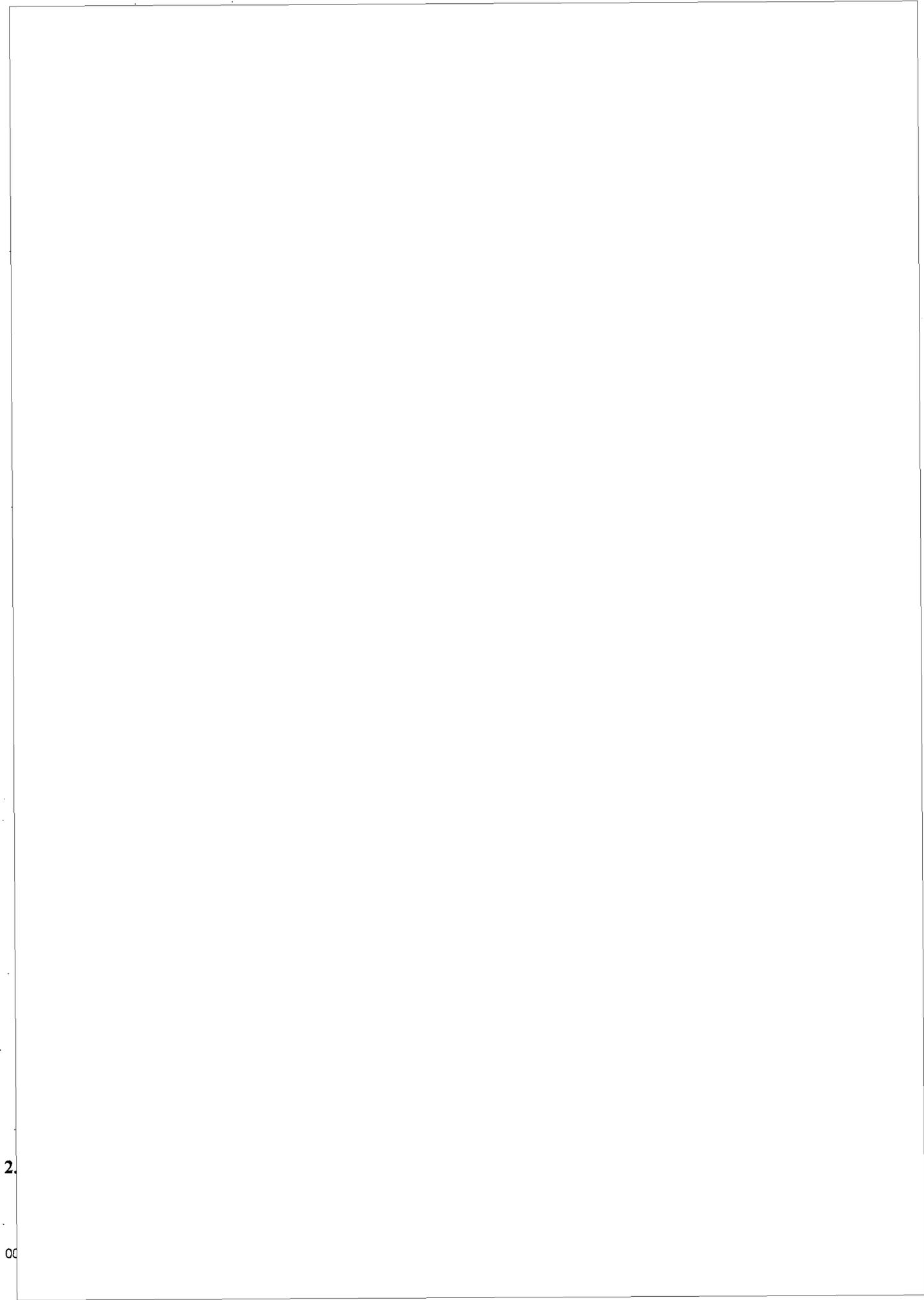
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From: Adam Smith [redacted]
Sent: 27 April 2012 09:54
To: OLDFIELD PAUL
Subject: Fwd: Follow-up from this afternoon's call

Begin forwarded message:

From: "Michel, Frederic" <fmiche[redacted]>
Date: 23 February 2011 21:59:18 GMT
To: [redacted]
Subject: FW: Follow-up from this afternoon's call

From: Steve Unger [redacted]
Date: 23 February 2011 09:19:41 PM GMT
To: [redacted]
Cc: [redacted]

Subject: Follow-up from this afternoon's call

Dear [redacted]

Thank you for your time today and hopefully we are progressing towards agreement.

As we discussed earlier today, there are still some differences between us. I understand that the OFT is coming back to you on the issues discussed on our later call. This email follows on from our earlier discussion in respect of the establishment of an editorial committee of the Newco Board.

We proposed that in order to meet our concerns on plurality there should be a transparent mechanism in place to ensure that the editorial integrity and independence of Sky News is at the heart of Newco's Board's interests. We proposed that an editorial committee of the Board should be established with a majority of independent non executive directors, one of whom is the Chairman of the Board Editorial Committee. We expected the Chairman to have senior editorial experience and expertise. We also indicated what we

would expect to be included in the terms of reference for the Board Editorial Committee.

Your counter proposal was for a Governance and Nominations Committee to be established that would:

- (a) comprise a majority of members who are Independent Directors (including an Independent Director with editorial and/or journalistic experience);
- (b) be chaired by an Independent Director;
- (c) be entrusted with oversight of Newco's compliance with both the corporate governance provisions and the provisions relating to the principle of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code

You previously indicated that the Governance and Nominations Committee would operate under substantially similar terms to those of Sky's current Corporate Governance and Nominations Committee, but we note in your latest UILs you propose that the Newco Board should determine these.

As outlined earlier today, as your proposal is for a general purpose governance committee, and not an editorial committee, we do require further reassurance from you before we can be confident that it would achieve the effect of the editorial committee which we had proposed. By way of example of our concerns, there is a real possibility that the editorial responsibilities of the committee would be diluted by its other functions to such an extent that it would not be effective. As a further example, we understand that a general purpose governance committee would not normally be expected to meet as frequently as the type of editorial committee we had envisaged. For this reason, we outline below what types of measures would give us confidence that your proposed Governance and Nominations Committee would achieve substantially what we envisaged being addressed by an editorial committee.

We would expect the UILs to state that the Secretary of State should approve the terms of reference for the committee. We would also expect Clause 3.1(viii) of the UILs to indicate the key principles of the terms of reference. We would expect the terms of reference to include, for example:

- the editorial function reflected in the name of the committee
- at least one member with senior editorial/journalistic experience
- a majority of independent non-executive directors
- a clear reference to the principles of editorial independence and integrity (which are also contained in the company's constitutional documents)

- a chairman who is the independent director with editorial/journalistic experience
- a clear responsibility to report regularly to the Board on editorial matters
- an explicit process for the Head of Sky News to report on editorial independence and integrity, as a route to reporting to the Board
- a role in advising the Board on all editorial issues, including advice on decisions relating to the hiring, firing, authority and reporting relationship of the Head of Sky News
- frequency of meetings (e.g. at least once per quarter)
- appropriate resource and powers to investigate all matters relevant to editorial independence and integrity within its remit
- a statement in Newco's annual report on its activities

We note that you have already confirmed some of these would be provided by the Governance and Nominations Committee and that others are included in the current terms of reference for Sky's Governance and Nominations Committee. We would like to see all of the above reflected in the terms of reference for Newco's Governance and Nominations Committee. Could you please consider whether you are prepared to agree and include in the next consolidated amended UILs? Where this is not possible, could you please provide an explanation of the substantive concern that prevents you from doing so?

I'd be very happy to talk to you about this further tomorrow morning.

Best wishes

Steve

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[redacted]

From: Adam Smith [redacted]
Sent: 27 April 2012 09:54
To: OLDFIELD PAUL
Subject: Fwd: OFT

Begin forwarded message:

From: "Michel, Frederic" <fmichel [redacted]>
Date: 23 February 2011 23:16:30 GMT
To: [redacted]
Subject: OFT 1

FYI - per below, it looks like we have agreement with OFT on all of OFT's material issues. We will provide a revised UIL tomorrow am reflecting these issues to OFT.

This does not include Ofcom's corp gov issues...

From: Sheldon Mills [mailto:[redacted]]
Sent: Wednesday, February 23, 2011 10:50 PM
To: [redacted]
Cc: [redacted]
Subject: RESTRICTED: Newscorp/BSkyB

Dear [redacted]

I refer to our call earlier this evening in which we promised to respond to you on certain points in relation to the Second Revised Draft UIL (attached to your email of 22 February 2011) to which paragraph references in this email relate. We have considered the discussion and the points made on the call carefully and set out below our further requests in relation to the Second Revised Draft UIL.

Paragraph 3 of the UIL - corporate governance provisions - amendments to the Articles of Association

We note your comments in relation to the corporate governance provisions at paragraph 3.2 and 3.1 (iii) and (viii) of the UIL. In particular, your view that these provisions provide a potential purchaser who acquires a shareholding above 50% but below 75% in Newco with an opportunity to remove the restrictions in the Articles of Association.

For the reasons below, we kindly request that News agree to the following amendments to the UIL:

(1) removal of the reference to a 15 per cent 'floor' in paragraph 3.2; and

(2) amend the 50 per cent 'ceiling' (paragraphs 3.1(iii) and (viii) and 3.2) to refer only to a situation in which News has over 50 per cent of the voting rights.

Overall, we consider that these amendments would address our concerns over their impact on the practical effectiveness of the UIL in terms of their operation. To assist you in considering these requests, we set out our reasons in more detail below.

Amendments to the 50 per cent ceiling

We consider that inclusion of this provision could, in practice, serve to undermine the operation and practical viability of the UIL in achieving their objectives. First, although we note your view that Newco's financial viability may be enhanced with the inclusion of such a provision in the UIL, as discussed on the call, we consider that the provisions in the proposed brand licensing agreement relating to a change of control reduce the likelihood of a third party acquiring control of Newco (absent renegotiation of those terms with News/Sky). In such circumstances, we see limited benefit in terms of the financial viability of Newco from the inclusion of such a provision in the UIL. Rather, we consider that our paramount consideration should be ensuring the practical viability of the UIL in achieving their objectives – one of which is to ensure that the circumstances in which the corporate governance of Newco can be changed are, of necessity, limited in scope.

We take a cautious approach in relation to design of the UIL and it is important to ensure that they are effective in meeting the concerns they have been designed to address. In the light of this, whilst we have considered the reasons you have given for the inclusion of this provision, we remain concerned to ensure the continued effectiveness of the provisions protecting the independence of Newco (from an editorial and governance perspective) as enshrined in the Articles of Association in the event of an acquisition by a third party of 50 per cent or more of the voting rights - the extent to which such protections would continue to be necessary would ultimately depend upon the factual circumstances surrounding such an acquisition, including the identity of the acquirer. As such, at this stage, our preference would be to an amendment which provided that the corporate restrictions apply (and the voting restriction in paragraph 3.2 applies) unless News owns more than 50 per cent of Newco's voting rights (which would be following approval from the Secretary of State pursuant to paragraph 6.1).

Removal of the 15 per cent floor

We are concerned, taking into account the need to reduce the risks to the practical viability of the UIL in achieving their objectives, to avoid a scenario in which - as a result of a temporary reduction in News' shareholding - the Articles of Association are during that time amended, with News not having to vote against such an amendment as a result of the level of its shareholding, whilst at the same time there is some ambiguity about whether (when News reacquires the shares it had temporarily disposed of) there is then a change in the level of News' control over Sky News such that a relevant merger situation or special merger situation had been created. We consider that such an amendment is necessary to reduce the risk of a creation of a potential gap in the ongoing effectiveness and operation of the UIL, we therefore request that the 'floor' level should be set at zero.

Paragraph 5 of the UIL - operational agreements - upfront approval

We would like to thank you for your time in providing us with a further explanation of the operational agreements set out in paragraph 5 of the UIL. As agreed, we have considered this issue further and agree that the advertising sales agreement in paragraph 5.1 of the UIL need not be approved by the Secretary of State on an upfront basis, given the existence of third party providers and the likely ease with which Newco could source services from such a provider. We would insist upon, however, as you agreed on the call, to the satellite capacity, playout and uplink and DTT transmission arrangements being reviewed upfront.

Paragraph 10 of the UIL - removal or variation

We note your points in relation to inclusion of a removal of variation clause.

We would not normally expect UIL to include provisions which merely repeat rights that already exist under statute. We consider that such provisions are unnecessary and may lead to confusion as between the UIL obligation and the statutory provisions. In addition, to the extent that we were to agree to the inclusion of such provisions in a UIL, they should follow the letter and spirit of the legislation. In this regard, we note that notwithstanding the wording of paragraph 3(9) of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, it is plain from section 92 of the Act that the expectation is that UIL will be considered for variation or release when there has been a change of circumstances. It is quite plain that if there has not been a change of circumstances, that begs the question why variation or release should be considered. In summary, we consider that paragraph 10 of the UIL is may create the misleading impression that the Secretary of State should consider a variation or release request when there has not been any change of circumstance, which clearly does not follow the intended operation of the statute or practice, and we therefore request its removal (or that it is amended accordingly).

I would be grateful if you could send through tomorrow morning as early as possible a revised draft of the UIL, reflecting your position on the above points and having regard to the issues you agreed to take away in relation to paragraph 5.1(iv) (providing for upfront review of the satellite capacity, playout and uplink and DTT transmission arrangements) and (v) (clarifying what is meant by broadcast operations and creative services).

Kind regards

Sheldon

Sheldon Mills

Director | Mergers Group | Office of Fair Trading | Fleetbank House | 2-6 Salisbury Square | London | EC4Y 8JX |

Direct dial +44 [redacted] [redacted]

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[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:54
To: OLDFIELD PAUL
Subject: Fwd: BSkyB - David Elstein memo
Attachments: The Ofcom report on the NewsCorpKGrevised.docx; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 5 March 2011 18:55:01 GMT
To: Adam Smith [Redacted]
Subject: BSkyB - David Elstein memo

See the list of recipients...!!

The conclusion is interesting.

Fred

From: [Redacted]
Date: 5 March 2011 14:06:16 GMT

[Redacted]

<danielauthrie@luther.co.uk> <simon@maidthorn.com>

[Redacted]

<brie.goodall@endersanalysis.com> <claire.enders@endersanalysis.com>

[Redacted]

[Redacted]
Subject: BSkyB

Dear friends and colleagues,

Since giving various media interviews on Thursday, I have been repeatedly asked on what basis I criticised the Ofcom report on the NewsCorp/BSkyB merger. For those of you who do not regularly read opendemocracy.net or lse.ac.uk/mediapolicyproject, I attach the note I prepared for the LSE seminar on Wednesday. If you find any errors or weakness in argument, please do not hesitate to alert me.

Kind regards,

[Redacted]

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The Ofcom report on the NewsCorp/BSkyB transaction

Ofcom's report, on whether the News Corp offer to buy the 60.9% of BSkyB it does not already own should be referred to the Competition Commission, said at the outset that the threshold was low: if the transaction involved a reduction in media plurality that might be contrary to the public interest, the Commission should be called in.

The test was whether there would be a sufficient supply of people with control of media enterprises. Unfortunately, the Enterprise Act 2002 which created the special powers of intervention for the Secretary of State in media mergers defined neither "sufficient" nor "control"; and even the definition of "media enterprises" – as newspaper publishers or broadcasters – has its tricky points.

An immediate problem for Ofcom was deciding whether there was currently a "sufficient" supply of people with control of media enterprises. On the face of it, Ofcom's failure to intervene in the earlier merger of Northern and Shell and Channel 5 strongly suggests that a reduction of one in "supply" is not in itself grounds for intervention; and that if the reduction as a result of that deal was not material, the status quo was presumably satisfactory. Why, then, would News Corp increasing its ownership of BSkyB to 100% from the 39.1% which already allowed it operational control make enough difference to cross the "low threshold" required for intervention?

The three criteria

Ofcom said (in paragraphs 1.21 and 3.17 of its report) that its conclusions would depend upon three criteria: reach; consumption of news; and the importance attached by consumers to different sources of news.

Unfortunately, Ofcom's attempts to apply these criteria are seriously flawed, thanks to a combination of errors of fact and of judgment.

From the outset, Ofcom said it wanted to assess cross-media provision of news and current affairs: but in only one of the four media examined is the category of current affairs actually measured – TV – and Ofcom chose to ignore that metric. It so happens that including current affairs viewing would have reduced the reported consumption of Sky News output, and enlarged that of the BBC, but we are not given a reason for the omission.

The only genre for which data from BARB (the industry research unit) was used by Ofcom was that dealing with international and national news: viewership of news bulletins, news programmes and 24-hour news channels.

Reach

The Ofcom exercise tried to align "reach" across various media, set out in Figure 1 on page 8 of its report (also Figure 15 on page 33). However, it managed to confuse itself thoroughly: first with TV.

The definition of reach of each channel's or broadcaster's news output depends upon three variables: the qualifying length of continuous viewing time (number of minutes), the period within which qualification counts (a week, a month, etc) and the number of different such viewings in the period (one, two, three, etc).

Ofcom chose to focus more on suppliers of news than on broadcasters. In legal terms, as Ofcom recognizes in paragraph 2.20, suppliers may well fall outside the 2002 Act, if they are not also broadcasters (ITN, for example, is not a broadcaster) and therefore do not qualify as media enterprises. Ofcom conceded that if Sky News were only a supplier (to Channel 5 and to commercial radio through its contract with Independent Radio News), and did not operate a broadcast service, there would be no basis for a public interest intervention, as only one of the merger parties would qualify as a "media enterprise". Nonetheless, given that there was a broadcast operation called Sky News, Ofcom felt justified in including its third party supply as being under its "control". I will return to this point later.

Ofcom describes Sky News as one of "three main (sic) providers of TV news": a description somewhat undercut by the qualification that their respective shares of provision are 70% (BBC), 22% (ITN) and 8% (Sky News). Indeed, if broadcast channel had been the definition, Sky News would be found in a remote seventh position. Yet the combination of "one of three main providers" of TV news with News Corp's leading position in newspaper provision is Ofcom's reason for referring the transaction to the CC.

The report's analysis of TV news reach, using one viewing period of three consecutive minutes in a week as the criterion, puts the BBC well ahead, at

33.5 million adults. ITN's reach (across ITV and Channel 4) is 21.9 million, and that of Sky News (in its own right and as a supplier to Channel 5) is 11.7 million.

Actually, the reach of the Sky News channel by this measure is just 4.8 million (less than 10% of adults). In Figure 8 on page 31, all the channels broadcasting news are identified individually, showing Sky News reach trailing that of news on BBC One, ITV1, BBC News Channel, Channel 5, Channel 4 and BBC Two. Sky News reach is less than one-sixth of that for news on BBC One. Even news content on BBC Two has a 30% larger reach than the Sky News channel.

The significance of BBC news being available from three BBC channels would be more apparent if the third element of measurement – “at least one” qualifying viewing session – were increased to two, three, or four, with multiple viewing options allowing “BBC TV” to draw much further clear.

Likewise, increasing the threshold from three consecutive minutes to five consecutive minutes would reduce Channel 5's reach by 60% (and with it the reach of “Sky News” as a supplier), as compared with a reduction of around 10% for other channels. Ofcom chose not to cite these – or any other – alternative ways of measuring reach.

Yet five minutes of consecutive listening is precisely the measure used by Ofcom to define radio reach. RAJAR, the radio equivalent of BARB, has no sub-genre entitled news, let alone news and current affairs, so Ofcom simply regarded any one instance of five consecutive minutes of listening to radio in a week to be equivalent to reach for radio news: a substitution for which it is impossible to find a justification.

News Corp says that Ofcom compounds this error with two further mistaken assumptions: that commercial radio transmits three minutes of news every hour, and that Sky News supplies it all. News Corp's response to the Ofcom report pointed out that, in peak time (when most listening takes place), most major commercial radio groups supplement Sky News content (which only covers national and international news) with other news content (primarily local news); and news bulletins typically run two minutes, not three.

It is puzzling how Ofcom (which licenses and regulates all broadcast commercial radio in the UK) would not know this if News Corp is right. What is

even harder to understand is how it can convert reach for any commercial radio listening into reach for news listening (which constitutes 3.3% of output), let alone listening to Sky News, if Sky News does not supply all of commercial radio's news content.

Eventually, in paragraph 4.36, Ofcom acknowledges that the figure for Sky News radio reach is "*potential*" reach; moreover, "it is likely that estimating reach on the basis of all radio listening overstates the level of reach achieved in respect of national news listening". It probably overstates it by a factor of at least 2, and maybe much more.

To add to the confusion, Ofcom places newspaper reach in the same graphic (Figure 1 on page 8, reproduced as Figure 15 on page 37). The numbers it shows, supplied by Kantar, base the definition of reach on readership, as researched by the National Readership Survey. However, the published NRS figures are for individual newspapers, not for newspaper groups, and Ofcom does not reveal how the group figures were derived.

For instance, the Daily Mail has an average readership of 4.7 million according to NRS, while the Mail on Sunday has a readership of 4.9 million. According to Ofcom, the Mail's group readership is 7.3 million, implying that at least half of the Sunday readers do not read the weekday edition, and vice versa. Likewise, the Daily Telegraph has a readership of 1.7 million, and the Sunday Telegraph 1.5 million, but group readership, according to Ofcom, is 2.4 million: again implying that about half of the weekday readers do not read the Sunday edition, and vice versa.

News Corp's News International is more complicated, as it owns four newspapers. The Sun and the News of the World have readerships of 7.7 million and 7.6 million respectively, with The Sunday Times on 3 million and The Times on 1.6 million. But Ofcom reports group readership at 14.5 million, or 29.4% of all adults, which can only be true if at least half of The Sun's readers do not read the News of the World, and vice versa. Given that half of all adults – according to NRS – do not read a newspaper at all, the Ofcom calculation implies that 60% of all people who read a newspaper read a News Corp title.

The 1 million readership attributed to the Lebedev Foundation is even more puzzling, as The Independent has a readership of 550,000, and the Independent on Sunday a readership of 590,000: it would appear that almost nobody reads both papers.

Ofcom excluded the Evening Standard from its Lebedev numbers, so that cannot be the answer. In the absence of any other explanation, it is hard to understand these and many other Kantar figures, unless – perhaps – the published NRS reach statistics have been inflated by extending the period (24 hours after publication, according to NRS) qualifying as “readership”.

The likelihood, of course, is that such an extension would only apply to non-news elements in the newspapers: for as Ofcom notes in paragraph 3.5, “newspapers are not solely devoted to the reporting of news”. What else is there? According to Ofcom, there is “content based on in-depth discussions and opinionated commentary”.

In reality, there is much more: the puzzles, fashion, cookery, travel, investment advice, TV listings, reviews, agony aunts, features, gardening, property pages, readers’ letters, and so on that constitute the bundled product we call “newspapers”.

Last week, The Sunday Times (according to NRS, the newspaper on which readers spent by far the most time) contained the equivalent of 504 A4-size pages. 30 were devoted to national and international news. A further 52 pages came in the shape of sport and business sections, which NRS tells us are read by less than 60% of “readers” of The Sunday Times. Even allowing these sections full “news” value (and note that Ofcom excludes “sports news programmes” from its definition of news for TV reach), and discounting advertising pages by 90%, actual news content accounted for less than 23% of all pages.

In recent weeks, the “news” proportion of The Sunday Telegraph has been as low as 15% and never above 30%. The same applies to the Saturday editions of both the Daily Telegraph and The Times (which are read for longer than the Monday to Friday editions): this week, “news” comprised 15% of content, or less than 90 pages out of nearly 600. Clearly, the reach of newspaper groups reported in the Ofcom table – even if it were fully explained – cannot be

reasonably presented as equivalent to the reach of their news pages. Research from North America has shown that as many as a third of newspaper readers never look at the news pages.

Ken Goldstein, president of Communications Management Inc of Winnipeg, argues that the same criticism can be applied to the data for online reach and consumption, taken from Nielsen by Ofcom. The prominence in the top 50 websites of news providers does not equate to site visits being news consumption. The Daily Mail and the BBC, which are easily the leading two sites included in the sample, both offer a large proportion of feature material (though the BBC is in the process of reducing the entertainment element in its website). As it happens, the role of the internet in the Ofcom analysis is too small to make it worthwhile to attempt a systemic adjustment: but the point made is almost certainly correct.

The simple fact is that “newspaper” reach for certain, and online reach in all probability, is not the equivalent of “TV news” reach: presenting it as such is just as erroneous as the comparison between “Sky News radio” reach and “TV news” reach. It follows that the 51% reach for Sky News and News Corp combined, calculated by Ofcom, is unlikely to be correct. Figure 1 is not what a regulator which styles itself “evidence-based” should be including in a report.

Consumption

Fortunately, actual news consumption is an easier currency to measure across media. BARB provides details of the minutes of TV news consumption per head per day; it is possible roughly to estimate the proportion of daily radio listening measured by RAJAR that is attributable to news; NRS measures both readership and minutes spent on newspapers; and Nielsen has estimates of online consumption.

However, Ofcom’s attempt (Figure 26 of page 59) to assemble the four elements in a single diagram – the most crucial in the whole report – falls into a number of traps. Ofcom does not provide the raw figures it used: but the percentages it has calculated give us a clue as to its methodology – which turns out to be not even the biggest problem presented by Figure 26.

On TV news consumption, as with reach, Ofcom chooses to attribute the Sky News production, News on Five, to Sky News, rather than to Channel 5, which is responsible for it in legal, contractual and regulatory terms – something Ofcom is fully aware of, as the licensor of Channel 5. If there were any problem with Channel 5's news output, Ofcom would be straight on to Channel 5, and would not even pick up the phone to Sky News.

The legal issue is: who has control? Having commissioned News on Five (originally from ITN) when I launched the channel, I had no doubt that my Head of News was always in editorial control, and accountable to me (through the Director of Programmes) as Chief Executive. In due course, the ITN employee who was the editor of News on Five moved to Five as an employee, and his successor accounted to him on a daily basis. Inevitably, newsgathering was undertaken by the supplier, but the news agenda, together with the content and running order of the news bulletins, was a joint decision.

It was absolutely not my experience that – in Ofcom's words – “there was little scope for editorial adjustment by the retailer”. The implication that, currently, the Sky News editor responsible for delivering News on Five checks with News Corp what to include in each bulletin, while the broadcaster stands helplessly by, is wrong. Given Ofcom's concession that the Competition Commission, in assessing the concept of wholesale news supply, concluded that there was “some degree of shared editorial influence”, it is hard to understand Ofcom's decision to attribute the output of Five News 100% to the Sky News column.

There is a further legal puzzle. The 2002 Enterprise Act is clear as to what constitutes a media enterprise: either a broadcaster or a newspaper publisher. The Ofcom report makes clear that if Sky News were not itself a media enterprise – in other words, a broadcaster in its own right – then its wholesale supply of news would not be relevant to the public interest inquiry.

It follows that if Sky News were to hand back its Ofcom broadcast licence, and operate in the UK solely as an online service, it could retain its non-UK broadcast services, and its wholesale supply contracts, without there being any basis for a public interest intervention by the Secretary of State. Yet because Sky News *is* a broadcast service, Ofcom feels able to attribute 100% of Channel 5's news output (along with commercial radio news, irrespective of the use of

other sources and the active compilation of bulletins by radio stations themselves) to Sky News.

An illustration of the difficulty presented by the Ofcom approach is that if ITN – which is a wholesale supplier that does not qualify as a broadcaster – were to be taken over by the Daily Mail, currently a 20% shareholder, and then won back the supply contracts to Channel 5 and commercial radio currently held by Sky News, the merged enterprise would – according to Ofcom’s methodology – suddenly jump from a 9% control of consumed news to 22%. Yet such a transaction would fall entirely outside the framework of the legislation, suggesting that either the Act is badly drafted, or that Ofcom’s methodology is faulty, or that there would be nothing to worry about (or possibly all three).

If we move to the newspaper side of the consumption diagram, we find that Ofcom has – as in the reach section – counted the full weight of minutes reading newspapers as if these were spent consuming news, on the basis that “one minute of TV national news consumption is equivalent to one minute of reading a newspaper” (note 124): an unsustainable position, in the light of actual newspaper content.

Could Ofcom – without saying so – be working on the assumption that newspapers are read with real concentration, whereas many people do other things whilst watching TV? Unfortunately, Ofcom itself had disposed of this argument in a massive research exercise last year, which included the finding that 83% of all TV viewing is “solus” (that is, not accompanied by any other media activity), whereas only 71% of reading print is “solus”.

The question is: what level of discount should be applied to the newspaper consumption figures to make them comparable to the TV news consumption minutes? It seems that a figure of 50% would be conservative: a minimum reflection of the very different experiences being measured as between “viewing TV news” and “reading newspapers”, and a discount level used by the German regulator, KEK in a similar situation recently.

It should be noted that Ofcom’s focus on “national” newspapers (which happens to catch all News Corp titles) excludes great swathes of newspaper publication covering national and international news, but not nationally distributed. That the Yorkshire Post, The Scotsman and the Evening Standard

also cover issues at a more local level does not invalidate their national and international content. Metro's readership is not far below that of the Daily Mirror/Record, and the Evening Standard's is not far short of that for The Times. 3.5 million people read a regional evening paper every weekday; 7.5 million a regional morning paper; 10 million a paid-for local weekly; 17 million a free local weekly: their combined readership is as large as that for the so-called national titles, but is excluded from Ofcom's analysis.

Audience reliance on news sources

The significance of these omissions is underlined when we move on to the third element in the Ofcom guidance: audience reliance on different news media. Here the report provides startling – and seemingly decisive – evidence.

In 2009, as in previous years, Ofcom asked a very large sample of regular news consumers which source they relied upon most. 73% plumped for TV; 8% for newspapers (including, to some extent, the categories of newspaper just described that Ofcom excluded); 7% for radio; and 7% for online. These proportions have changed little over the years. Likewise (see paragraph 4.32), 29% reported that their only source of news was TV, compared with 6% for newspapers, 3% for radio and 5% online. Some of this differential may be on account of perceptions of bias: 56% think newspapers are biased, but only 22% say that of TV.

Ofcom also cites another piece of recent research, on cross-media behaviour, which asked similar questions, but in a different order and with different emphases. The results were 63:14:10:10 – slightly less stark than the 73:8:7:7, but surely of high significance. These findings strongly suggest up-weighting the reported minutes watching TV news, or re-allocating all consumption according to these “reliance” ratios (it would then no longer be necessary to discount minutes reading non-news in newspapers, as the actual level of news in newspapers would have been factored in).

Mr Goldstein of CMI takes the view that, if Ofcom is conducting an inquiry based on the potential detrimental effects of a merger's undue influence on consumers of news, and the views of those consumers in terms of reliance on sources are established and robust, it must make sense to take those views

fully into account – rather than discard them whilst claiming to act on behalf of these very consumers. He has compiled the following table:

Media	Audience shares within the medium based on Figure 26, page 59 of Ofcom report	Media “weights” based on Figure 6 on page 29 of Ofcom report:		Media “weights” based on footnote 54 on page 28 of Ofcom report:	
		% saying medium is “main source of news”	Audience shares weighted by “source of news” %	% saying medium is “main source of news”	Audience shares weighted by “source of news” %
NEWSPAPERS		8%		14%	
News Corp.	34.2%		2.74%		4.79%
DMGT	22.8%		1.82%		3.19%
Trinity Mirror	11.9%		0.95%		1.67%
Telegraph	10.4%		0.83%		1.46%
Northern and Shell	10.2%		0.82%		1.43%
Guardian	6.5%		0.52%		0.91%
Lebedev	2.5%		0.20%		0.35%
Pearson	1.5%		0.12%		0.21%
RADIO		7%		10%	
BBC	73.2%		5.12%		7.32%
Sky (as news supplier)	26.8%		1.88%		2.68%
ONLINE		7%		10%	
BBC	37.5%		2.62%		3.75%
News Corp.	12.5%		0.88%		1.25%
DMGT	25.0%		1.75%		2.50%
Trinity Mirror	0.0%		0.00%		0.00%
Northern & Shell	0.0%		0.00%		0.00%
Telegraph	12.5%		0.88%		1.25%
Guardian	12.5%		0.88%		1.25%
Lebedev	0.0%		0.00%		0.00%
Pearson	0.0%		0.00%		0.00%
Sky	0.0%		0.00%		0.00%
TELEVISION		73%		63%	
BBC	73.5%		53.66%		46.30%
ITN	17.4%		12.70%		10.96%
Sky	9.1%		6.64%		5.73%
(of which Five 22.6%)	(2.1%)		(1.50%)		(1.29%)
ALL OTHER		5%		3%	
TOTALS		100%	100.00%	100%	100.00%
BBC			61.40%		57.37%
ITN			12.70%		10.96%
News Corp.			3.62%		6.04%
Sky			8.52%		8.41%
Sky + News Corp.			12.14%		14.45%
Sky/NC minus wholesale			8.76%		10.48%

As a cross-check, I re-worked Ofcom Figure 26 on page 59, adjusting in three ways: down-weighting newspapers by 50%; separating wholesale news supply; and up-weighting TV by 50%:

Ofcom 1 (before changes)

News consumption: percentage of minutes per head per day

Company	Papers	Radio	TV	Online	Total
Sky		6.7	2.4		9.1
Channel 5			0.7		0.7
News Corp	13.8			0.1	13.9
<i>[News Corp/Sky</i>	<i>13.8</i>	<i>6.7</i>	<i>3.1</i>	<i>0.1</i>	<i>23.7]</i>
BBC		18.3	24.9	0.3	43.5
ITV			4.8		4.8
Channel 4			1.1		1.1
DMGT	9.2			0.2	9.4
T Mirror	4.8				4.8
Telegraph	4.2			0.1	4.3
N and Shell	4.1				4.1
Guardian	2.6			0.1	2.7
Indy	1.0				1.0
Pearson	0.6				0.6
Total	40.3	25.0	33.9	0.8	100%

Ofcom 2 (after changes)

Company	Papers	Radio	TV	Online	Total
Sky			4.51		4.51
News Corp	5.45			0.07	5.52
<i>[News Corp/Sky</i>	<i>5.45</i>		<i>4.51</i>	<i>0.07</i>	<i>10.03]</i>
BBC		14.46	46.77	0.25	61.48
ITV			9.02		9.02
Channel 4			2.08		2.08
IRN		5.29			5.29
DMGT	3.63			0.17	3.8
T Mirror	1.89				1.89
Telegraph	1.66			0.07	1.73
N and Shell	1.62				1.62
Channel 5			1.32		1.32
Guardian	1.03			0.07	1.1
Indy	0.4				0.4
Pearson	0.24				0.24
Total	15.92	19.75	63.7	0.63	100%

As can be seen, both in the Goldstein table and my "Ofcom 2", the share of news consumption attributable to News Corp is substantially lower than in Ofcom 1, and the combined share of News Corp and Sky, excluding wholesale supply, is around 10% - as compared with the 24% in the Ofcom report.

There is a further problem. News Corp already owns 39.1% of BSkyB (and therefore of Sky News). Ofcom says it has “taken into account” that fact, but nonetheless fails to attribute any part of the Sky News audience to News Corp pre-transaction (which would reduce yet further the supposed impact of the merger). Ofcom’s justification is that owning 100% of BSkyB would allow News Corp to run the business entirely to its own commercial agenda. This legal argument (in marked contrast to Ofcom’s preference for “reality” as opposed to legality where wholesale news supply is concerned) misses the key point: News Corp has now – and has always possessed – operational control of BSkyB, including every aspect of Sky News.

When Ofcom asserts (as it does in paragraph 5.7) that 100% control of BSkyB would give News Corp greater power to dismiss the editor of Sky News, it is wrong. Every editor of Sky News is appointed by the chief executive of BSkyB. Every chief executive of BSkyB has been nominated by News Corp, and rubber-stamped by the BSkyB board. News Corp could remove the current editor of Sky News today, and secure the appointment of his successor, even without the proposed transaction.

Some opponents of the merger have argued that only the presence of the independent directors of BSkyB has prevented News Corp having its evil way with Sky News. They cite Rupert Murdoch musing that he wished Sky News were more like Fox News. In fact, there is nothing preventing Murdoch from transforming Sky News, other than sound commercial sense. A version of Fox News might or might not work in the UK – the US version, available on the Sky platform, has virtually no viewers – but Sky News is very successful journalistically (winning the Royal Television Society award for best news channel again this February) and arguably Murdoch’s most admired UK journalistic product.

As for the independent directors, there is no evidence that they have ever raised at board level any issue to do with Sky News. Indeed, in their submission to Ofcom in support of the merger, they effectively offered to close Sky News if that were the only barrier to clearance.

Paradoxically, it is News Corp – which launched Sky News and funded it for two years before Sky was merged with British Satellite Broadcasting in 1990 – which has shown the most interest in keeping alive the loss-making service.

There is a further problem with treating the 39.1% as if it had no significance. It would follow that, if News Corp sold down its stake in News International (which publishes all its UK newspapers), reducing to 39.1% but retaining editorial control (as with BSkyB), and then used the proceeds to buy 39.1% – plus editorial control – of the Telegraph Group, the Daily Mail group, Trinity Mirror and Northern and Shell, it would have secured editorial control of 89% of UK national newspaper consumption. However, according to Ofcom, there would be five separate owners of that 89%, and none of them would be News Corp. There would be no reduction in media plurality, and no grounds for any intervention under the 2002 Act. Indeed, the current merger proposal would also not be subject to a public interest intervention.

Summary

I would expect the key table in the report (Figure 26 on page 59, which is equivalent to Ofcom 1 above) to come under severe pressure if it were subjected to detailed scrutiny at any independent review. Contrary to the report's claim that its conclusions represent "a reasonable belief, on the basis of the evidence available", it is clear that Ofcom ignored a great deal of evidence: not only that which was readily available, but also that which Ofcom itself provided.

It failed to present any alternative ways of measuring TV news reach, including one variation which reduces Channel 5 reach by 60%. It offered a radio news reach figure for Sky News which cannot be correct. Instead of presenting the published figures for individual newspaper reach, it offering a bulked up estimate for "group reach", unsupported by any explanation and in seeming conflict with the individual reach figures.

On consumption, it treated newspaper readership as if it were news readership: an approach which substantially over-states the significance of newspapers. Despite saying that current affairs as well as news consumption would be measured, no attempt was made to include the easily measurable TV current affairs genre.

On audience reliance on sources, it presented strong evidence of the paramount significance of TV, and then chose to ignore it.

It also chose to attribute 100% of its estimate of commercial radio news reach and consumption to Sky News, despite News Corp's claim that most major station groups treat Sky News content as an ingredient within, rather than the whole of, the peak-time bulletins they compile. The News Corp claim also challenged Ofcom's estimate of the volume of commercial radio news output, whether or not it was all attributable to Sky News.

On wholesale news supply, Ofcom ignored the Competition Commission judgment that it involved shared editorial responsibility, and instead attributed all of Channel 5's news output to Sky News.

It wrongly stated that the transaction would allow News Corp to dismiss the editor of Sky News (a power it has always possessed). Finally, in consistently discounting the significance of News Corp's current stake in BSkyB, it exaggerated the true effects of the transaction on media plurality. An extension of that logic would see Ofcom allowing even a massive shift in control of UK newspapers without recognizing any case for intervention.

The biggest danger for Ofcom is not that it may have made a series of errors and questionable judgments. It is that all of these errors and judgments pointed in one direction: to enlarge the significance of the proposed merger, and reduce the reported level of BBC dominance. The chances of this having happened by accident are low. If any independent review of the Ofcom report found support for a charge of bias, it would surely spell the beginning of the end for Ofcom, whose future status is by no means guaranteed under media legislation planned for 2015.

Cross-media ownership rules

As part of its report, Ofcom suggested that any new legislation should create additional regulatory powers to intervene in the media market, even in the absence of a transaction, if there were concerns about plurality. Whatever the faults of the current legislation, the weakness of this report will give politicians pause before they assign any new authority to Ofcom – or its successor.

My original concern in this whole affair was that a misguided regulatory intervention into the News Corp/BSkyB transaction might have the effect of discrediting our regulatory processes, rather than dislodging the merger. That concern remains.

It is sometimes claimed that our regulatory structure is too weak to counter-act the influence of News Corp. Yet regulators forced Rupert Murdoch's exit from London Weekend Television, rejected his consortium's application for the British satellite project, rejected his consortium's bid for Channel 5, excluded BSkyB from what became ITV Digital, forced BSkyB to divest most of its shares in ITV, and have imposed restrictions on BSkyB in relation to platform management, electronic programme guides, conditional access charges and wholesale pricing of sports channels. The main cross-media ownership rule – the 20/20/20 clause – is aimed at News Corp and BSkyB.

Yet Ofcom's new intervention proposal reflects a degree of unease with our cross-media ownership rules, the current version of which have been in place in 2003. We seem primarily concerned with national newspapers: yet Ofcom accepts that diversity of ownership is not equivalent to diversity of opinion. Moreover, the long-term decline in circulation seems likely to continue, such that a 20% threshold in 2003 represents a much higher circulation than it does now. Is it circulation or share which concerns us? Is circulation anyway the right test? The Daily Mail/ITN example I offered would not be possible if readership rather than circulation was the test: no newspaper with over 20% of national newspaper circulation can control the ITV news provider. The Mail falls below that threshold in circulation, but not in readership.

Finally, what – if anything – should we do about the BBC? The BBC's share of TV news consumption has grown from 60% to 70% since 2002. The BBC now controls 71% of the news sources on which consumers place 87% of their reliance: TV, radio and online. Many, including Ofcom, are relaxed about this situation, in that the BBC seeks to influence neither votes nor views. But if we are not concerned about that 71%, why worry about possible combinations of small fractions of that share in the commercial sector? And if we are concerned about the 71%, what should be done?

David Elstein

27.2.11

[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:55
To: OLDFIELD PAUL
Subject: Fwd: Sky News [2011-023]
Attachments: capitalundertakings.pdf; ATT00001..htm; DunfermlineUIL.pdf; ATT00002..htm; Global.pdf; ATT00003..htm; insysundertakings.pdf; ATT00004..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[redacted]>
Date: 8 March 2011 15:27:18 GMT
To: [redacted]
Subject: FW: Sky News [2011-023]

Adam,

My initial reaction is that they still don't seem to understand how the corporate governance provisions (and more generally the UILs) work and therefore the note has a number of inaccuracies, for example:

- a third party can't change the articles without 75% and we agreed to vote against any changes in the articles that would remove the corp gov protections (for as long as we don't own a majority of the voting shares of Sky News, which in itself would be subject to another regulatory review);
- the carriage agreement will be subject to approval by Jeremy (which means also OFT/OFCOM) so all the key terms will have to be blessed by them;
- the financial viability has been assessed by the OFT so it is not up to the third parties to opine on it (and the details of the business plan are confidential business secrets);
- material Transactions (£5m or more) between Sky News and News/Sky need to get the approval of the Audit Committee, which consists exclusively of independent directors; if they involve more than £12.5m, they also need to get approval by the Board in addition to the Audit Committee;
- bundling is a competition issue and has not been raised by OFCOM in the review of the UILs from a plurality perspective.

On the length and detail of the UILs, I attach the examples of UILs given in other cases that show that ours are within standard range.

I hope this helps. I am working on a more detailed rebuttal.

Let's discuss

Warm regards

Fred

[redacted]
From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: Sky News [2011-023]

Begin forwarded message:

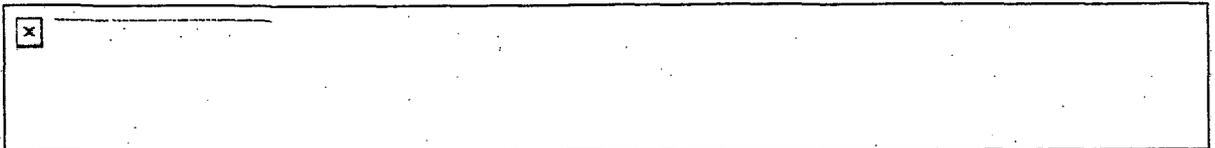
From: Adam Smith <[redacted]>
Date: 8 March 2011 15:14:37 GMT
To: adam.smith@[redacted]
Subject: Fwd: FW: Sky News [2011-023]

----- Forwarded message -----

From: Michel, Frederic <fmichel@[redacted]>
Date: Tue, Mar 8, 2011 at 2:37 PM
Subject: FW: Sky News [2011-023]
To: [redacted]

Thought you would like to see this

From: Enders Analysis [mailto:info=endersanalysis.com@mcsv16.net] On Behalf Of Enders Analysis
Sent: 08 March 2011 14:06



Sky News

- The concept of demerging Sky News is evidently a plausible one and we consider it very unlikely that critics of the deal will have much success undermining its appropriateness as a protection of

From: Enders Analysis [mailto:info=] On Behalf Of Enders Analysis



Sky News

- The concept of demerging Sky News is evidently a plausible one and we consider it very unlikely that critics of the deal will have much success undermining its appropriateness as a protection of plurality
- However, it is harder to judge whether the proposed implementation secures the channel's independence as fully and clearly as it might
- We outline a series of issues that the information supplied for the public consultation does not appear to deal with. We note, in particular, that the proposed undertakings seem not to block Rupert Murdoch, or members of his family, from buying the 60.9% of the shares in Sky News not to be held by News Corp

[Click here to download the pdf](#)

Jeremy Hunt's announcement on 4 March regarding the separation of Sky News to address plurality issues follows long and detailed negotiations between News Corp, the OFT and Ofcom. The OFT is understood to have seen carefully crafted business plans and been given multiple commitments from News Corp that will ensure the future prosperity of Sky News. However, the undertakings put into public consultation are extremely light on detail, making it difficult for an outsider to assess the degree to which Sky News will be viable, let alone independent, after the transaction completes.

We have now entered a process of public consultation, which completes at midday on 21 March, and we consider it very unlikely that critics of the deal will have much success in undermining any conclusions relating to plurality. If the transaction does not go ahead it is much more likely to be a consequence of disagreement between/with shareholders than between the politicians, regulators and News Corp. Nevertheless, the independence of Sky News, as described in the undertakings, still looks to us somewhat 'soft'. In this note we articulate some of the issues relating to Sky News' independence that result from the paucity of detail that is publicly available. In other words, while these undertakings are not 'behavioural', with all the obvious weaknesses that this would entail, neither do they represent a truly 'structural' solution that moves a viable and well-resourced Sky News into complete independence.

Overall, the concept of demerging Sky News is evidently a plausible one, but it is harder to judge whether

the proposed implementation secures the channel's independence as fully and clearly as it might, for the following reasons:

There is little financial data provided in the undertakings. Two numbers refer to the incidental question of which transactions with News Corp need to be approved by the Sky News board. However, interested parties are not informed of:

- The value of the carriage fee and how it inflates or deflates over time
- The cost to Sky News of continuing to rent space and assets from BSkyB
- The price Sky News will have to pay for use of the Sky brand

As a result, we cannot know whether BSkyB is demerging a business that can make a profit or one which will be plunged into loss within weeks. Since Sky News will have no balance sheet to speak of – its major assets all being owned by BSkyB – it might reasonably be argued that the channel will be dependent on News Corp's goodwill to survive from week to week. The employees will be reliant on services from BSkyB ranging from access to the canteen to transponder capacity but the price is unspecified. News Corp says that the OFT has approved the numbers but since no outsiders with knowledge of how satellite channels work will ever see the figures, it is impossible to form an independent view on the viability of the channel and therefore its value. As a result of the model accepted by the OFT, Ofcom and the DCMS, while Sky News may have no significant liabilities, it may have no value either. There may be a rapid desertion of outside shareholders in the listed entity.

The majority of the protections contained in the undertakings operate through the articles of association of the new company. These protect, for example, the editorial independence of Sky News. News Corp is blocked from amending the articles, this is very clear. However, the other shareholders can change them whenever they want, and most of the important protections will fall away.

- The majority of BSkyB shareholders may have no interest whatsoever in owning a small stake in a tiny satellite TV station, with a market capitalisation probably in the low tens of millions and perhaps much less.
- The shares can be picked up (cheaply, no doubt) by anybody wanting a guaranteed presence on the Sky EPG and use of the Sky brand name. He or she could then tear up the articles of association overnight, removing most of the plurality protections such as the independent directors and chair.
- Or, perhaps more likely, the shares might be bought by a company or person directly or indirectly affiliated with the Murdoch family. He or she could also remove many of the important protections in the undertakings and let News Corp run the channel exactly as it wished. These are not unreasonable concerns; there are tens of thousands of people who would be able to acquire the shares in an undercapitalised Sky News.
- We believe that the present wording of the undertakings allows any member of the Murdoch family, including Rupert Murdoch himself, to buy the 60.9% of the shares in Sky News not held by News Corp. Sky News will be a public company traded on a stock exchange. Only very carefully drafted undertakings could protect against the circumvention of their purpose in this way.
- This is not to say that News Corp is planning any such move, and we are in no way implying

intention in this outline. However, a risk attached to the way the undertakings are drafted is that it makes such events possible.

There is no commitment on the part of News Corp to make the demerged company viable.

- News Corp might reasonably argue that it is obviously in its interest to keep Sky News healthy because it owns a 39% stake in the new company, but there is no guarantee of that.
- The current wording of the undertakings appears to allow News Corp to withdraw from acting as the advertising sales outlet for Sky News. News Corp assures us that the intention of the undertakings is to oblige BSkyB to provide ad sales services to Sky News, but the wording doesn't seem to be fully there in the undertakings. Although others would offer to take over the advertising role, there is no guarantee that Sky News would achieve the same prices or ad volumes as achieved by the current Sky sales house, which could create revenue uncertainty.

There is no protection against 'bundling' of news products contained in these undertakings. News Corp may have offered guarantees against 'most favoured nation' treatment of News International newspapers but such promises appear to be absent in the undertakings themselves.

News Corp can terminate the carriage of Sky News if the channel is in 'material breach' of its contractual terms and dispute resolution fails. 'Material breach' isn't defined, nor are the key contractual terms included in the undertakings, nor is the dispute resolution process specified. Could Sky News be removed from the EPG? Once again, the parties assure us that News Corp would only remove the channel after a serious problem but the public is given no indication of what such a problem might be.

The continued strength of the financial umbilical cord between Sky News and News Corp can be shown by the lack of scrutiny over material transactions between the two companies. BSkyB protects its independence from News International in the UK by forcing all related party transactions over £10m (a tiny fraction of turnover) through a governance committee. For the demerged Sky News the figure is £5m, probably almost 10% of turnover. Only transactions over £12.5m with News Corp businesses will need to go to the board of directors, perhaps equivalent to a season's entire turnover.

Among other problems, the undertakings provide some employment protection for the 'head of Sky News' but for no other employees (unlike, for example, the nominal protections given at the time of the Wall Street Journal acquisition). The undertakings also avoid specifying how independent directors are appointed and rotated and they do not specify how these directors can actually remedy any interference from News Corp in editorial matters.

Regards,

Claire Enders

Chris Gooda

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ANTICIPATED ACQUISITION BY CAPITAL RADIO PLC OF GWR GROUP PLC

UNDERTAKINGS GIVEN BY CAPITAL RADIO PLC TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) Capital proposes to acquire GWR by way of a scheme of arrangement under section 425 of the Companies Act 1985;
- (b) It appears to the OFT that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in the UK;
- (c) The OFT has a duty to refer an anticipated merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of GWR by Capital to the CC;
- (f) The OFT further considers that the undertakings given below by Capital are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from it, as specified in the Decision;

NOW THEREFORE Capital hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Capital, they are accepted by the OFT.

Divestment of the Century 106 Business

- 2.1 Capital shall, using its best endeavours and acting in good faith, effect to the satisfaction of the OFT the divestment of the Century 106 Business as a going concern by the end of the Divestment Period to a purchaser

approved by the OFT in accordance with the provisions of these undertakings.

- 2.2 Capital shall be deemed to have complied with the obligation at paragraph 2.1 if, by the end of the Divestment Period, it has entered into a legally binding sale and purchase agreement with a purchaser or purchasers approved in advance by the OFT in writing pursuant to these undertakings provided that, if later than the end of the Divestment Period, the final closing in respect of the divestment of the Century 106 Business takes place within a period not exceeding 2 months (subject to obtaining all the necessary approvals and consents from third parties) after the approval of the relevant purchaser or purchasers by the OFT.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Capital shall take the following measures to the extent they may be necessary to effect the sale of the Century 106 Business in accordance with those provisions:
- (a) the grant of an option to transfer the rights and contracts associated with the existing carriage agreement for the digital broadcast of the Century 106 analogue service;
 - (b) the grant of an option to the 106 Century FM brand name and/or programming relating to the Century 106 Business;
 - (c) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents but excluding the transfer or vesting of the rights and contracts associated with the existing carriage agreement for the digital broadcast of the Century 106 analogue service, the 106 Century FM brand name and programming relating to the Century 106 Business referred to in paragraphs 2.3 (a) and (b) above otherwise than by way of the grant of options as set out in those paragraphs);
 - (d) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (e) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
 - (f) the formation or winding up of a company.
- 2.4 In the event that Capital fails to comply with the obligation set out in paragraph 2.1, the OFT may, whether or not initiating the Trustee Functions set out below, require Capital to divest the Century 106 Business as a going concern at no minimum price to a purchaser approved by the OFT.
- 2.5 Capital shall notify the OFT of the identity of each proposed purchaser that makes an offer for the Century 106 Business together with the value and terms of such offers as soon as reasonably practicable following the

receipt of such offers and in any event within at least 10 Working Days of receipt of such offers.

Purchaser Approval

- 3.1 For the purposes of approving a proposed purchaser for the Century 106 Business sold in accordance with these undertakings, Capital and/or any proposed purchaser will need to satisfy the OFT that:
- (a) the proposed purchaser is independent of and unconnected to Capital and the Group of Interconnected Bodies Corporate to which Capital belongs and any Associated Person or Affiliat  of Capital or such Group of Interconnected Bodies Corporate;
 - (b) the proposed purchaser has the financial resources, expertise and incentive to maintain and develop the Century 106 Business as a viable and active business in competition with Capital and other competitors; and
 - (c) the proposed purchaser must reasonably be expected to obtain all necessary approvals and consents from any regulatory authority.
- 3.2 The OFT may require Capital to provide it with such information and documentation as it may reasonably require to demonstrate to the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Appointment of a Trustee

- 4.1 The provisions of paragraphs 4.2 to 4.7 below shall apply only as long as Capital has not satisfied, or where the OFT has reasonable grounds for believing that Capital will not satisfy, all or any part of the obligation to divest the Century 106 Business in accordance with paragraphs 2.1 and 2.2.
- 4.2 Within 15 Working Days of the OFT notifying Capital that it must do so, Capital shall propose to the OFT:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
 - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 The individuals nominated by Capital pursuant to paragraph 4.2 shall meet the following requirements:
- (a) they shall each be EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society, law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;

- (b) they shall each be independent of Capital and of the Group of Interconnected Bodies Corporate to which Capital belongs and of any Associated Person or Affiliate of Capital or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of the Century 106 Business to be sold pursuant to paragraph 2.1 above, and, in the opinion of Capital, appropriate to be appointed as Trustee; and
- (c) they shall neither be nor become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by Capital pursuant to paragraph 4.2 above and their proposed mandates, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Capital shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT pursuant to this paragraph.

4.5 In the event that:

- (a) Capital fails to nominate any person or persons in accordance with the provisions of paragraph 4.2 above; or
- (b) none of the persons nominated by Capital pursuant to paragraph 4.2 is approved by the OFT; or
- (c) Capital is unable for any reason to conclude within the time limit stipulated in paragraph 4.4 the appointment of any such person following approval by the OFT;

Capital shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Capital shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or 4.5 shall be irrevocable unless (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises; (b) the Trustee ceases to perform its functions; or (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated under paragraph 4.6 above, Capital shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. Capital shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT. Where

required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

The Mandate

5. The terms of the mandate proposed by Capital pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
 - (a) an exclusive, irrevocable mandate to sell any of the Century 106 Business as required by paragraph 6.1 below to a purchaser or purchasers approved in advance in writing by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
 - (b) a mandate to take any other steps necessary for, or incidental to, its mandate under sub-paragraph (a) above;
 - (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps reasonably necessary or appropriate to effect the sale of the Century 106 Business;
 - (d) a mandate to comply with any orders and directions given by the OFT; and
 - (e) a mandate to appoint at Capital's expense such advisers as the Trustee considers necessary or appropriate in connection with the performance of the Trustee Functions.

Functions of Trustee

- 6.1 The Trustee shall seek to procure within 3 months of the end of the Divestment Period, or within such other later period as may be specified by the OFT, the completion of the sale of the Century 106 Business at no minimum price, to a purchaser or purchasers approved by the OFT in accordance with paragraph 6.3.
- 6.2 Without prejudice to the generality of paragraph 6.1, the Trustee shall take any of the measures set out in paragraph 2.3 in relation to the Century 106 Business to the extent to which they may be necessary to effect the divestment of the Century 106 Business in accordance with that provision.
- 6.3 The Trustee shall not sell or permit the divestment of the Century 106 Business to a proposed purchaser unless it has obtained the OFT's prior approval in writing in respect of the identity of the purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable and in any event at least 20 Working Days

in advance of the proposed completion of the proposed sale and purchase agreement in question.

- 6.4 The provisions of paragraph 2.4 shall apply to any such sale by the Trustee as if these undertakings were given by the Trustee rather than Capital.
- 6.5 Pending the divestment of the Century 106 Business pursuant to paragraph 6.1, the Trustee shall monitor Capital's compliance with its obligations under paragraphs 7.1 and 7.2 of these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 6.6 The Trustee may give written directions to Capital to take such steps within its competence as may be specified or described in the directions for the purpose of securing Capital's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Capital to:-
- (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 6.7 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Capital is failing to comply with any of its obligations under these undertakings.
- 6.8 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Capital nor shall the Trustee Functions be extended or varied in any way by Capital save with the prior express written consent of the OFT.

Functions of Capital following appointment of Trustee

- 7.1 Capital shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 Capital shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6, and (b) providing the Trustee with all such assistance and information, as it may reasonably require in carrying out the Trustee Functions.

Remuneration of Trustee

8. Capital shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5.

Interim Action

9. Pending the divestment of the Century 106 Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Capital shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the acquisition, the Century 106 Business shall be maintained as a going concern;
 - (b) except with the prior written consent of the OFT no step shall be taken which might lead to the integration of the Century 106 Business with any other business carried on, by or under the Control of Capital or of any member of the Group of Interconnected Bodies Corporate to which Capital belongs;
 - (c) except with the prior written consent of the OFT the Century 106 Business is maintained and preserved, including facilities and goodwill;
 - (d) the nature, description, range and standard of goods and services currently supplied by the Century 106 Business are maintained and preserved;
 - (e) except in accordance with paragraph 2.1, paragraph 2.2 or paragraph 6.1 above, no assets of the Century 106 Business shall be disposed of, and no Interest in such assets shall be created or disposed of, other than in the ordinary course of business.

Continued Separation

10. Except with the prior written consent of the OFT, following the divestment of the Century 106 Business pursuant to paragraph 2.1, paragraph 2.2 or paragraph 6.1, Capital or any member of the Group of Interconnected Bodies Corporate to which Capital belongs:
- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the Century 106 Business;
 - (ii) any Interest in any company carrying on or having Control of the Century 106 Business; or

- (iii) other than in the ordinary course of business, any of the assets of the Century 106 Business;
- (b) shall procure that no employee or director of Capital or of any member of the Group of Interconnected Bodies Corporate to which Capital belongs holds or is nominated to any directorship or managerial position in the Century 106 Business or any directorship or managerial position in any company or other undertaking carrying on or having Control of the Century 106 Business without the OFT's written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Century 106 Business or of any company or other undertaking carrying on or having Control of the Century 106 Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Capital or of any member of the Group of Interconnected Bodies Corporate to which Capital belongs directly or indirectly acquiring the Century 106 Business or doing any of the things listed in sub-paragraphs (a), (b) and (c) above.

Compliance

- 11.1 Capital shall comply 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.
- 11.2 Capital shall cooperate fully with the OFT when the OFT is:
 - (a) monitoring compliance with the provisions of these undertakings: and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 11.3 Capital shall procure that any member of the same Group of Interconnected Bodies Corporate as Capital complies with these undertakings as if it had given them.
- 11.4 Where any Affiliate of Capital is not a member of the same Group of Interconnected Bodies Corporate as Capital, Capital shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

12. Capital shall furnish promptly to the OFT such information as the OFT considers necessary to enable it to monitor these undertakings.

Extension of time limits

13. The OFT may, where appropriate, in response to a written request from Capital showing good cause, or otherwise at its own discretion, grant an extension of any period specified or referred to in these undertakings.

Interpretation

- 14.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 14.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 14.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 14.4 For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Capital within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"business" has the meaning given by section 129(1) and (3) of the Act;

"Capital" means Capital Radio plc;

"CC" means the Competition Commission;

"the Century 106 Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the business comprising a local sound broadcasting service for the East Midlands carried on under licence number L200-1 by Border Radio Holdings Limited and currently with the call sign "106 Century FM", including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision dated 22 December 2004 in connection with the anticipated acquisition by Capital of GWR;

"Divestment Period" means the period of time determined by the OFT and notified in writing to Capital by the OFT;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"GWR" means GWR Group plc;

"OFT" means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"Trustee" means the person appointed pursuant to paragraph 4.4, 4.5 or 4.7 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraphs 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, and 6.7;

"UK" means the United Kingdom of Great Britain and Northern Ireland;

"Working Days" mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England; and

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

COMPLETED ACQUISITION BY THE DUNFERMLINE PRESS LIMITED OF BERKSHIRE REGIONAL NEWSPAPERS FROM TRINITY MIRROR PLC

PROPOSED UNDERTAKINGS TO BE GIVEN BY DUNFERMLINE PRESS LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 29 July 2007, DPL acquired BRN from Trinity Mirror plc;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of BRN to the CC;
- (f) The OFT further considers that the undertakings given below by DPL are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision; and
- (g) DPL offered initial undertakings pursuant to section 71 of the Enterprise Act 2002, which the OFT accepted on 28 November 2007, in respect of the Acquisition. These initial undertakings cease to be in force on the acceptance of the undertakings in lieu given below by DPL.

NOW THEREFORE DPL hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by DPL, they are accepted by the OFT.

Divestment of the Divestment Business

- 2.1 DPL shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement to divest to the satisfaction of the OFT the Divestment Business to the proposed purchaser, Baylis, on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, DPL shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the Divestment Business if desired by the proposed purchaser of the Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, the Parties shall take the following measures to the extent they may be necessary in the opinion of the OFT, to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
 - (d) the formation or winding up of a company.

Approval of purchaser and terms of divestment

- 3.1 For the purposes of the OFT approving Baylis as a proposed purchaser for the Divestment Business in accordance with these undertakings, DPL shall, save as required or permitted by the OFT, satisfy the OFT that:
- (a) the acquisition by the proposed purchaser of the Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the proposed purchaser is independent of and unconnected to DPL and the Group of Interconnected Bodies Corporate to which DPL belongs and any Associated Person or Affiliate of DPL or such Group of Interconnected Bodies;
 - (c) the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability) and incentive to maintain and operate the Divestment Business as part of a viable and active business in competition with DPL and other competitors in the provision of local newspapers in Slough and Windsor;
 - (d) the proposed purchaser must reasonably be expected by the OFT to obtain all necessary approvals and consents from any regulatory authority plus all relevant consents; and
 - (e) the acquisition by the proposed purchaser of the Divestment Business is not expected to result in a substantial lessening of competition within any market or markets in the UK.
- 3.2 The OFT may require DPL and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Interim action

- 4.1 Pending completion of the divestment of the Divestment Business, DPL shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, the Divestment Business is maintained as a going concern and sufficient resources are made available for the development of the Divestment Business on the basis of its pre-merger plans;
 - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Divestment Business or the management responsibilities within the Divestment Business;
 - (c) except with the prior written consent of the OFT, the Divestment Business is maintained and preserved, including facilities and goodwill;

- (d) the nature, description, range and standard of goods and services currently supplied by the Divestment Business are maintained and preserved;
- (e) the separate trading name and/or the separate sales or brand identity of the Divestment Business is maintained;
- (f) except in accordance with paragraph 2.1, no assets of the Divestment Business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (g) there is no integration, or further integration, of the information technology used by DPL with that used by the Divestment Business and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;
- (h) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to the Divestment Business shall pass, directly or indirectly from the Divestment Business (or any employees, directors, agents or Affiliates of the Divestment Business) to DPL (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
 - (i) the transfer of any accounting information necessary to allow DPL's Chief Executive, Deputy Chief Executive and Group Secretary and the DPL Board to monitor and review the financial performance of the Divestment Business provided that such accounting information is not passed on to any other person within DPL;
 - (ii) the transfer of any information required in connection with DPL's dealings with the OFT; or
 - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the businesses and including for the avoidance of doubt the compilation of consolidated accounts in line with DPL's existing accounting practices;
 - (iv) any steps necessary in order for DPL to comply with these undertakings;

provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by DPL in relation to that Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed.

Continued separation

5.1 Except with the prior written consent of the OFT, following the divestment of the Divestment Business, DPL or any member of the Group of Interconnected Bodies Corporate to which DPL belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of DPL or of any members of the Group of Interconnected Bodies Corporate to which DPL belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of DPL or of any member of the Group of Interconnected Bodies Corporate to which DPL belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having Control of the Divestment Business without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of DPL or of any member of the Group of Interconnected Bodies Corporate to which DPL belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

Compliance

- 6.1 DPL 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; and/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.
- 6.2 DPL shall procure that any member of the same Group of Interconnected Bodies Corporate as DPL complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as DPL shall be attributed to DPL for the purposes of these undertakings.
- 6.3 Where any Affiliate of DPL is not a member of the same Group of Interconnected Bodies Corporate as DPL, DPL shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 7.1 DPL shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

Interpretation

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

8.4 For the purposes of these undertakings:

"Acquisition" means the acquisition on 29 July 2007 by DPL of BRN from Trinity Mirror plc;

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with DPL within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"Baylis" means Baylis & Co (The Maidenhead Advertiser) Limited;

"BRN" means Berkshire Regional Newspapers, formerly a business unit of Trinity Mirror PLC and now incorporated into Berkshire Media Group Limited comprising the assets acquired by DPL from Trinity Mirror plc by agreement completed on 29 July 2007.

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision under section 22 of the Act dated 4 February 2008 in connection with the Acquisition;

"the Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, as operated at the date of entry into a legally binding agreement for the sale of these titles by DPL, including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express and which are capable of being transferred;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express and which are capable of being transferred;
- (c) all or substantially all contracts, vehicle leases, commitments and customer orders of or associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express which are capable of being transferred;
- (d) all customer, credit and other records of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express (in hard copy only);
- (e) all trading names associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, but not including the Maidenhead Express title; and
- (f) the personnel employed by DPL in relation to each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, other than the member of staff within BRN with responsibility for overseeing the installation of the production IT platform across the whole of the BRN business.

"DPL" means The Dunfermline Press Limited;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

"OFT" means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated; and

"UK" means the United Kingdom of Great Britain and Northern Ireland.

FOR AND ON BEHALF OF DPL

.....	Signature	Signature
.....	Name	Name
.....	Title	Title
.....	Date	Date
(Director)		Director/Company Secretary	

COMPLETED ACQUISITION BY GLOBAL RADIO UK LTD OF GCAP MEDIA PLC

UNDERTAKINGS TO BE GIVEN BY GLOBAL RADIO UK LTD TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 6 June 2008 Global acquired GCAP;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of GCAP to the CC; and
- (f) The OFT further considers that the undertakings given below by Global are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE Global hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Global, they are accepted by the OFT.

Divestment of the East Midlands Divestment Business and the West Midlands Divestment Business

- 2.1 Global shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement (or agreements), conditional on OFT approval, to divest to the satisfaction of the OFT the East Midlands Divestment Business and the West Midlands Divestment Business each as a going concern to the proposed purchaser, LDC, on terms approved by the OFT in advance of acceptance of these undertakings. The completion of the divestment of each of the East Midlands Divestment Business and the West Midlands Divestment Business as contemplated by such agreements shall take place within a period not exceeding two months from the date the undertakings take effect (as set out in paragraph 1.1 above).
- 2.2 Without prejudice to the generality of paragraph 2.1 above, Global shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business if so desired by LDC as the proposed purchaser of the East Midlands Divestment Business and the West Midlands Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Global shall take one or more of the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the East Midlands Divestment Business and the West Midlands Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer of Global's shareholding in the East Midlands Divestment Business and the West Midlands Divestment Business;
 - (b) the transfer of the rights and contracts associated with the existing carriage agreements for the DAB broadcast of the East Midlands Divestment Business analogue services in the East Midlands and the West Midlands Divestment Business analogue services in the West Midlands, save where such transfer can only be effected by means of the consent of a third party in which case Global shall take steps to procure the consent of that third party or secure alternative arrangements for DAB broadcasting of those services where such consent cannot be secured;
 - (c) the transfer of the West Midlands Divestment Business brand names relating to the FM analogue broadcast licences of the West Midlands Divestment Business and the licensing of the Heart brand relating to the FM analogue broadcast licence of the East Midlands Divestment Business as contemplated by paragraph 4.3 below;

- (d) the transfer or vesting of any additional property, assets, rights, personnel, liabilities or obligations, including without prejudice any contracts, licences, authorisations, permits or consents;
- (e) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
- (f) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (g) the formation or winding up of a company.

2.4 Global shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the East Midlands Divestment Business and the West Midlands Divestment Business as part of a viable and active business in competition with Global and other competitors in the supply of regional advertising campaigns in each of the East Midlands and West Midlands.

2.5 In the event that Global fails to divest the East Midlands Divestment Business and West Midlands Divestment Business in accordance with paragraph 2.1 above, the OFT may require Global to divest the East Midlands Divestment Business and the West Midlands Divestment Business as a going concern to a purchaser or purchasers approved by the OFT.

Approval of purchaser and terms of divestment

3.1 For the purposes of the OFT approving LDC as a proposed purchaser for the East Midlands Divestment Business and the West Midlands Divestment Business in accordance with these undertakings, Global shall, save as required or permitted by the OFT, satisfy the OFT that:

- (a) the acquisition by LDC of the East Midlands Divestment Business and the West Midlands Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) LDC is independent of and unconnected to Global and the Group of Interconnected Bodies Corporate to which Global belongs and any Associated Person or Affiliate of Global or such Group of Interconnected Bodies;

- (c) LDC has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the East Midlands Divestment Business and the West Midlands Divestment Business as part of a viable and active business in competition with Global and other competitors in the provision of regional radio advertising campaigns to reach listeners in the East and West Midlands;
 - (d) LDC has obtained all necessary approvals and consents; and
 - (e) the acquisition by LDC of the East Midlands Divestment Business and the West Midlands Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.
- 3.2 The OFT may require Global to provide it with such information and documentation as it may reasonably require to satisfy the OFT that LDC will fulfil the requirements set out in paragraph 3.1 above.

Advertising Sales Agreement and licence of Heart brand

- 4.1 Global shall enter into a Advertising Sales Agreement with LDC which provides for Global to sell advertising campaigns for the East Midlands Divestment Business and West Midlands Divestment Business on behalf of LDC for use as part of National Campaigns.
- 4.2 Global shall be deemed to have complied with the obligation at paragraph 4.1 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, Global has entered into a legally binding agreement (or agreements) to divest the East Midlands Divestment Business and the West Midlands Divestment Business (in accordance with its obligation under paragraph 2.1 above), which agreement (or agreements) provides that on completion of such agreement (or agreements) LDC shall deliver or make available to Global a duly executed version of an agreed form Advertising Sales Agreement, provided that the terms of the Advertising Sales Agreement:
- (a) do not individually and/or collectively reduce or undermine LDC's ability to compete actively with Global as regards the sale of Regional Campaigns that do not form part of a National Campaign, including, for example, by the imposition of a minimum inventory requirement for National Campaigns beyond that which would be considered reasonable and proportionate in relation to such an Advertising Sales Agreement in these circumstances;
 - (b) do not individually and/or collectively reduce or undermine LDC's incentive to compete actively with Global in the sale of Regional Campaigns that do not form part of a National Campaign; and

(c) contain no direct or indirect restriction on LDC's ability to sell Regional Campaigns, including Regional Campaigns forming part of a National Campaign, regardless of the identity of any customer purchasing such Regional Campaign, provided that the customer in question has indicated their preference to purchase a Regional Campaign directly from LDC.

4.3 Global shall enter into a Brand Licence with LDC in order to allow LDC to use the Heart brand in relation to the East Midlands Divestment Business.

4.4 Global shall be deemed to have complied with the obligation at paragraph 4.3 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, Global has entered into a legally binding agreement (or agreements) to divest the East Midlands Divestment Business and the West Midlands Divestment Business (in accordance with its obligations under paragraph 2.1 above), which agreement (or agreements) provides that on completion of such agreement (or agreements) LDC shall deliver or make available to Global a duly executed version of an agreed form Brand Licence, provided that the terms of the Brand Licence:

(a) do not provide Global with the ability to determine or influence LDC's choice of local programming staff or local presenters for the East Midlands Divestment Business or the West Midlands Divestment Business;

(b) do not individually and/or collectively reduce or undermine LDC's ability to compete actively with Global as regards the sale of Regional Campaigns that do not form part of National Campaigns, including, for example, by:

(i) the imposition of minimum quality standards beyond those that would be considered reasonable and proportionate in relation to such a Brand Licence; and/or

(ii) the imposition of a minimum quantity of national network programming that is materially detrimental to the commercial operation of the Station;

(c) do not individually and/or collectively reduce or undermine LDC's incentive to compete actively with Global in the sale of Regional Campaigns that do not form part of a National Campaign; and

(d) contain no direct or indirect restriction on LDC's ability to sell Regional Campaigns, including Regional Campaigns forming part of a National Campaign, regardless of the identity of any customer purchasing such Regional Campaign, provided that the customer in

question has indicated their preference to purchase a Regional Campaign directly from LDC.

Interim action

5.1 Prior to the completion of the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Global shall ensure that from the date these undertakings take effect and -except with the prior written consent of the OFT:

- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, each of the East Midlands Divestment Business and the West Midlands Divestment Business is maintained as a going concern and sufficient resources are made available for the development of each of the East Midlands Divestment Business and the West Midlands Divestment Business on the basis of their respective pre-merger plans;
- (b) no substantive changes are made to the organisational structure of the East Midlands Divestment Business and the West Midlands Divestment Business or the management responsibilities within the East Midlands Divestment Business and the West Midlands Divestment Business, other than in the ordinary course of business;
- (c) the East Midlands Divestment Business and the West Midlands Divestment Business are maintained and preserved, including facilities and goodwill;
- (d) the nature, description, range and standard of goods and services currently supplied by the East Midlands Divestment Business and the West Midlands Divestment Business are maintained and preserved;
- (e) the separate trading name and/or the separate sales or brand identity of each of the East Midlands Divestment Business and the West Midlands Divestment Business is maintained;
- (f) except in relation to the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business to LDC, no assets of the East Midlands Divestment Business and the West Midlands Divestment Business are disposed of, and no interest in such assets is created or disposed of, other than in the ordinary course of business;
- (g) there is no further integration of the information technology used by Global with that used by either of the East Midlands Divestment

Business and the West Midlands Divestment Business and the software and hardware platforms of the East Midlands Divestment Business and the West Midlands Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;

- (h) all reasonable steps are taken to encourage all Key Staff to remain with the East Midlands Divestment Business and the West Midlands Divestment Business, save where LDC has stated in writing to Global that it does not wish that an individual member of the Key Staff be transferred to it with the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to any of the East Midlands Divestment Business and the West Midlands Divestment Business shall pass, directly or indirectly from the East Midlands Divestment Business or the West Midlands Divestment Business (or any employees, directors, agents or Affiliates of the East Midlands Divestment Business and the West Midlands Divestment Business) to Global (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
 - (i) the transfer of any accounting information necessary to allow Global's Chief Executive, Chief Financial Officer and Group Secretary and the Global Board to monitor and review the financial performance of the East Midlands Divestment Business and the West Midlands Divestment Business provided that such accounting information is not passed on to any other person within Global;
 - (ii) the transfer of any information required in connection with Global's dealings with the OFT;
 - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the East Midlands Divestment Business and the West Midlands Divestment Business businesses;
 - (iv) any steps necessary in order for Global to comply with these undertakings;

provided that, upon divestment of any of the East Midlands Divestment Business and the West Midlands Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Global in relation to East Midlands Divestment

Business or the West Midlands Divestment Business shall be returned to the relevant business and any copies destroyed.

Continued separation

- 6.1 Except with the prior written consent of the OFT, following the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business, Global or any member of the Group of Interconnected Bodies Corporate to which Global belongs:
- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the East Midlands Divestment Business or the West Midlands Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the East Midlands Divestment Business or the West Midlands Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Global or of any members of the Group of Interconnected Bodies Corporate to which Global belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of the East Midlands Divestment Business or the West Midlands Divestment Business;
 - (b) shall procure that no employee or director of Global or of any member of the Group of Interconnected Bodies Corporate to which Global belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having Control of the East Midlands Divestment Business or the West Midlands Divestment Business without the OFT's prior written consent;
 - (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the East Midlands Divestment Business and the West Midlands Divestment Business; and
 - (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of

Global or of any member of the Group of Interconnected Bodies Corporate to which Global belongs directly or indirectly acquiring the East Midlands Divestment Business and the West Midlands Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

Compliance

- 7.1 Global 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.
- 7.2 Global shall procure that any member of the same Group of Interconnected Bodies Corporate as Global complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Global shall be attributed to Global for the purposes of these undertakings.
- 7.3 Where any Affiliate of Global is not a member of the same Group of Interconnected Bodies Corporate as Global, Global shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 8.1 Global shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

Interpretation

- 9.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 9.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

9.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

9.4 For the purposes of these undertakings:

"Acquisition" means the completed acquisition on 6 June 2008 by Global of GCAP;

"Advertising Sales Agreement" has the meaning set out in Clause 4.1 above;

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Global within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"Brand Licence" has the meaning set out in Clause 4.3 above;

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision under section 22 of the Act dated 8 August 2008 in connection with the Acquisition;

"East Midlands Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the following companies:

Name	Company Number
Global Radio East Midlands Limited	03050677
Border Radio Holdings Limited	03376590

which comprise a local sound broadcasting service for the East Midlands carried on under the following licence number and with the following call sign

Licence number	Carried on by	Call sign
AL200-1	Global Radio East Midlands Limited	"Heart"

excluding the Heart brand, but including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

"GCAP" means GCap Media plc;

"Global" means Global Radio UK Limited;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to

exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the East Midlands Divestment Business and/or the West Midlands Divestment Business;

"LDC" means LDC Media;

"National Campaign" mean an advertising campaign that is either UK-wide in scope or is at least wider in geographic coverage than the East Midlands and West Midlands;

"OFT" means the Office of Fair Trading;

"Regional Campaign" means an advertising campaign which will be broadcast in the East Midlands and/or West Midlands;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"UK" means the United Kingdom of Great Britain and Northern Ireland; and

"West Midlands Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the following companies:

Name	Company Number
Midlands Radio Limited	02365381
BRMB Limited	00275304
Birmingham Broadcasting Limited	00685666
Capital Gold Birmingham Limited	04643580
Capital Radio Fun Limited	01384547
Capital Radio North East Limited	01455872
Mercia Sound Limited	01386660
Beacon Broadcasting Limited	00674678
Radio Wyvern Limited	01568552

which comprise a local sound broadcasting service for the West Midlands carried on under the following licence numbers and with the following call signs

Licence number	Carried on by	Call sign
AL077-2	Birmingham Broadcasting Limited	"BRMB"
AL119-2	Beacon Broadcasting Limited	"Beacon FM"
AL022-2	GWR Group Limited	"Mercia FM"
AL061-3	Radio Wyvern Limited	"Wyvern FM"
AL076-2	Capital Gold Birmingham Limited	"Gold Birmingham"
AL118-2	GCap Media AM Limited	"Gold Wolverhampton"
AL021-2	GCap Media AM Limited	"Gold Coventry"

including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

FOR AND ON BEHALF OF GLOBAL RADIO UK LIMITED

..... Signature Signature

..... Name Name

..... Title Title

..... Date Date

Director

Director/Company Secretary

Enterprise Act 2002 Undertakings

ACQUISITION OF INSYS GROUP LIMITED BY LOCKHEED MARTIN UK HOLDINGS
LIMITED

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY
BY

LOCKHEED MARTIN UK HOLDINGS LIMITED, INCORPORATED IN ENGLAND AND
WALES WHOSE REGISTERED OFFICE IS AT 59 LAFONE STREET, LONDON SE1 2LX
(No. 3184898) ("LMUK"); AND

LOCKHEED MARTIN CORPORATION, A COMPANY INCORPORATED UNDER THE LAWS
OF THE STATE OF MARYLAND, USA, WHOSE HEADQUARTERS ARE SITUATED AT
6801 ROCKLEDGE DRIVE, BETHESDA, MARYLAND, USA ("LOCKHEED MARTIN
CORPORATION")

WHEREAS:

- (A) On 16 August 2005 LMUK announced its proposal to acquire by way of share purchase Insys Group Limited, incorporated in England and Wales, whose registered office is at Reddings Wood, Ampthill, Bedford, Bedfordshire MK45 2HD (No. 4141148) ("Insys") (the "Transaction");
- (B) On 17 August 2005 the Secretary of State issued a special intervention notice to the OFT pursuant to section 59(2) of the Act;
- (C) On 19 September 2005 the OFT reported to the Secretary of State in accordance with section 61(2) of the Act, which was within the period specified by the Secretary of State, summarising representations received by it relating to the national security public interest consideration specified in the special intervention notice;
- (D) The Secretary of State has the power to refer the Transaction to the Competition Commission under section 62(3) of the Act or may, instead of making such a reference, accept undertakings in lieu under paragraph 3(2) of Schedule 7 of the Act;
- (E) The Secretary of State considers the undertakings given below by LMUK and Lockheed Martin Corporation are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of the special merger situation and the Secretary of State shall in consequence not make a reference to the Competition Commission.

LMUK and Lockheed Martin Corporation therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this special merger situation.

INTERPRETATION

In these undertakings:-

- 1.1 where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2 except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3 reference to a clause shall be a reference to a clause within these undertakings;
- 1.4 "Act" means the Enterprise Act 2002;
- 1.5 "Classified" means protectively marked in accordance with the system of protective marking defined in the Government Manual of Protective Security;
- 1.6 "Effective Date" means the date on which these undertakings are accepted by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the date of such completion;
- 1.7 "Insys" means Insys Group Limited, a company incorporated in England and Wales whose registered office is at Reddings Wood, Ampthill, Bedford, Bedfordshire MK45 2HD (No. 4141148);
- 1.8 "LMUK" means Lockheed Martin UK Holdings Limited, a company incorporated in England and Wales whose registered office is at 59 Lafone Street, London SE1 2LX (No. 3184898) and for the avoidance of doubt shall not include Lockheed Martin Corporation;
- 1.9 "Lockheed Martin Corporation" means Lockheed Martin Corporation, a company incorporated under the laws of the State of Maryland, USA and whose headquarters are situated at 6801 Rockledge Drive, Bethesda, Maryland, USA;
- 1.10 "Military Programmes" means any defence-related programmes in relation to which any of the UK Companies enters into or has entered into contracts with the Ministry of Defence;
- 1.11 "Ministry of Defence" means the United Kingdom Secretary of State for Defence;
- 1.12 "OFT" means the Office of Fair Trading;
- 1.13 "Prime Contractor" means a UK Company which is a supplier to the Ministry of Defence under Military Programmes, under a contract between the UK Company in question and the Ministry of Defence;
- 1.14 "Secretary of State" means the Secretary of State for Trade and Industry;
- 1.15 "Security Undertakings" means the undertakings made in clause 2;
- 1.16 "Subcontractor" means a UK Company which is a contractor with a third party in connection with Military Programmes;
- 1.17 "Subsidiary" has the meaning ascribed to it in sections 736 and 736A of the Companies Act 1985 as amended;
- 1.18 "UK Companies" means Insys and those Subsidiaries of Insys that are incorporated in

England and Wales at the Effective Date and any successor UK company resulting from any internal reorganisation of LMUK in accordance with the terms of the Security Undertakings;

- 1.19 "UK Military Capability" means the capability immediately prior to the Effective Date within the UK Companies to carry out Military Programmes and to perform any contracts or subcontracts (including those entered into on and after the Effective Date) relating to Military Programmes;
- 1.20 "UK National Security Regulations" means the regulations in relation to Classified material set out in the Government Manual of Protective Security as amended or supplemented from time to time;
- 1.21 "UK Protected Material" means information, software, hardware and equipment classified "Confidential" or above or to which access is otherwise similarly restricted in the interests of UK national security; and
- 1.22 "US ITAR" means United States International Traffic in Arms Regulations.

2. SECURITY UNDERTAKINGS

LMUK undertakes that:

Maintenance of strategic capabilities

- 2.1 It will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, except in so far as the Ministry of Defence has separately agreed otherwise in writing, a sufficient number of the directors of such a UK Company shall be UK security cleared British Citizens to enable security sensitive issues to be resolved at board level should the need arise.
- 2.2 It will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, those Military Programmes shall continue to be directly controlled, except insofar as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK.
- 2.3 It will provide to the Ministry of Defence a copy of the Memorandum and Articles of Association of each of the UK Companies within one month of the completion of the Transaction.
- 2.4 It will inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence at least 3 months prior to (i) removal of any significant part of the UK Military Capability to any location outside of the United Kingdom; or (ii) disposal of any significant part of the UK Military Capability to any entity not directly or indirectly controlled by LMUK; or (iii) the voluntary winding-up or dissolution of LMUK; or (iv) reducing in any significant way the UK Military Capability with respect to funded Military Programmes.

Protection and Exploitation of Technology and Information

- 2.5 Except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to Military Programmes and security within the UK Companies shall be maintained in line with UK National Security Regulations, including the security of work areas subject to special physical ring-fencing and in particular:
- (i) the operational management of the Military Programmes by the UK Companies shall be by personnel with the appropriate UK security clearances, with security procedures meeting UK National Security Regulations and any other such

requirements as deemed necessary from time to time by the Ministry of Defence;

- (ii) only personnel with appropriate security clearance shall have access to UK Protected Material;
- (iii) no transfer or disclosure by whatever means of UK Protected Material, and no other Classified information which is owned by a third party or country, shall be made outside of LMUK, or to locations outside the United Kingdom without the prior written approval of the Ministry of Defence;
- (iv) the originals of all information and material generated by the UK Companies pertaining to Military Programmes shall remain in the United Kingdom; and
- (v) prior to incorporating any information, material or technology which is subject to US ITAR into any Military Programme for which any of the UK Companies is under contract with the Ministry of Defence on the Effective Date, LMUK shall obtain written approval from the Ministry of Defence.

2.6 It will ensure that the UK Companies are aware of, and bound by, obligations between the Ministry of Defence and any of the UK Companies regarding confidentiality of information, and rights in and limitations on use of intellectual property. It will also ensure that the UK Companies shall continue to respect any commercial exploitation levy obligations between the Ministry of Defence and any of the UK Companies in effect at the Effective Date.

Compliance

2.7 It will provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that LMUK is fulfilling the Security Undertakings. If LMUK is unable to comply with any of the Security Undertakings, or becomes aware of any non-compliance, it will provide full reasons for the inability to comply or the non-compliance within one month of becoming aware thereof.

2.8 As well as appointing a security officer responsible for facilitating and overseeing the compliance with UK National Security Regulations and the Security Undertakings at the premises of the UK Companies (as required by UK National Security Regulations), LMUK will, as soon as reasonably practicable after the Effective Date and following consultation with the Ministry of Defence, appoint a compliance officer who shall be responsible for providing to the Ministry of Defence:

- (i) an annual report within three months of the end of the financial year of Insys, as well as any other such information as the Ministry of Defence may from time to time require, to verify compliance with the Security Undertakings, including any measures taken or proposed by the UK Companies so as to ensure compliance with the Security Undertakings and to prevent any breach of them; and
- (ii) full particulars of any failure to comply with the Security Undertakings immediately upon such failure becoming apparent.

2.9 For the purpose of checking compliance with the Security Undertakings, representatives of the Ministry of Defence shall be entitled to enter and inspect any premises used by the UK Companies which are in any way connected with Military Programmes and inspect any document or thing in any such premises which is concerned with such Military Programmes. Such representatives shall be entitled to all such information as they may reasonably require.

Provision of Information

- 2.10 It will co-operate with the OFT and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these Security Undertakings.

Directions from the OFT

- 2.11 LMUK and the UK Companies will comply with such written directions as the OFT may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Security Undertakings. LMUK and the UK Companies will do or refrain from doing anything so specified or described in such written directions which they might be required by these Security Undertakings to refrain from doing or to do. LMUK will procure that the UK Companies comply with these Security Undertakings as if the UK Companies themselves had given them.

3 UNDERTAKING BY LOCKHEED MARTIN CORPORATION

- 3.1 Lockheed Martin Corporation undertakes that it will take or refrain from taking such action as is reasonably necessary, in order to enable LMUK to comply with the Security Undertakings.

4 GOVERNING LAW

- 4.1 These Undertakings shall be governed by and construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to resolve, and the laws of England shall govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to these Undertakings or breach thereof, except that other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed

For and on behalf of Lockheed Martin UK Holdings Limited

Signed

For and on behalf of Lockheed Martin Corporation



[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: letter to MPs and peers



Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 14 March 2011 19:51:04 GMT
To: Adam Smith [Redacted]
Subject: FW: letter to MPs and peers

Guardian.co.uk: News Corp/BSkyB merger: letter to MPs and peers

Alliance against News Corp's Sky deal ask members of parliament and House of Lords to lobby Jeremy hunt

Monday 14 March 2011 13.57 GMT

I am writing on behalf of the alliance of media organisations – BT, Guardian Media Group, Associated Newspapers Ltd, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group – that has opposed the above merger.

Members of both Houses will be aware of OFCOM's initial advice to the Culture Secretary that the merger would give rise to serious media plurality concerns and should be referred to the Competition Commission; and the fact that the Culture Secretary was initially minded to accept this advice.

As we now know, the Culture Secretary went on to revise this position. He announced on Thursday 3 March that he was minded to accept undertakings from News Corporation and clear the way for the takeover, subject to a consultation period ending Monday 21 March.

This letter sets out why the alliance believes the proposed undertakings will be ineffective and will not achieve their stated aim of protecting plurality in news media. I set out below the main arguments that lead us to believe the undertakings should not be accepted and support our view that that this matter should still be referred to the Competition Commission. I hope that you find the arguments persuasive, and may find time to write to the Secretary of State.

Our reasons for opposing clearance of the proposed remedy without a full Competition Commission investigation can be summarised as follows:

1 Newco, the new publicly listed spin off company which will run Sky News, will be in a state of economic dependency vis-à-vis News Corporation. Newco and Sky News will rely on News Corporation for 85% of its revenues and for its access to the market via the all-powerful digital satellite BSkyB platform. Newco will be tied into the royalty-bearing brand licensing agreement with News Corporation for the Sky News and other associated brands. This will provide a ready means for News Corporation to turn the financial screw on Newco if it so wishes to exert influence.

2 The safeguards for editorial independence are weak and of the sort that News Corporation has previously being adept at undermining. The main board of Newco will still have News Corporation 'placemen' on it, able to exert significant influence over Sky News. Only one of the independent directors of Newco will be required to have editorial or senior journalistic experience. The definition of independence in the undertakings is weak. The remedy relies on an unspecified 'principle of editorial independence'. The safeguards for editorial staff are too legalistic and written in employment law terms. They require editorial staff to put themselves into dispute with their employer in defence of editorial independence, which is likely to be regarded by staff as an extreme and risky step. The proposal for a Sub Committee of the main board of Newco to oversee this is a remedy precisely of the sort that has previously been undermined by News Corporation. On this issue we agree with the views of James Murdoch, current chairman of BSkyB:

"[W]e must have genuine independence in the news media. Genuine independence is a rare thing. No amount of governance in the form of committees, regulators, trusts or advisory boards is truly sufficient as a guarantor of independence. On the contrary, independence is characterised by the absence of supervision and dependency." [1]

3 Neither OFCOM nor the OFT regard this remedy as a sustainable solution. The OFT, in its advice to the Culture Secretary, warns that the proposed remedy is "unlikely to be effective" beyond the short to medium term (ie beyond ten years or potentially even less). OFCOM, in its advice to the Culture Secretary, specifically states that the remedy is "not a permanent solution". OFCOM also recognises that the market will change a lot in the next ten years and agrees that ten

years is, in that context, therefore "long term". But this does not amount to advice as to the appropriate duration of the remedy.

4 The proposed consultation is insufficient. The OFT advises that the Culture Secretary should 'test further the viability and robustness' of the commitments from News Corporation during the consultation process. The undertakings will in fact be composed of a series of detailed draft contracts between News Corporation and Newco. We do not regard it as practically possible to prepare, review and anticipate the complex effects of such contracts in a two week consultation period. In any event, some of the key elements of the arrangements have not been made public.

5 The remedy puts too much power in the hands of the Culture Secretary, rather than independent regulators. There are at least seven different ways in which the Culture Secretary can be required to approve or agree to behaviours governed by the undertakings, which make them incredibly susceptible to more or less implicit political interference in future. In any event, all the undertakings to protect independence would be extinguished should News Corporation acquire over 50% of Newco. This would require the consent of and consultation by the Culture Secretary. However, it is well known that Sky News is loss-making. Were it to fall into economic distress, a bid by News Corporation to increase its stake in Newco to 'save Sky News and protect plurality' can readily be envisaged.

6 The law to protect plurality has failed and needs urgent strengthening. In its advice to the Culture Secretary, OFCOM says that the current laws protecting plurality do not work well. OFCOM urges a wider review with a view to creating a system that does not require a transaction to take place for issues of plurality to be examined by the regulator. We agree with this. The need for such a review is intensified by the increase in market power that will be exerted by the merged News Corporation/BSkyB entity. It will be in a position to restrict or distort competition through cross-promotion, bundling, banning rivals' advertisements and distorting the advertising market with cross-platform deals. These are issues of massive importance to the industry, especially at a time of real commercial pressure, but which the Secretary of State was able to ignore completely in his consideration of this takeover. We need a regulatory regime able to factor in these issues and their likely effect on pluralism.

In summary:

We regard the proposed undertakings as being fraught with uncertainty and unlikely to safeguard plurality. We do not believe that, given these concerns, and those of many others in civil society, the Culture Secretary should accept these undertakings, but should forward the matter to the Competition Commission for a full investigation.

Please do get in touch if any further information on this issue is required to assist you in your Parliamentary duties.

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[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: CONFIDENTIAL _ RUBUTTAL SLAUGHTER AND MAY DOCUMENT
Attachments: CO-#13715780-v3-Outline_rebuttal_to_Slaughter_&_May_document.DOC;
ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel [redacted]>
Date: 24 March 2011 08:48:49 GMT
To: [redacted]
Subject: CONFIDENTIAL _ RUBUTTAL SLAUGHTER AND MAY DOCUMENT

Here it is. Hope it's helpful for this afternoon's meeting. Tried to be as comprehensive as possible.
Fred

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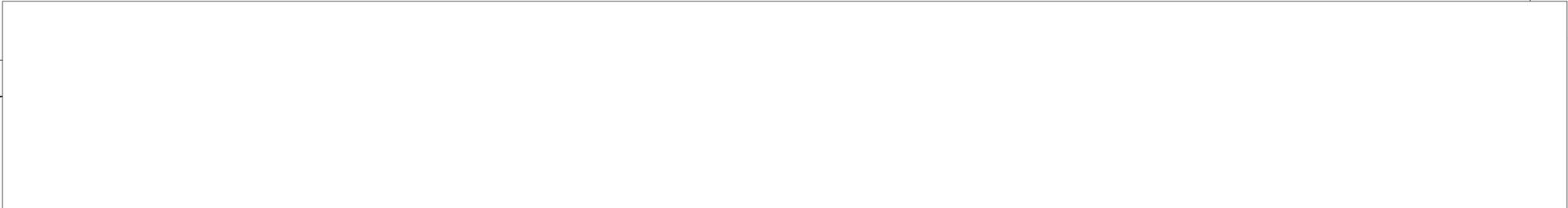
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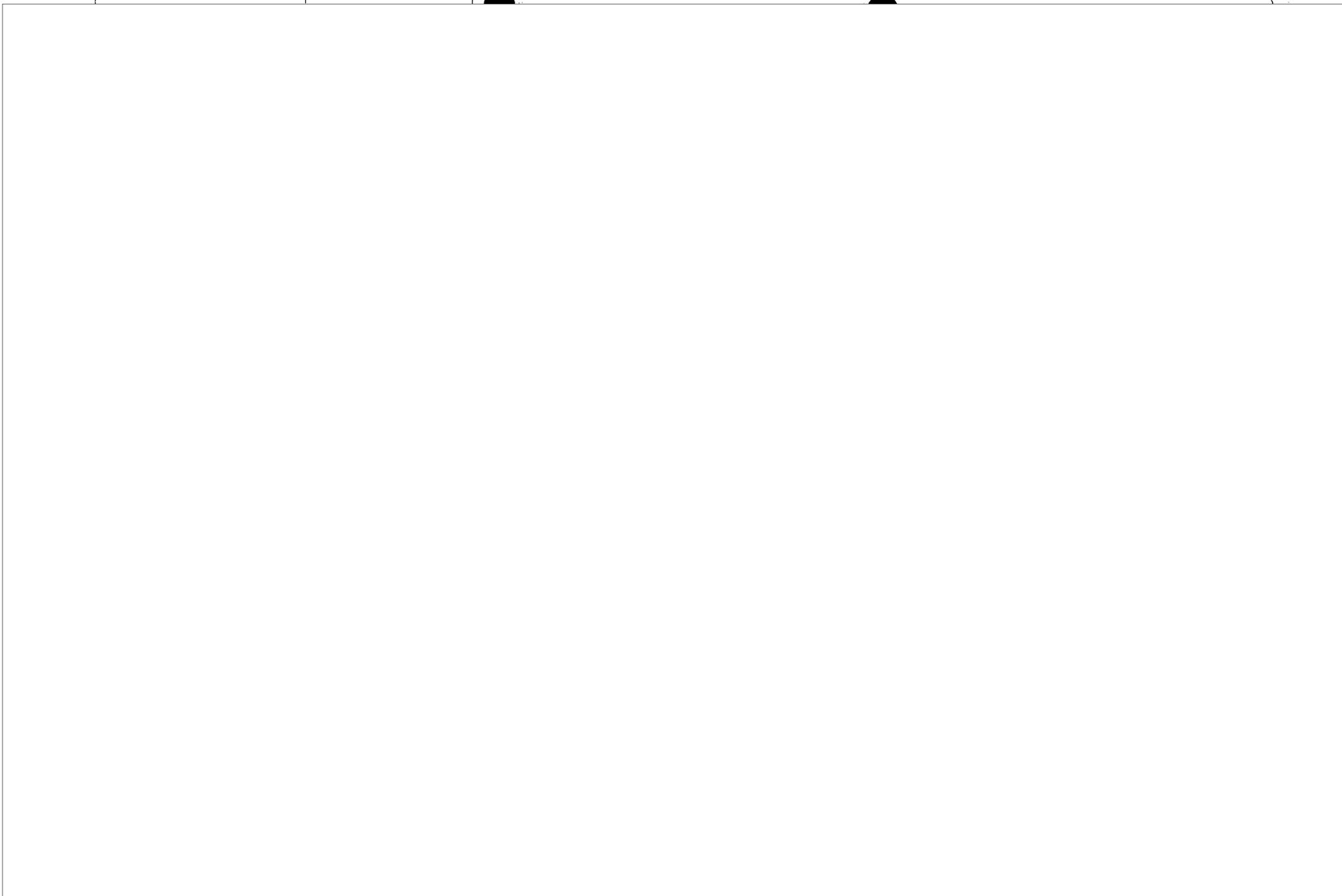




For Distribution to CPs

MOD300009582









[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: RESTRICTED: Newscorp / BskyB - OFT/OFCOM Questions re draft carriage agreemtn and brand licensing agreement
Attachments: News - Sky - OFT OFCOM Questions of 29 March 2011 on draft contracts of 21 March 2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel [Redacted]>
Date: 30 March 2011 09:59:05 GMT+01:00
To: Adam Smith [Redacted]
Subject: Fwd: RESTRICTED: Newscorp / BskyB - OFT/OFCOM Questions re draft carriage agreemtn and brand licensing agreement

Please find attached an initial and non-exhaustive list of questions (prepared jointly by OFT and Ofcom) in relation to the draft carriage agreement and brand licensing agreement submitted by News Corporation to [Redacted] of the Department for Culture, Media and Sport on 21 March 2011.

These questions are designed to assist the OFT and Ofcom in preparing their advice to the Secretary of State under sections 93 and 93A Enterprise Act 2002 respectively.

We request a response to these questions if possible by 5pm on 31 March 2011, or in any event by 5pm on 1 April 2011. It may be useful to have a conference call later this week / early next week once we have had an opportunity to review your response to these questions.

Kind regards

Sheldon

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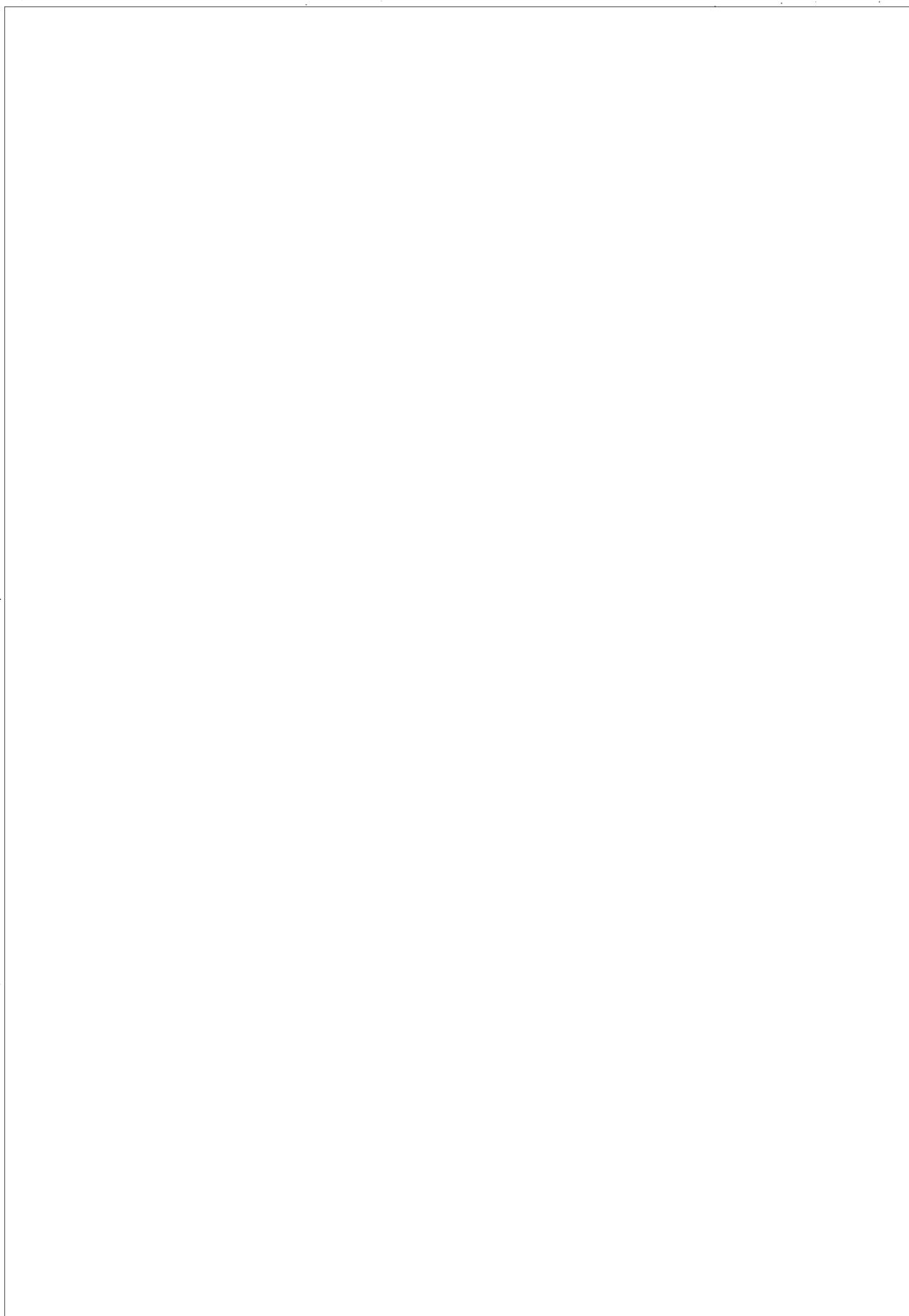
PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

OFT / OFCOM JOINT QUESTIONS TO NEWS
RE DRAFT CARRIAGE AGREEMENT AND BRAND LICENSING AGREEMENT
OF 21 MARCH 2011

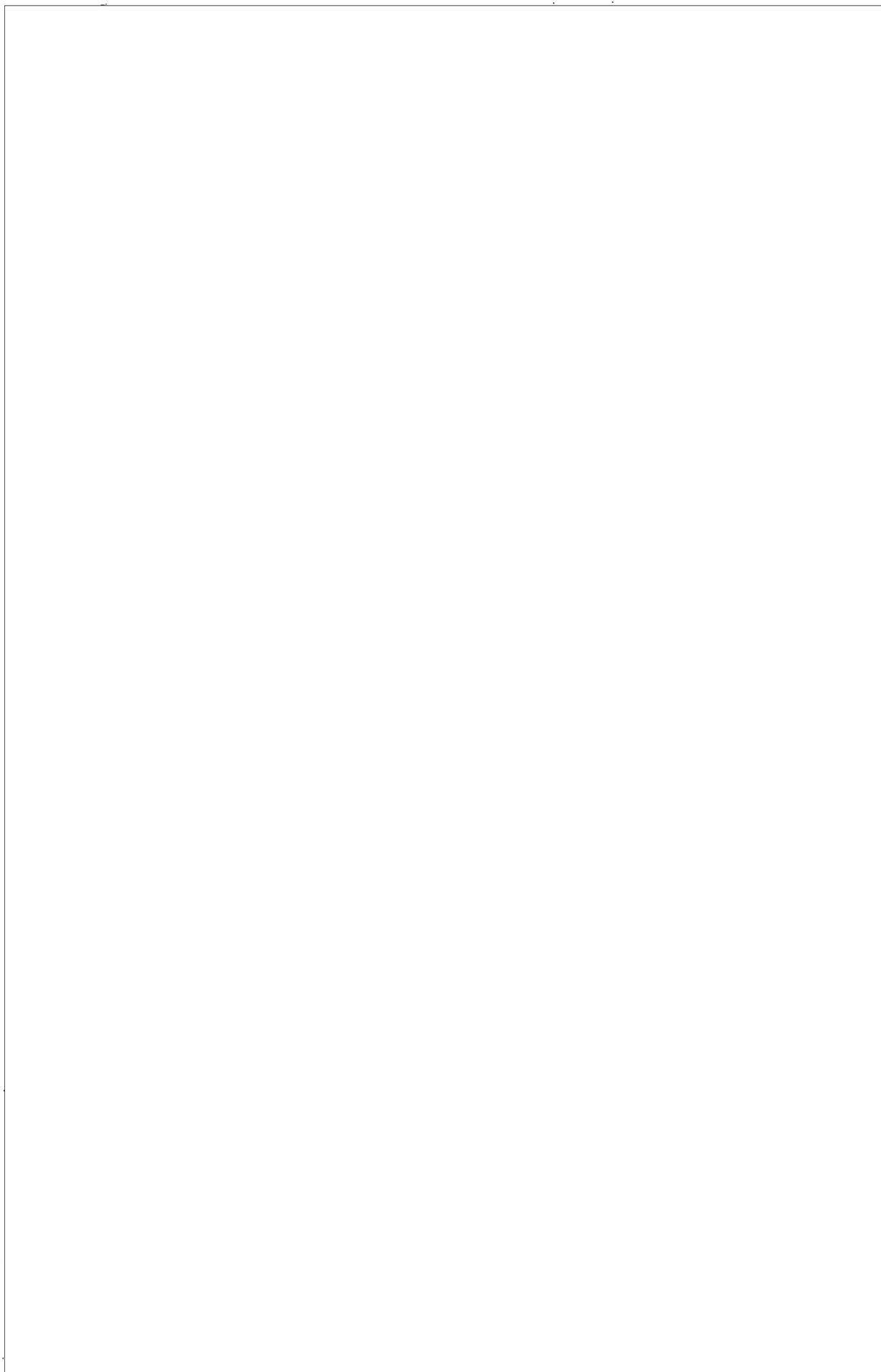
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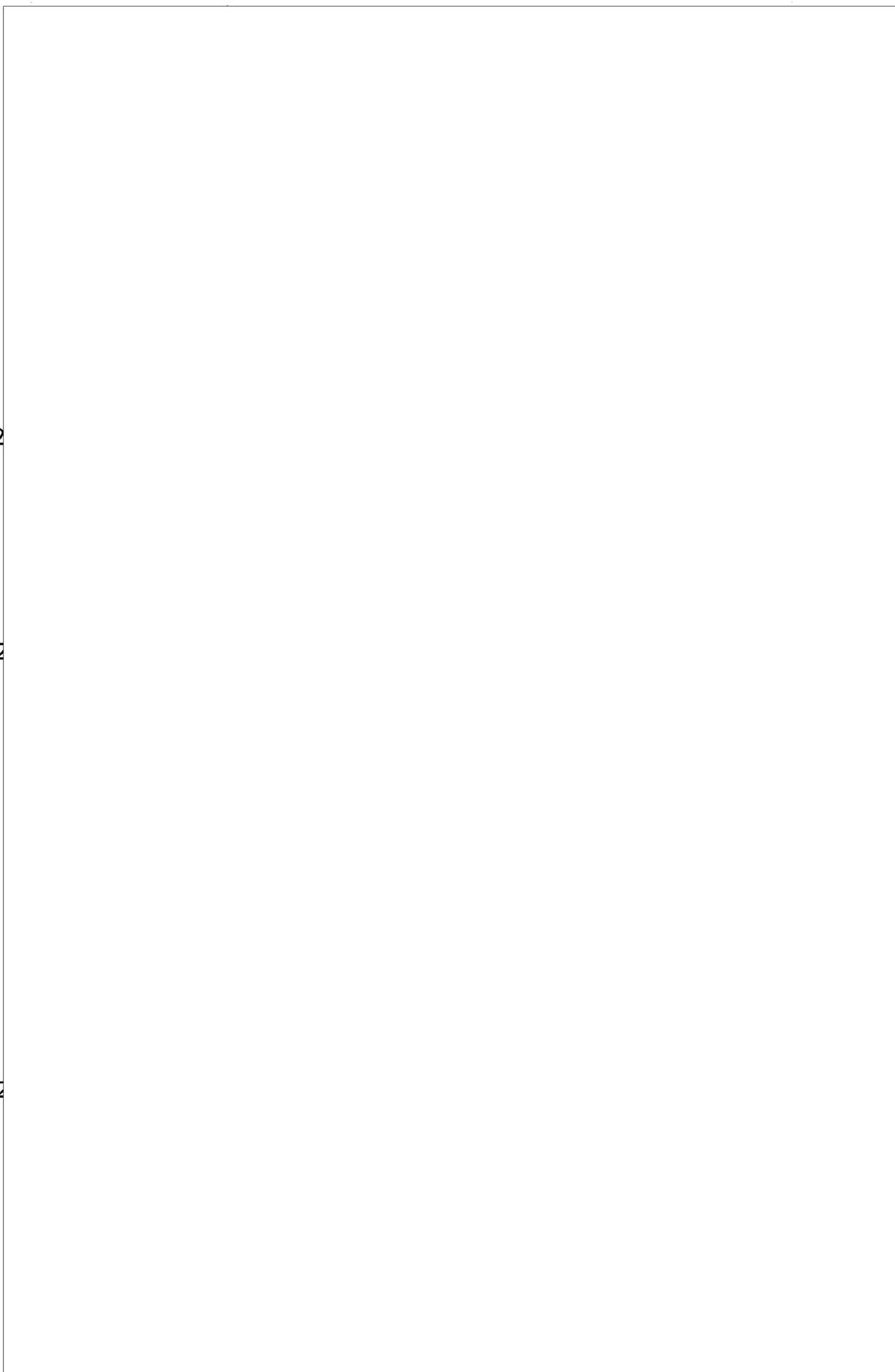
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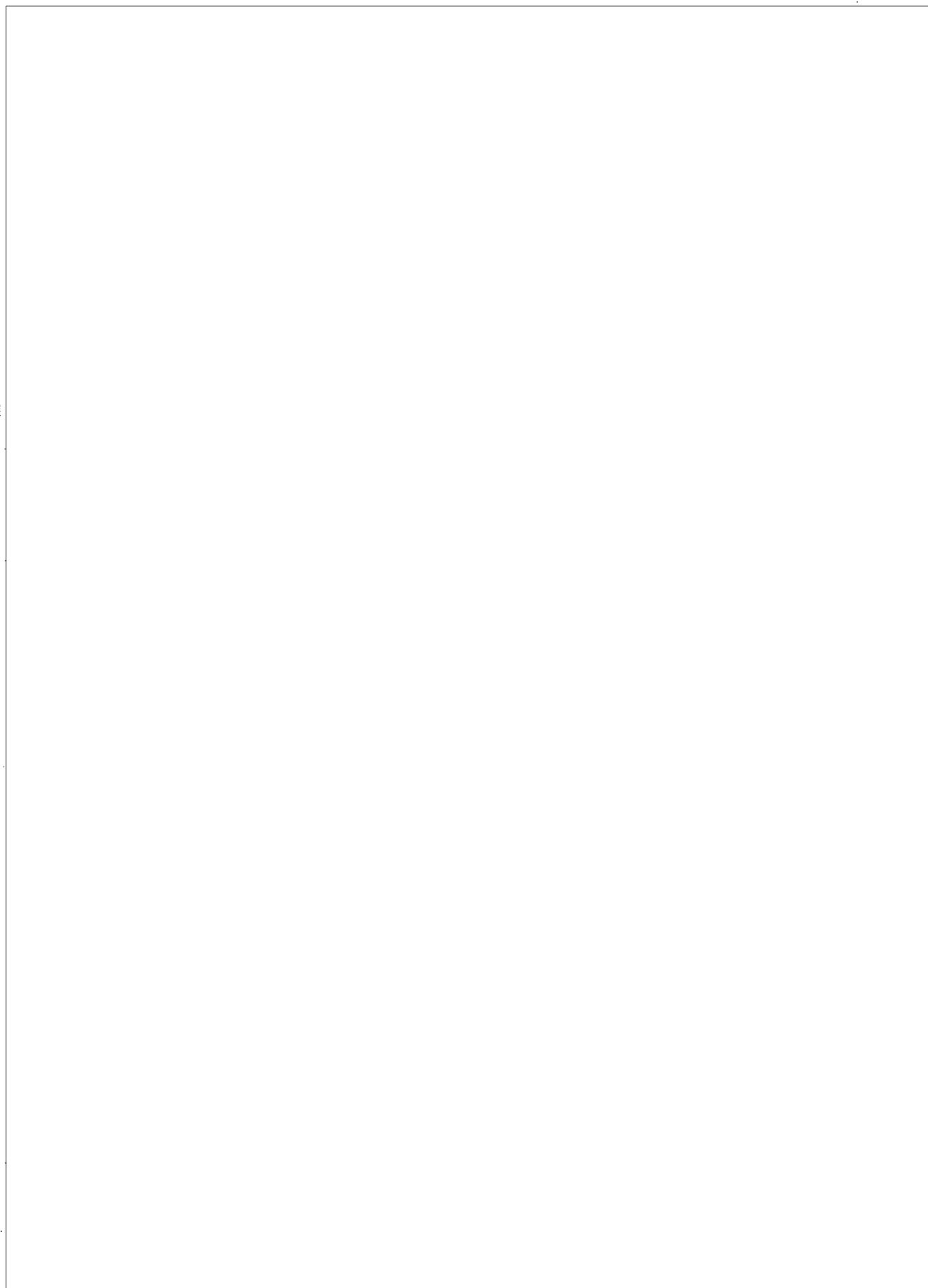
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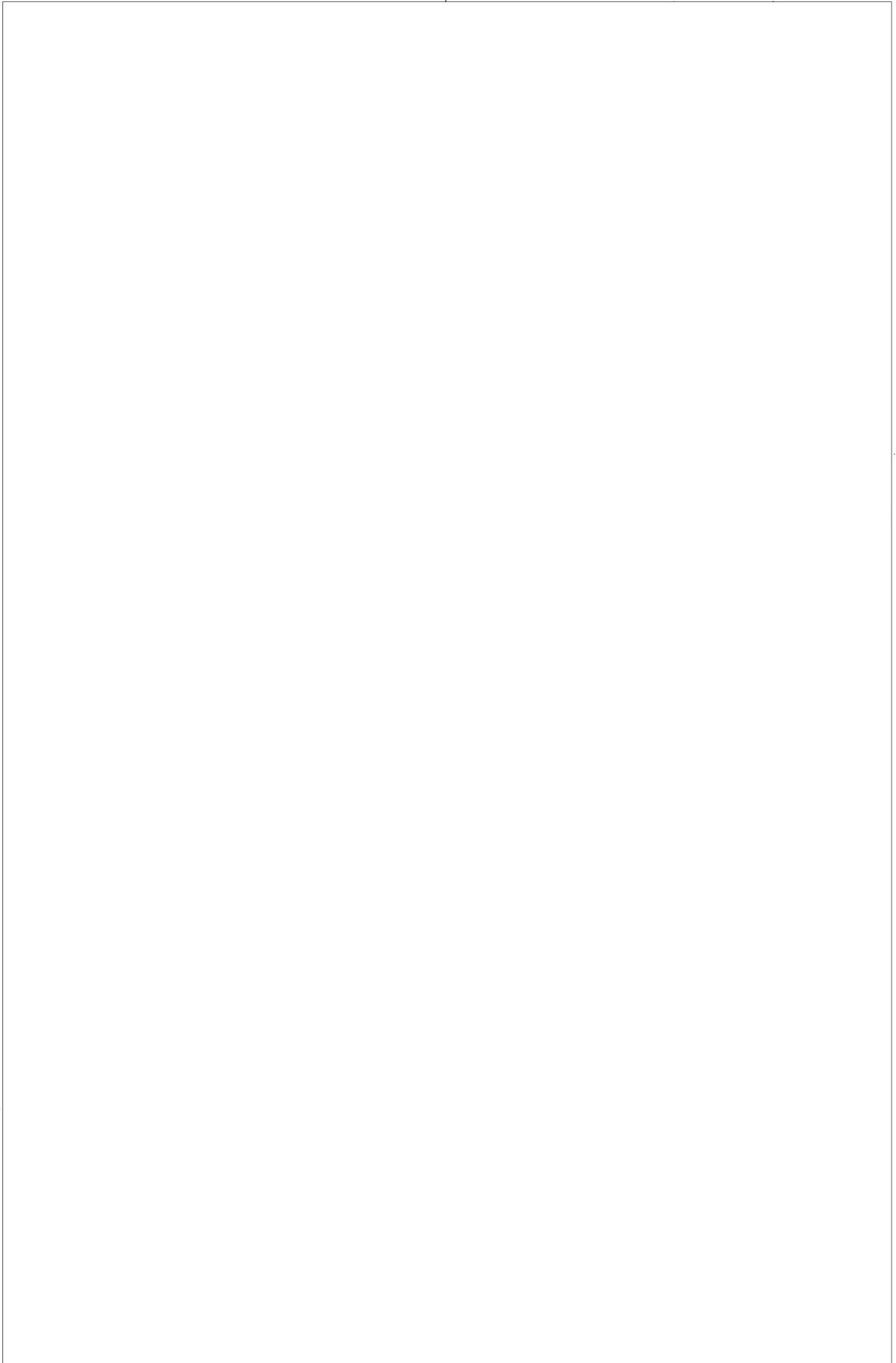
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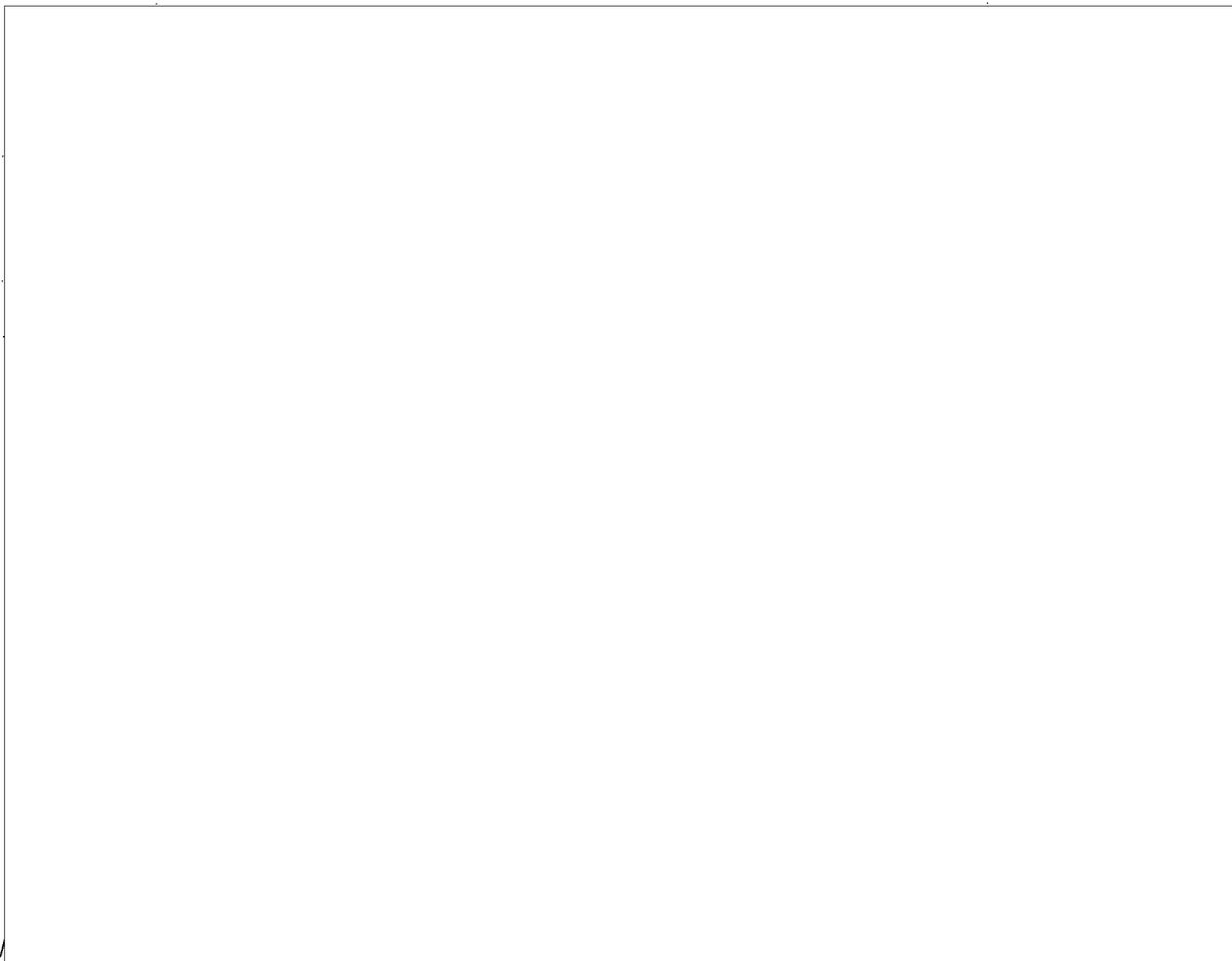
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OFT /

29 March 2011

[redacted]

From: Adam Smith [redacted]
Sent: 27 April 2012 09:57
To: OLDFIELD PAUL
Subject: Fwd: News' response to OFT/Ofcom questions of 29 March 2011 (0012561-0000367)
Attachments: CO-#13754766-v9-News_response_to_OFT_Ofcom_questions_of_29_March_2011.pdf; ATT00001..htm; CO-#13775220-v1-Annex_2_of_Response_to_OFT_Ofcom_29_March_questions.XLS; ATT00002..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[redacted]>
Date: 4 April 2011 12:45:50 GMT+01:00
To: [redacted]
Subject: FW: News' response to OFT/Ofcom questions of 29 March 2011 (0012561-0000367)

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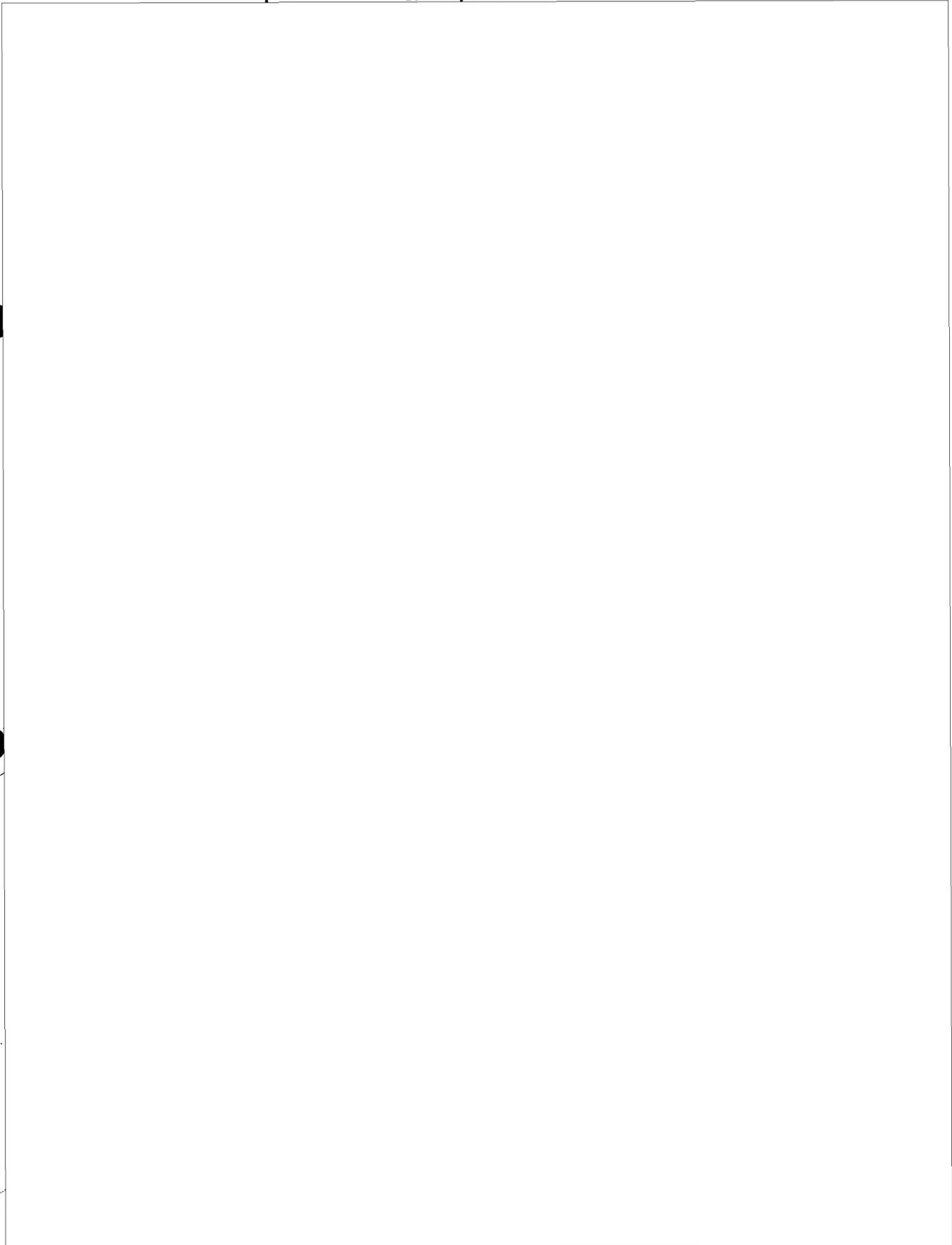
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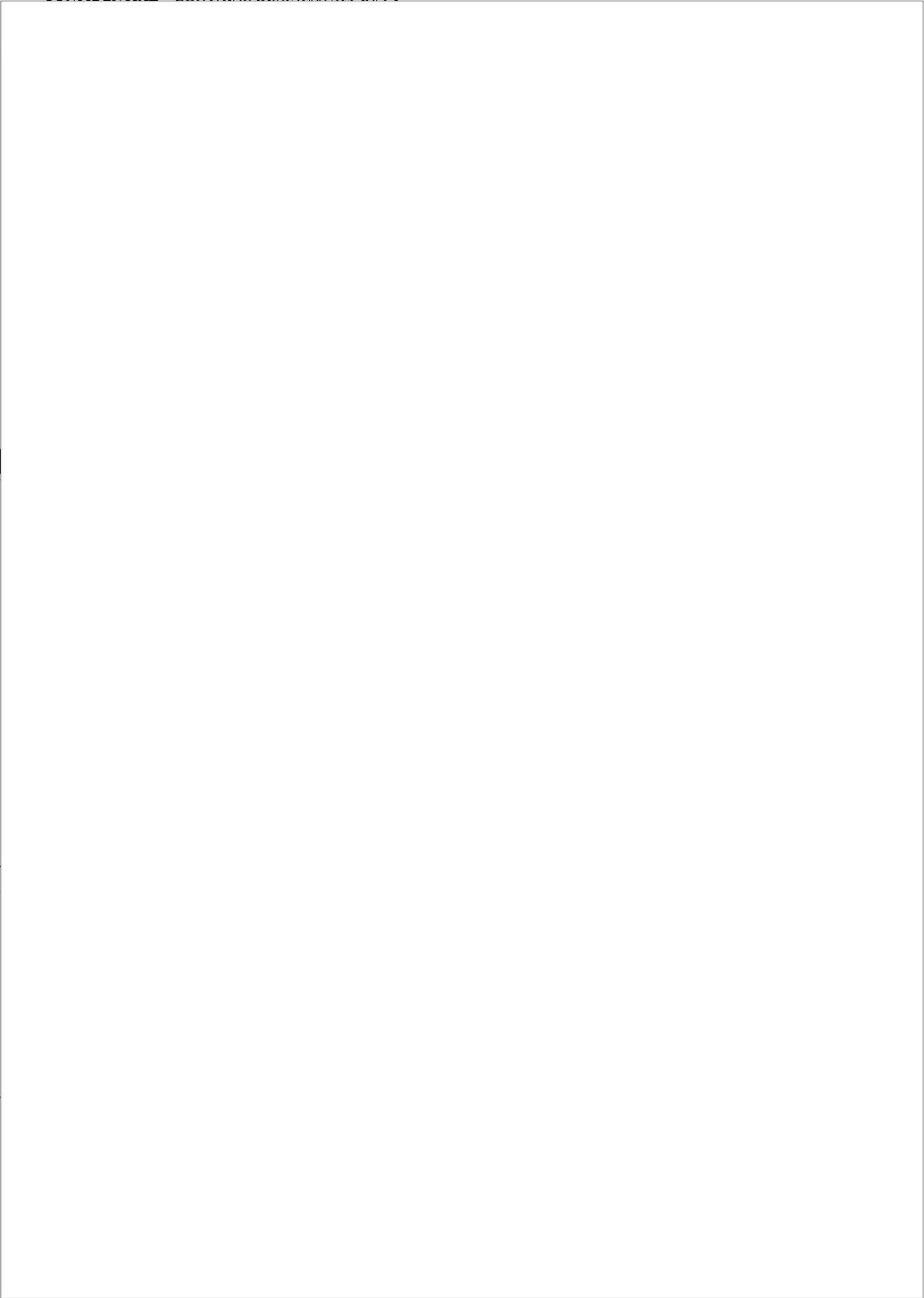
**PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9 PER CENT OF
BRITISH SKY BROADCASTING GROUP PLC**

Response to OFT/Ofcom questions of 29 March 2011

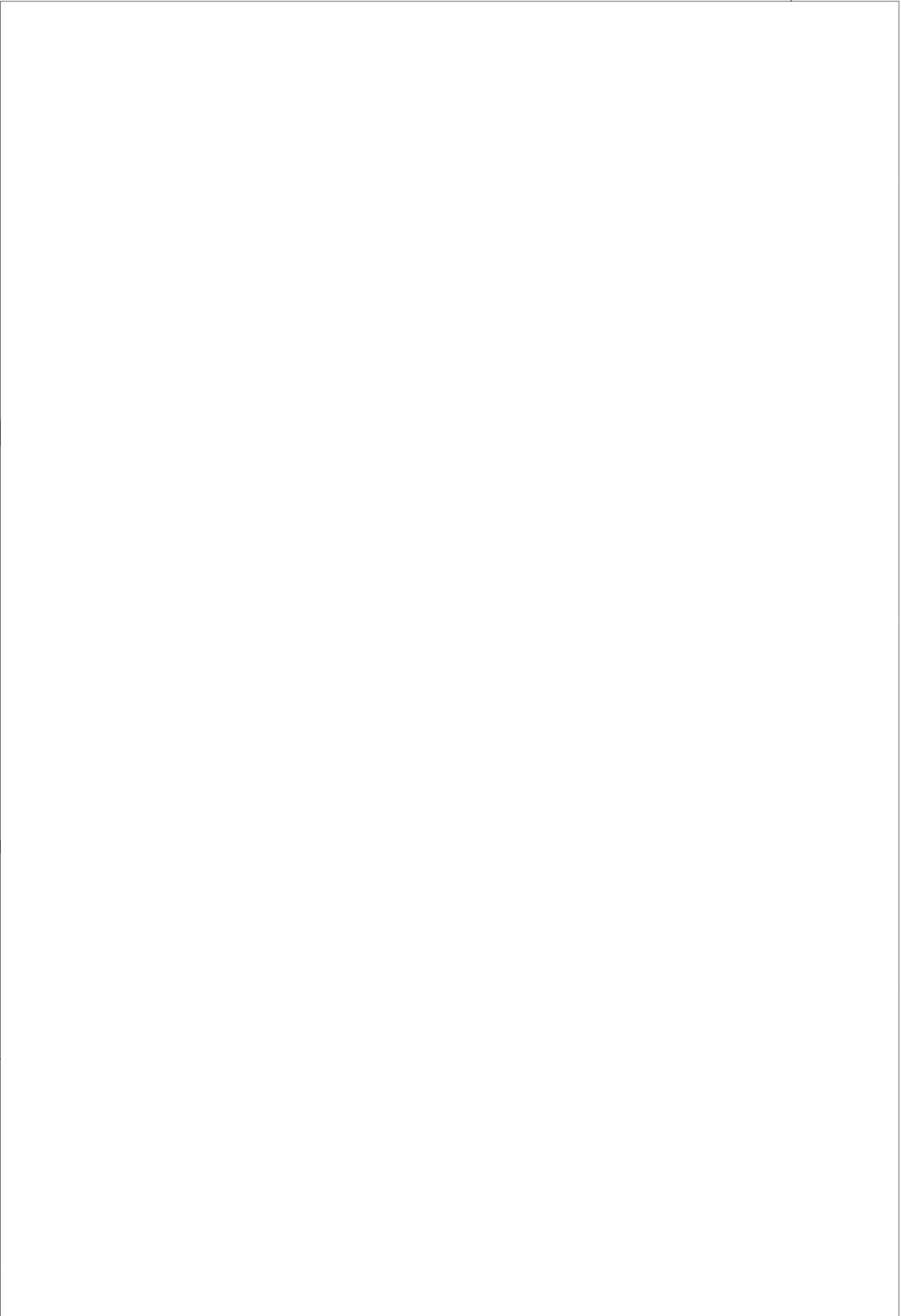


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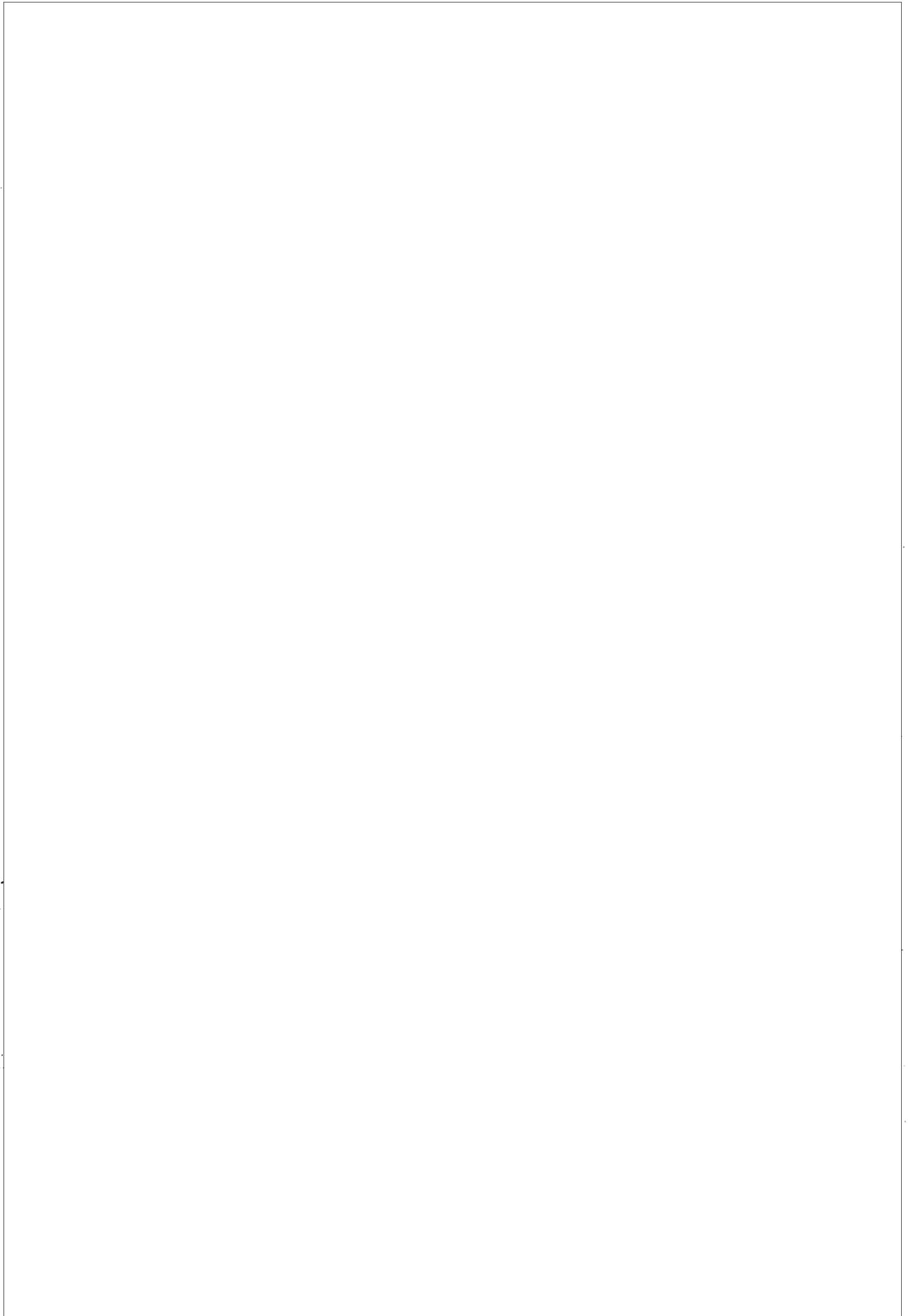
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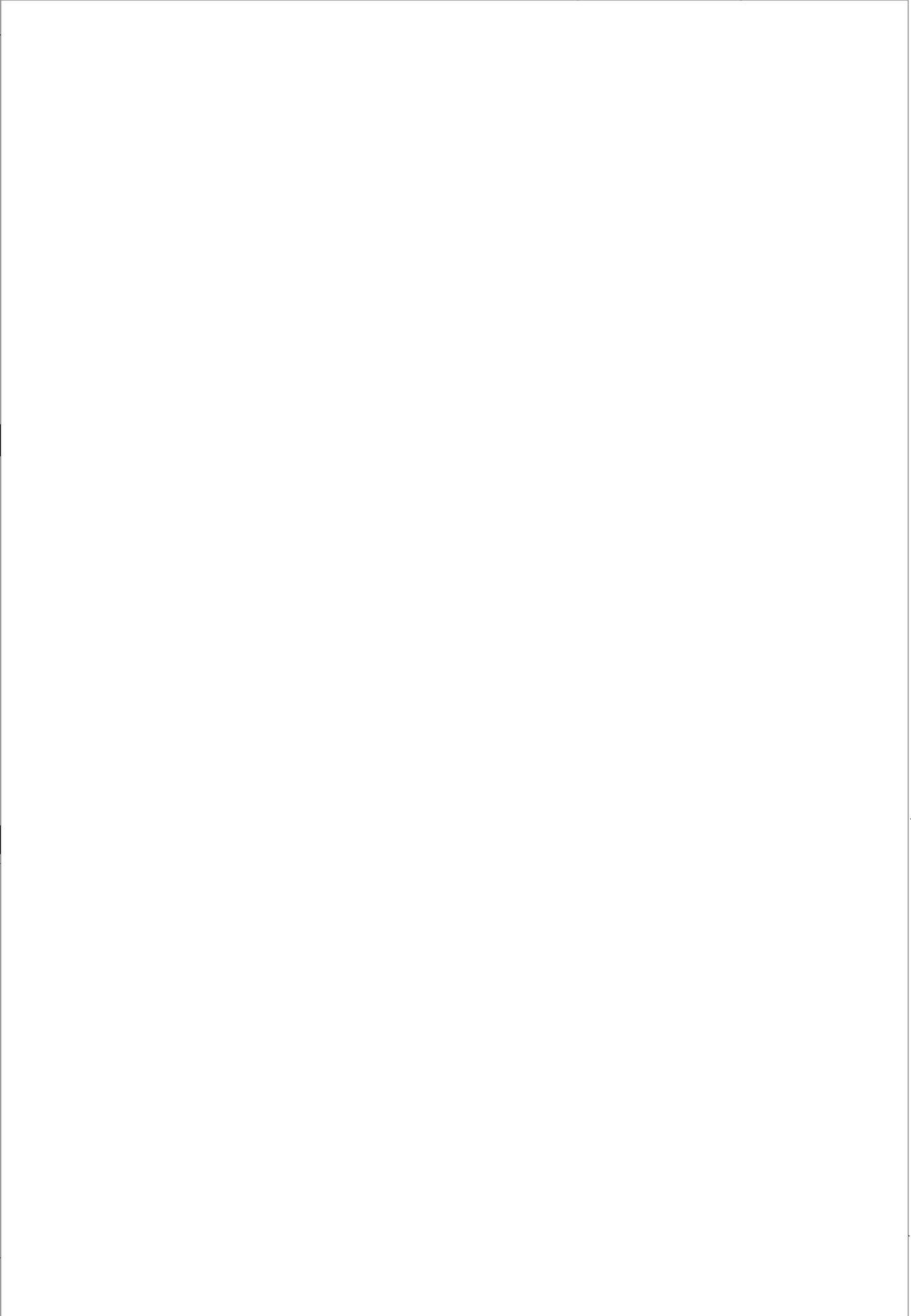
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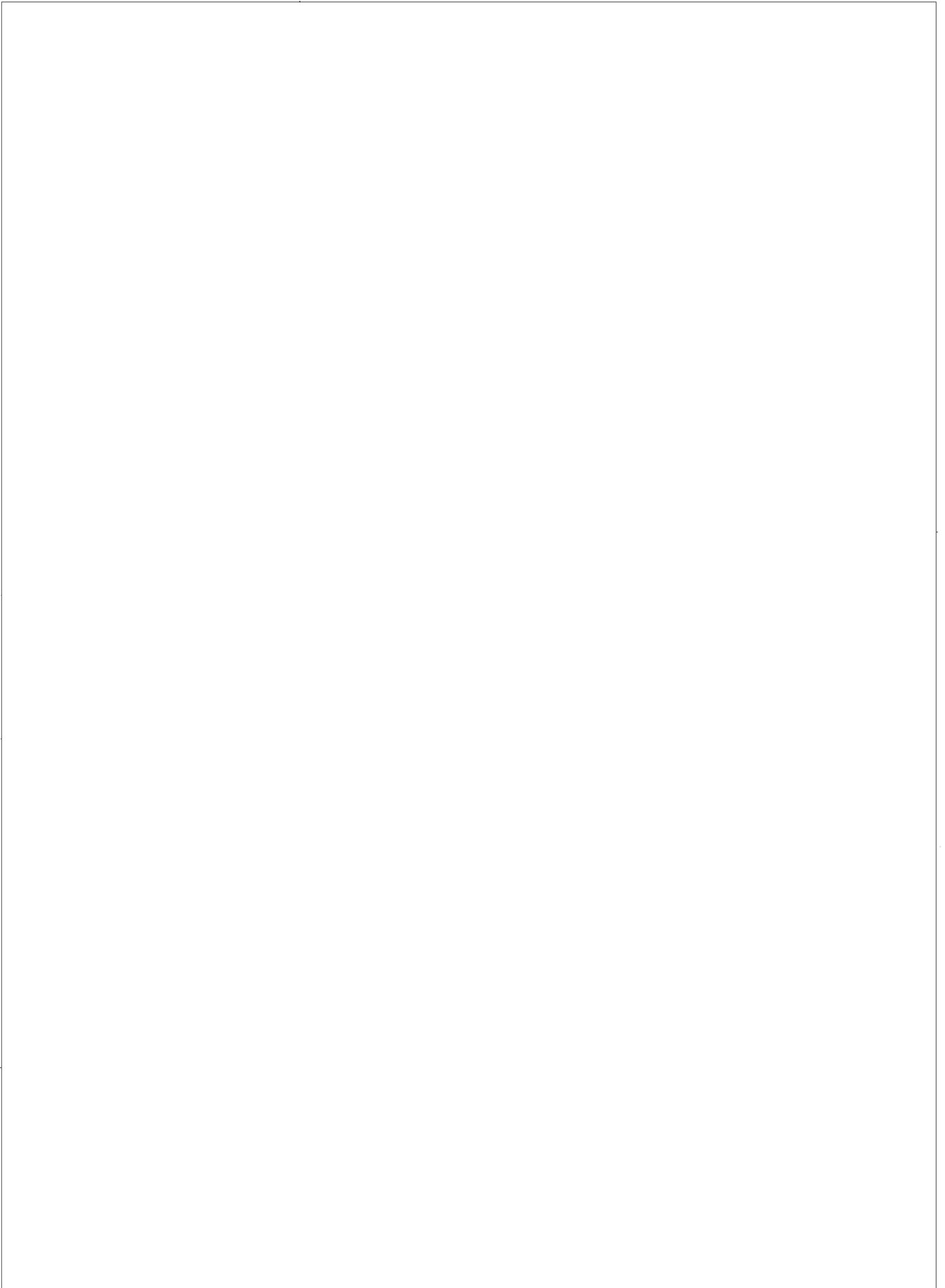
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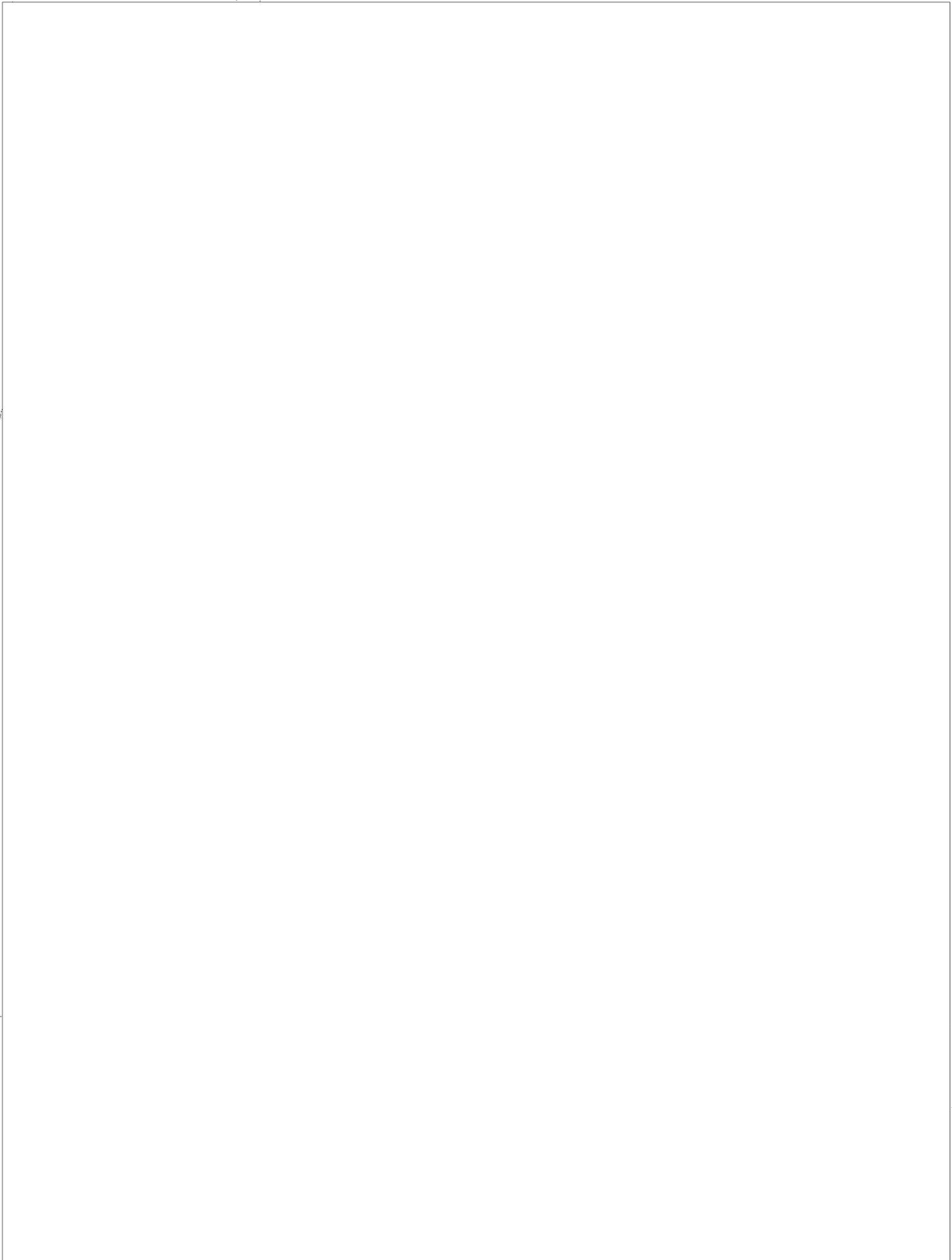
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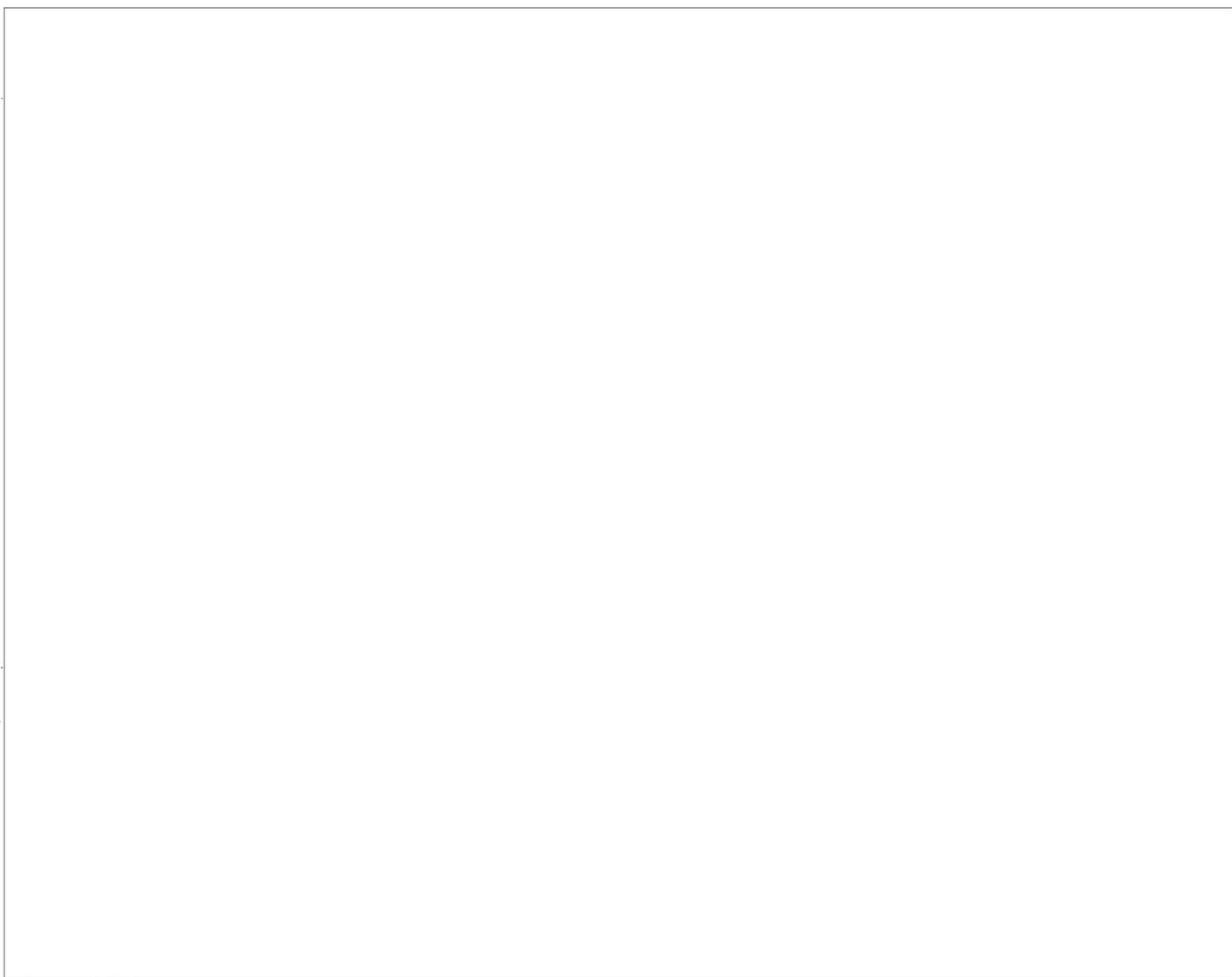
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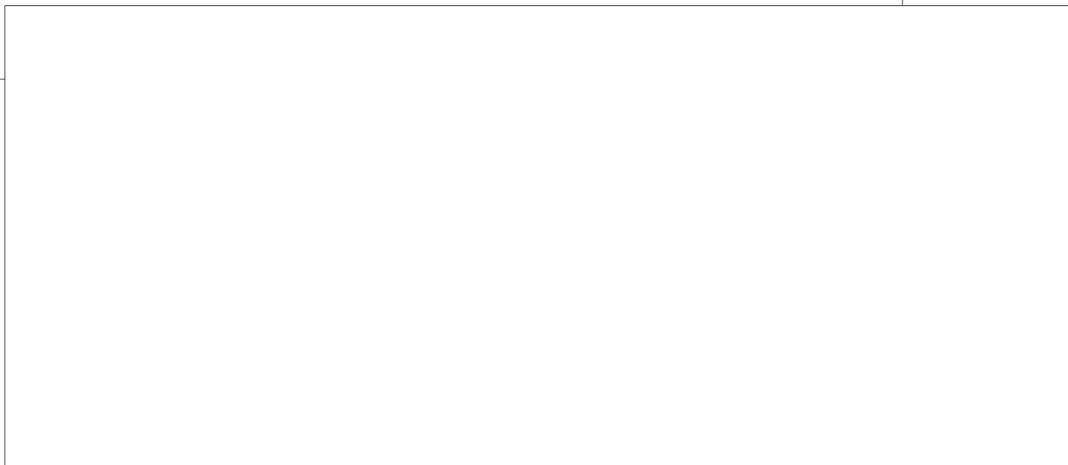
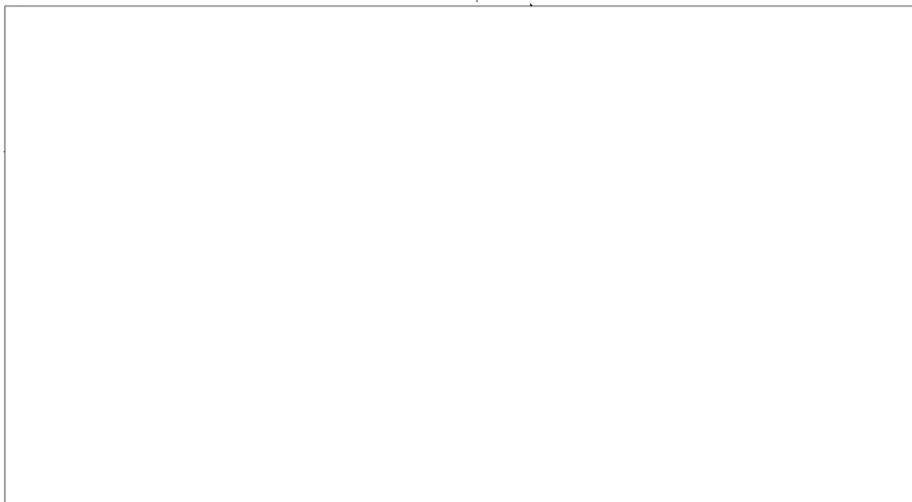
0012301-0000007-00-10734700.9

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1 April 2011

Programming Commitments



[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:57
To: OLDFIELD PAUL
Subject: Fwd: News/Sky - Private and Confidential (0012561-0000367)
Attachments: CO-#13827692-v2-Ltr_to_DCMS_re_Draft_UIL.pdf

Not on record as email.

Begin forwarded message:

From: "Michel, Frederic" <fmiche [Redacted]>
Date: 6 April 2011 15:28:09 GMT+01:00
To: Adam Smith [Redacted]
Subject: Fwd: News/Sky - Private and Confidential (0012561-0000367)

FYI

From: [Redacted]
Sent: 06 April 2011 11:23
To: [Redacted]
Cc: [Redacted]
Subject: News/Sky - Private and Confidential (0012561-0000367)

Dear [Redacted]

Please find attached a letter from Antonio.

<<CO-#13827692-v2-Ltr_to_DCMS_re_Draft_UIL.pdf>>

Kind Regards

[Redacted Signature]

Allen & Overy LLP

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E1 6AD

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Fax: + 44(0) 20 3088 0088

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[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:58
To: OLDFIELD PAUL
Subject: Fwd: RESTRICTED: Newscorp / BSkyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement (0012561-0000367)
Attachments: CO-#13897938-v6-News_Response_to_OFT_Ofcom_RFI_8_April_2011.pdf; ATT00001..htm; CO-#13912615-v1-Annex_1_to_News_response_to_the_OFT_Ofcom_questions_of_8_April_2011.pdf; ATT00002..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel [Redacted]>
Date: 13 April 2011 15:09:56 GMT+01:00
To: Adam Smith [Redacted]
Subject: Fwd: RESTRICTED: Newscorp / BSkyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement (0012561-0000367)

As promised

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: [Redacted]
Mob: [Redacted]

From: [Redacted]
To: [Redacted]
Cc: [Redacted]

Sent: Tue Apr 12 18:56:27 2011
Subject: RE: RESTRICTED: Newscorp / BSkyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement (0012561-0000367)

Sheldon,

With apologies for the delay, please find attached News' response to your

questions of 8 April (including at Annex 1 a revised Newco Business Plan).

Kind regards

[Redacted]

From: [Redacted] On

Behalf Of Sheldon Mills

Sent: 08 April 2011 16:42

To: [Redacted]

Cc: [Redacted]

[Redacted]

Subject: RESTRICTED: Newscorp / BSKyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement

Dear [Redacted]

Following News Corporation's response of 4 April 2011 to the OFT and Ofcom's questions of 23 March, please find attached a further list of questions (prepared jointly by OFT and Ofcom) in relation to the draft carriage agreement and brand licensing agreement submitted by News Corporation to [Redacted] of the Department for Culture, Media and Sport on 21 March 2011 and the revised business plan dated 4 April 2011.

These questions are designed to assist the OFT and Ofcom in preparing their advice to the Secretary of State under sections 93 and 93A Enterprise Act 2002 respectively.

We request a response to these questions by 5pm on Tuesday 12 April 2011. It may be useful to have a call or meeting later next week once we have had an opportunity to review your response to these questions.

Kind regards

Sheldon

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SKY BROADCASTING GROUP PLC**

News Corporation Limited, GPO Box 1111, Sydney, NSW 1587, Australia



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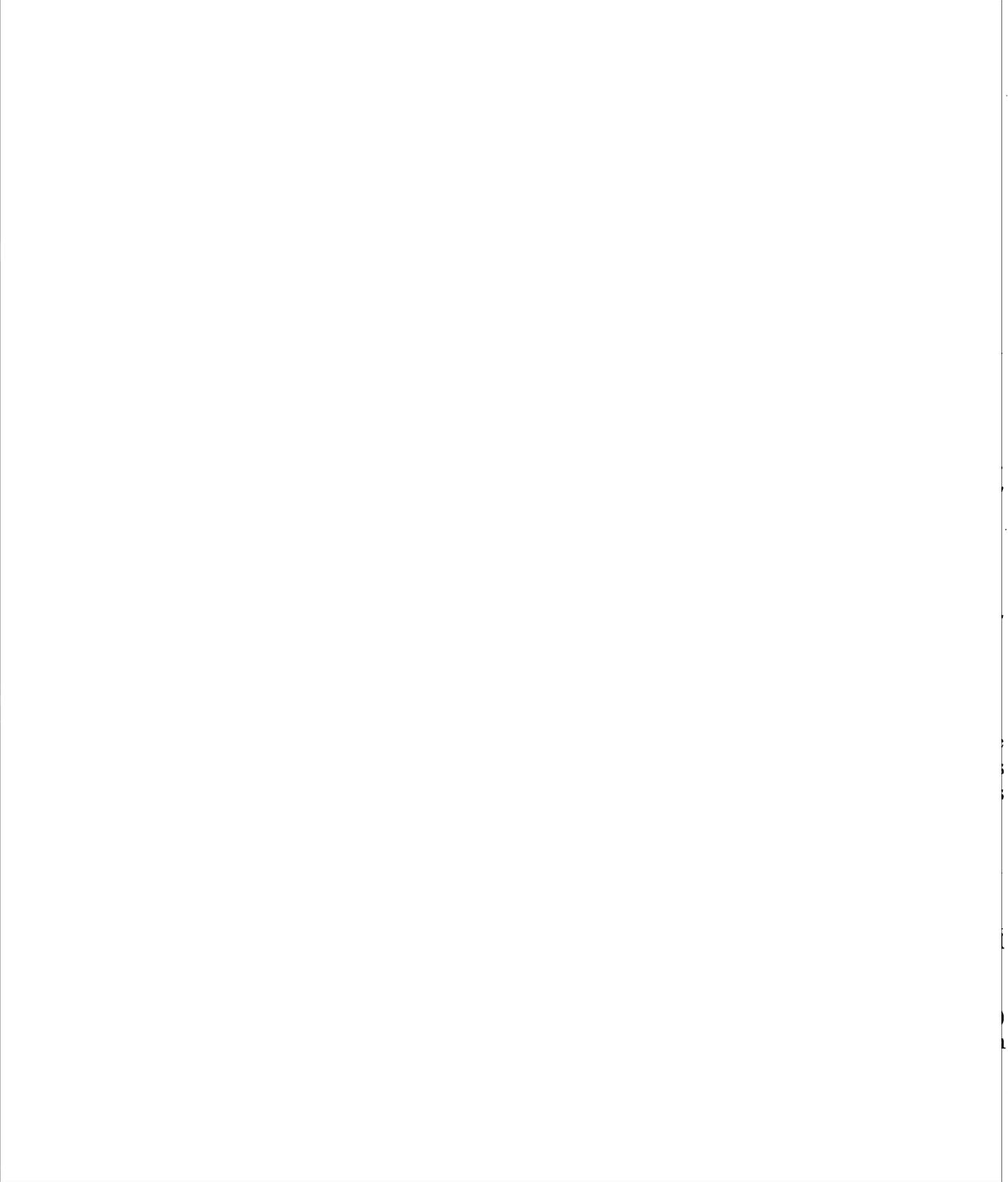
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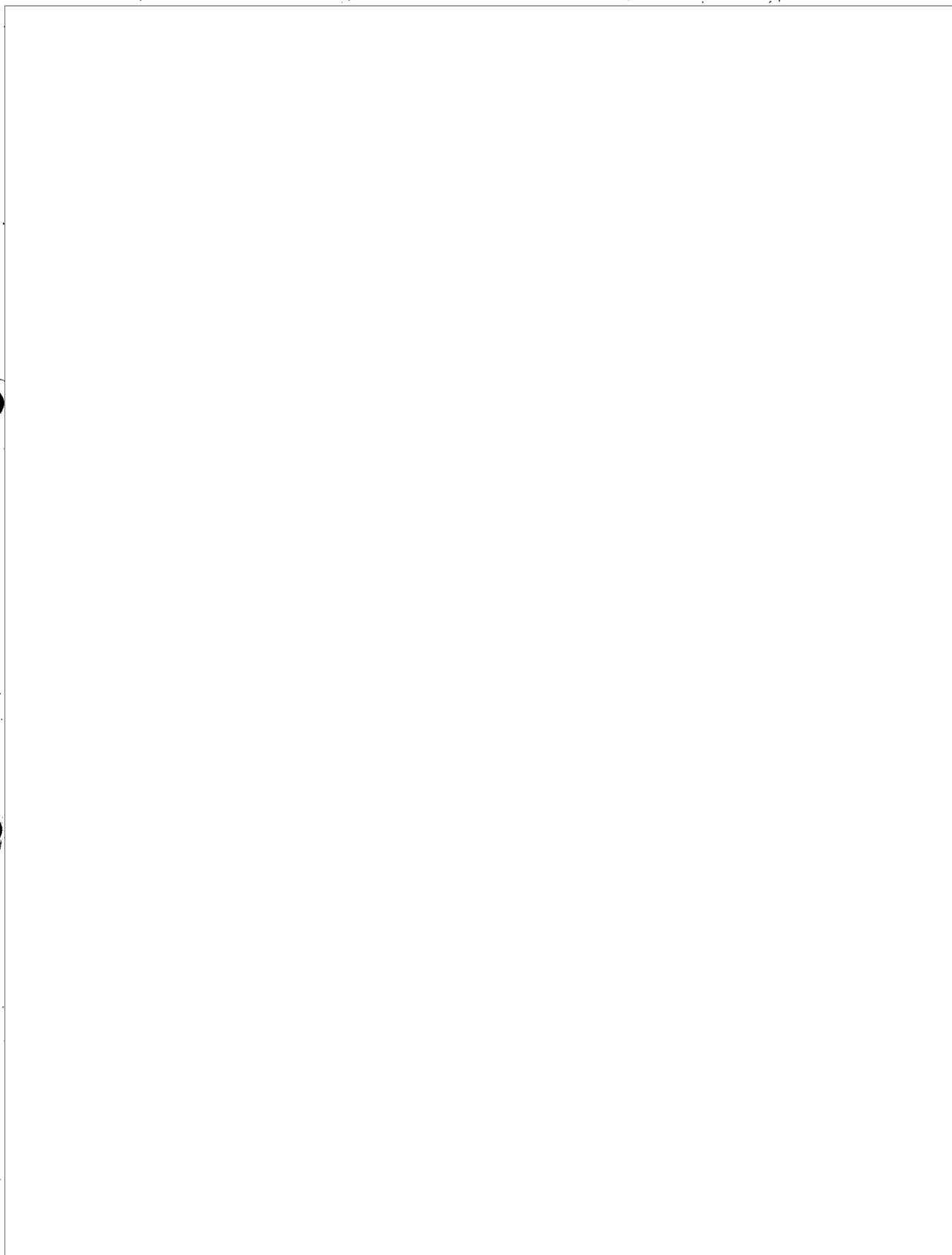
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[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:58
To: OLDFIELD PAUL
Subject: Fwd: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL (0012561-0000367)
Attachments: Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - Questions 19 April 2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 20 April 2011 10:44:58 GMT+01:00
To: Adam Smith [Redacted]
Subject: Fwd: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL (0012561-0000367)

Not good at all....

From: Sheldon Mills [Redacted]
Sent: 19 April 2011 21:48
To: [Redacted]
Cc: [Redacted]
Subject: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL

Dear [Redacted]

Many thanks for your responses to our earlier questions relating to the draft brand licensing agreements and carriage agreements. I attach a further set of questions which relate to the following specific areas:

- (1) further questions relating to the brand licensing and carriage agreements which take account of your responses dated 1 April and 12 April.
- (2) questions which arise from third party responses to the consultation launched by DCMS on the UIL. As you will appreciate, the responses to the consultation have been voluminous and

have necessitated detailed review in order to ensure that we ask appropriate questions which will serve to enhance the UIL proposal or, in respect of which, it is appropriate to seek your view/comment.

(3) detailed questions relating to the timing and mechanics of the UIL. I would urge you to respond in full to these questions since we wish to understand in some detail how, in practice, you understand the UIL will operate. We also include certain suggestions that we consider (following both responses to the third party consultation and further consideration) will lead to improvements to the UIL and its effective operation.

I anticipate, dependent on your responses, that this should be the final round of detailed questions prior to us providing our advice to the Secretary of State. I will endeavour to discuss with your team tomorrow both the timing for responses to these questions, the background to them and next steps.

In addition, in the interests of time, I would suggest that we schedule a meeting to discuss both your responses to the questions (including those attached to this email) and any issues which are pertinent to our advice to the Secretary of State (or issues which require resolution following receipt of your responses to the attached questions) in the week commencing 2 May. If you are amenable to this, we can arrange a convenient date and time.

Kind regards,

Sheldon

Sheldon Mills

Director | Mergers Group | Office of Fair Trading |
Fleetbank House | 2-6 Salisbury Square | London |
EC4Y 8JX |

Direct dial + |

Switchboard +44 (0)20 7211 8000

.....

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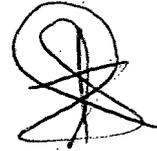
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PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

OFT / OFCOM QUESTIONS TO NEWS
RE CARRIAGE AGREEMENT, BRAND LICENCE AND
ADDITIONAL QUESTIONS EMERGING FROM THE CONSULTATION RESPONSES



[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:58
To: OLDFIELD PAUL
Subject: Fwd: Confidential - the latest questions and our views



Begin forwarded message:

From: Adam Smith [redacted]
Date: 21 April 2011 18:01:27 GMT+01:00
To: "Michel, Frederic" <fmichel@[redacted]>
Subject: Re: Confidential - the latest questions and our views

I disagree. They have been working on the complicated carriage arrangements and brand licensing agreement. You need to answer all their questions quickly to allow them to give jeremy advice. The only delay will be if they have to keep going back to you again if they don't get satisfactory answers.

Enjoy the weekend and let's catch up next week.

On 21 Apr 2011, at 17:53, "Michel, Frederic" <fmichel@[redacted]> wrote:

Adam,

- Although the public consultation on our draft UIL closed on 21 March 2011 it took almost a month, until 19 April 2011 for the OFT/Ofcom to put questions to News. More generally, the OFT/Ofcom have not been as prompt as we would have hoped for in providing feedback on the commercial agreements and in making progress in relation to the response to the consultation. News has responded promptly to all questions put by the regulators.
- The questions contain various points which are not "new" points raised by the consultation but are points of which OFT/Ofcom were very conscious from the outset and which had been discussed in detail and agreed between News and the regulators prior to publication of the draft UIL, e.g.
 - the possibility for the Secretary of State to approve commercial agreements in addition to those already agreed to require pre-approval;
 - the possibility for the Secretary of State to approve the Articles of Association of Newco and
 - the point at which approval will be required.

- The possible need for a Monitoring Trustee has also been raised again even though this wasn't pursued by the OFT in the previous round and draft UIL were agreed on that basis.
- Our feeling is that some of the OFT/Ofcom points are of commercial nature and have no link with plurality or financial viability.
- Because they do not feel under timing pressure, our sense is that the regulators are using the time to re-open second-order points which were not sufficiently important for them to have pursued when advising the Secretary of State in relation to the draft UIL in February/March. We do not believe this to be a reasonable use of the administrative process.
- News will respond to this last round of questions from the regulators but will encourage them on this basis to finalise their advice as we need to bring the process to a close.

Please let me know when we can discuss. Happy Easter!!!!

Best

Fred

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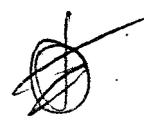
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[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:59
To: OLDFIELD PAUL
Subject: Fwd: 16th June



Begin forwarded message:

From: Adam Smith [redacted]
Date: 5 May 2011 17:40:13 GMT+01:00
To: "Michel, Frederic" <fmiche[redacted]>
Subject: Re: 16th June

If sue let's us!

On 5 May 2011, at 17:37, "Michel, Frederic" <fmiche[redacted]> wrote:

Book the 16th June in your diary for our News Corp summer party! You and JH must be there!

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[Redacted]
From: Adam Smith [Redacted]
Sent: 27 April 2012 09:59
To: OLDFIELD PAUL
Subject: Fwd: Timing - OFT/Ofcom - URGENT
Attachments: CO-#14041856-v1-DV_-_Consultation_UIL-UIL_10_May.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[Redacted]>
Date: 12 May 2011 13:18:16 GMT+01:00
To: [Redacted]
Subject: **Timing - OFT/Ofcom - URGENT**



Adam, confidentially,

We have now also spoken also to the OFT. They will speak with Ofcom this evening. Their current expectation is that they will send us by close on Friday a very short (subject to Ofcom's input) list of issues to clarify which Nick expects we would be able to address promptly. He said that he did not expect that a call would be necessary to discuss these. We discussed the role of Pinsent. He said that OFT "supported the idea of DCMS seeking legal advice" as they are not commercial law experts. (Another example of an "expert" washing their hands and SoS needing further cover on this.) We said that it was disappointing that this has emerged only now and I hoped that this would not delay the finalisation of advice on the UIL. He replied that their current plan was to advise on both UIL and final agreements at the same time and therefore wait for Pinsent's review.

We made the point strongly that the UIL only envisage approval of the agreements by effective date, the agreements are not consulted upon so there is no reason to delay finalising advice on UIL and starting the 2nd consultation (which, unsurprisingly, both OFT and DCMS legal think will be necessary). If Pinsent's review is a legal one (and cannot be anything but) drafting changes on the 2 agreements (if any) should not have an impact on the text of the UIL to be consulted upon. Nick said that this is a point for DCMS.

If DCMS instructs OFT to finalise their advice on the UIL (based on the agreements as they stand after the final round with OFT/Ofcom) JH can start the consultation before the 26th.

Even if JH will not start consultation until they have advice on the final agreements at least he should put pressure on Pinsent to finalise their "legal review" as soon as possible.

As a confirmation that the prospect of the UILs requiring a change as a result of a drafting/legal review by Pinsent is remote, please note that the only UIL changes which were made as a result of the nearly 2 month agreements review were (1) X-promotion and (2) cost cap. Neither is a legal point for Pinsent. I enclose a DV between latest set of UILs and Consultation version.

Hope this helps,

Fred

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10 May 2011

Contains Business Secrets

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SKY BROADCASTING GROUP PLC**

[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 09:59
To: OLDFIELD PAUL
Subject: Fwd: URGENT - 2

Begin forwarded message:

From: "Michel, Frederic" <fmiche [redacted]>
Date: 12 May 2011 22:15:02 GMT+01:00
To: Adam Smith [redacted]
Subject: URGENT - 2

Adam,

Further thoughts.

The combination of involving yet again another "advisor" at this late stage and the lack of experience of the advisor chosen is the concern.

Only a handful of firms have the specific expertise on these matters. It is therefore important that the brief to the external counsel is well defined. I assume it would have to be limited to determine whether the agreement is valid and enforceable, which it clearly is. I do not see how Pinsent can express any other view.

What we want to avoid is that a firm with no experience starts playing with drafting which Sky and other industry players use all the time....!!!

If the brief of Pinsent is well defined and they are asked to work within a strict deadline, which a private sector firm should be able to do, one can hope for a quicker solution.

We are keen to start the consultation as quickly as possible because, in any event, the agreements are not subject to the consultation.

Otherwise, we won't be done before mid-June, which will be catastrophic for many important reasons.

Fred.

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From: Adam Smith [redacted]
Date: 17 May 2012 11:27:15 GMT+01:00
To: [redacted]
Subject: Fwd: OFT meeting today

Begin forwarded message:

From: Adam Smith [redacted]
Date: 5 May 2011 09:12:44 GMT+01:00
To: "Michel, Frederic" [redacted]
Subject: Re: OFT meeting today

Great. Thanks. Remember to be nice! Let's speak tomorrow on this and Hargreaves as I have update on that.

On 5 May 2011, at 09:08, "Michel, Frederic"
<[fmichel@\[redacted\]](mailto:fmichel@[redacted])> wrote:

We have received the following agenda from OFT/OFCOM in advance of our meeting this evening:

1. Update on process / state of play
2. Revenues and costs indexation
3. Marketing and promotion
4. Diversification opportunities
5. Process for contracts and Articles approval
6. Interim protection

Will update you afterwards,

Fred.

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17/05/2012

MOD300009700

[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 10:00
To: OLDFIELD PAUL
Subject: Fwd: CONFIDENTIAL

Begin forwarded message:

From: "Michel, Frederic" <fmichel [redacted]>
Date: 29 May 2011 11:12:08 GMT+01:00
To: Adam Smith [redacted]
Subject: CONFIDENTIAL

Adam,

Hope you're well.

Update for you :

We are getting some feedback from OFT and MPs that Ed Richards is very much in driving seat on the agreements discussion and meeting JH regularly to update him...?

OFT has also mentioned that they hadn't see JH for a while and they were fine with everything on their side.

It would be good to understand the state of play as it does seem the timetable you outlined to me is slipping away massively and we might want to consider our options at this stage:

A decision before the 24th June is in everyone's interest and the idea that the 7-day consultation could be only starting on the w/c 13th or 20th June is not good news at all.

Pinsent is also querying commercial items that should not be in its remit and have been deal with months ago by OFT, or are asking for new commitments... They are not going to get back to us

Before next Thursday....!!

Can you possibly give me some infos on where do you think we are? From where we sit, seems that Ed Richards has been given very much a free-ride on this and is doing his best to delay.

Thanks for your help

Have a great week-end

Fred

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[redacted]
From: Adam Smith <[redacted]>
Sent: 27 April 2012 10:00
To: OLDFIELD PAUL
Subject: Fwd: Update (2)

Begin forwarded message:

From: "Michel, Frederic" <fmichel@[redacted]>
Date: 7 June 2011 12:19:53 GMT+01:00
To: [redacted]
Subject: Update

Adam,

We got the following update from [redacted] today:

They still need to get to the bottom of a couple of "small points". Issues have "narrowed significantly". We will get a further mark up likely to be on both CLA and BA, but not until "early tomorrow" ...!!!

The mark up will come directly from Pinsent. She does not envisage "a lengthy iteration" and they are working towards closing this by the end of this week. She envisages that we would interact directly with Pinsent on the issues, keeping her in the loop of course.

We did make the point that, given the delay if there was any scope to hear today it would "help"; she reassured us that they are doing everything they can to close this.

She also said that they will take a "sensible view on drafting" but there may be further points on which they may come back on later but this would not prevent the starting of the consultation.

We said that we were waiting to hear back from Pinsent before closing the circle with OFT so this was holding back that last step too on the OFT/Ofcom process.

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[redacted]
From: Adam Smith [redacted]
Sent: 27 April 2012 10:00
To: OLDFIELD PAUL
Subject: Fwd: Update

Begin forwarded message:

From: "Michel, Frederic" <fmiche [redacted]>
Date: 10 June 2011 17:49:43 GMT+01:00
To: [redacted]
Subject: Update

Adam,

Update for you. Let me know if you would like to discuss.

We spoke to [redacted] Everything was clear to her, she did not have questions and they will now consider whether the position is acceptable.

We have reverted to OFT this morning to close off the UIL.

we need to do everything possible to get to a consultation next week – preferably by Thursday – whats your view?

We were led to believe that OFT/Ofcom are nearly ready. The issues open between us and OFT/Ofcom were minor (and we have effectively agreed to everything they asked for).

To finalise the report however they need to have sight of the CA and BLA agreements. In that respect the ball is in DCMS' court. DCMS should close that off asap on Monday (or ideally today). Do you know?

In my view DCMS should also alert OFT and Ofcom today that, on the assumption that the BLA and CA are confirmed to be final to them by Monday, they should be ready to have their reports on his desk by Tuesday.

On that basis an announcement on Wednesday is possible. Obviously if they continue at the pace they have had in recent weeks it could take much longer...>!!!!

Question: do you know what you plan to publish when you start consultation on the revised UIL (in addition to a statement and the UILs themselves - which would be the normal practice)?

Do you plan to publish the new OFT and Ofcom reports now or, on the assumption JH would want to publish the reports at some stage (it is his choice) would you leave this to the time when the final decision is adopted?

If you intend to publish the reports now we will need to consider redactions.

I can check position with [redacted] on Monday as well.

Have a nice week-end. Let's talk

Fred

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Begin forwarded message:

From: Adam Smith [redacted]
Date: 17 May 2012 11:26:56 GMT+01:00
To: [redacted]
Subject: Fwd: letters

Begin forwarded message:

From: Adam Smith [redacted]
Date: 11 July 2011 08:03:04 GMT+01:00
To: "Michel, Frederic" <fmichel@[redacted]>
Subject: letters

One to Ed Richards and a draft one to James explaining where we are.

Ed Richards
Chief Executive
OFCOM
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

11 July 2011

Dear Ed

As you are aware, my consultation on the revised undertakings in lieu offered by News Corporation closed on Friday at midday. I am now considering the responses to that consultation, but, as I stated on Friday, I anticipate this taking some time. Prior to the completion of that process, I would be grateful if you could let me know whether the events that followed your letter of 22 June change in any way the advice you offered, particularly with respect to three areas:

1. The closure of the News of the World in the last week is a significant change to the media landscape. I would be grateful if you could indicate whether this development (and /or the events surrounding it) gives you any additional concerns in respect of plurality over and above those raised in your initial report to me on this matter received on 31 December 2010
2. I am aware of your letter on Friday to John Whittingdale MP in relation to any proposed fit and proper persons test and would be grateful if you could keep me informed of progress. In particular I would be grateful if you could clarify whether in your view, your current consideration or any potential future decision in relation to the fit and proper persons test might have an impact on the merger and my decision on media plurality or on the proposed undertakings in lieu.

17/05/2012

MOD300009707

3. Given the well-publicised matters involving the News of the World in the past week that led to its closure, I would be grateful if you could let me know whether you consider that any new information that has come to light causes you to reconsider any part of your previous advice to me including your confidence in the credibility, sustainability or practicalities of the undertakings offered by News Corporation.

I appreciate that Ofcom is considering its response the second consultation but it would be of great assistance if you were able to let me have your response as swiftly as you are able.

Yours ever

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

James Murdoch
Chairman and CEO, International
News Corporation
1 Virginia Street
Wapping
London
E98 1BD

11 July 2011

Dear James,

As you are aware, my consultation on revised undertakings in lieu of a reference to the Competition Commission closed at midday on Friday, 8 July.

Since that consultation was announced, there has been a spate of allegations and events involving a publication of News International, News of the World, and that publication has now closed.

In the light of those allegations and events, I think it right to reconsider whether I should accept undertakings from News Corporation, or whether I should refer this matter to the Competition Commission at this stage for its determination on plurality, and on possible remedies. I have also written to Ofcom to ask whether the most recent developments cause it to revise its advice to me on plurality and on the credibility, sustainability and practicalities of the undertakings. I am also writing to the OFT to seek its views in relation to the latter issue.

I would be grateful to hear from you with any comments you might have at this stage. I should say that if I were to be minded to refer this matter to the Competition Commission I would wish to do so sooner rather than later, and therefore an early response would be appreciated.

Yours sincerely,

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

17/05/2012

MOD300009708

[redacted]

From: SMITH, Adam
Sent: 12 July 2011 09:10
To: Michel, Frederic
Subject: RE: Letter from Mr Murdoch

Thanks Fred.

From: Michel, Frederic [mailto:fmiche[redacted]]
Sent: 12 July 2011 08:50
To: SMITH, Adam [redacted]
Subject: Letter from Mr Murdoch

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