

**Jeremy Hunt evidence to Leveson Inquiry**

**Primary evidence**

**Vol 3 of 3**

095

[Redacted]

**From:** [Redacted]  
**Sent:** 21 March 2011 12:06  
**To:** BSKYB  
**Cc:** [Redacted]  
**Subject:** Channel 4 - NewsCorp/BSkyB merger  
**Attachments:** Channel 4 Letter to Jeremy Hunt.pdf; Appendix 1 Letter to Ed Richards, CEO, Ofcom.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Please find attached a letter from David Abraham to the Secretary of State for Culture, Olympics, Media and Sport setting out Channel 4's views on the undertakings in lieu offered in relation to the proposed acquisition of British Sky Broadcasting by News Corporation.

Hard copy will follow in the post.

Best wishes

[Redacted]

[Redacted]

Channel 4

[Redacted]

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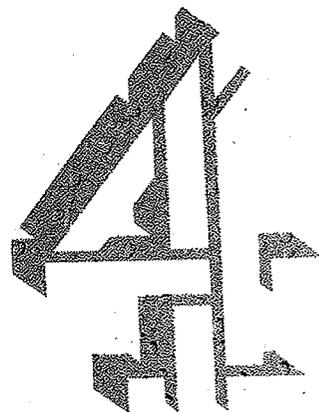
Telephone: C

Direct Tel: C  
Direct Fax: C

**STRICTLY PRIVATE AND CONFIDENTIAL**

**Rt Hon Jeremy Hunt MP  
Secretary of State for Culture,  
Olympics, Media and Sport  
House of Commons  
London SW1A 0AA**

21 March 2011



Dear Secretary of State

**The proposed acquisition by News Corporation of up to 60.9% of British Sky Broadcasting Group Plc**

We welcome the opportunity to respond to your consultation on the undertakings in lieu offered in relation to the proposed acquisition of British Sky Broadcasting ("BSkyB") by News Corporation ("NewsCorp").

As a public service broadcaster with a strong belief that a plural media landscape in the UK should be preserved, Channel 4 has followed closely the debate around the proposed acquisition. Throughout the process, we have consistently expressed the view that the proposed acquisition would have a negative impact on media plurality, and I have attached our letter to Ofcom of 19 December 2010 which summarises our concerns, and in particular the wider impact of the merger on the ability of Channel 4 and other media operators to sustain plurality.

Since then, we have considered your statement, the proposed undertakings in lieu (UIL), and the advice from Ofcom and the OFT on the public interest and media plurality. We note that the proposed UIL address the issues in a narrow sense—the impact on the number of people controlling media enterprises—and in our view, the public interest concerns raised by this merger are insufficiently addressed by the UIL, as we believe:

1. the UIL are insufficient to protect media plurality in the long term;
2. the UIL do not mitigate the wider "dynamic" impact on media plurality that would be caused by the acquisition;
3. a 17 day period is insufficient to assess adequately the implications of a transaction of this significance and magnitude; and
4. the legislative framework does not currently allow intervention on public interest media plurality grounds at a later date.

For these reasons, we believe that the proposed acquisition warrants fuller consideration by the Competition Commission, and we also urge you to provide for further opportunity for wider



plurality concerns to be considered by amending the public interest legislative framework. The remainder of this letter discusses each of these points further.

#### The UIL are insufficient to protect long term media plurality

We note that the UIL provide for a 10 year carriage contract, and a seven year brand licensing agreement (extendable for a further seven years) for Sky News. However, we further note that both Ofcom and the OFT have expressed concerns that the UIL are not a solution to the long term impact on media plurality which may arise from the proposed transaction.

For example, the OFT stated that *"there is a real risk that Newco [Sky News] may not survive as envisaged by the UIL beyond the term of the carriage agreement"* and added that the UIL *"do not address the essential structural limitation identified [...], that the UIL offered are unlikely to be practically and financially viable over the long term"*. Notwithstanding its observation that a *"carriage agreement of a 10-year term in the context of market dynamics in this sector is long term"*, Ofcom agreed that *"the proposed UILs are not a permanent solution and that their effectiveness may start to diminish in the run up to the end of the 10 year period"*.

Having considered the terms of the proposed UIL, Channel 4 does not believe they can be interpreted as "long term", even in a rapidly evolving market. While Ofcom notes that *"the situation with regard to plurality may be significantly different in 10 years' time"*, given current trends in industry revenue and profitability, as well as the merged entity's ability to stifle new entry, we believe it is extremely unlikely that the position of a combined NewsCorp/BSkyB entity will be any weaker in 10 years.

In addition, Ofcom acknowledges that its *"analysis and consideration of a forward view of the market in terms of plurality does suggest that, regardless of the transaction, plurality may face challenges in the future"*. Even with an optimistic view of developments and new entry in the sector, we do not believe that there will be sufficient plurality in future such that the impact of this transaction is mitigated.

#### The UIL do not mitigate the "dynamic" impact on media plurality

We have also had the opportunity to consider Ofcom's public interest report on the proposed acquisition, and agree with Ofcom's conclusion that there is a need for a fuller review of the issues by the Competition Commission, as it *"reasonably believes that the proposed acquisition may be expected to operate against the public interest"*.

Ofcom looked at the public interest consideration in two ways, distinguishing the effects of the proposed transaction as either "static"—concerning the range and number of persons controlling media enterprises—and "dynamic"—issues that may arise over time, within a forward view of how plurality may develop.

Ofcom's report focused primarily on "static" effects, setting out a comprehensive analysis of the current situation and an extensive evaluation of the "static" effects of the proposed transaction on plurality. On the basis of the "static" effects alone—ie. the immediate impact on plurality in news supply—Ofcom considered it *"reasonable to believe that the proposed acquisition may be expected to operate against the public interest"*.

However, a wide range of parties, including Channel 4, also raised serious concerns about the "dynamic" impact of the proposed acquisition. Many of these arguments were based on concerns that a strong and integrated NewsCorp/BSkyB could cause direct harm to other players in the market and hence damage their ability to sustain media plurality in the longer term.

While Ofcom does look at the "dynamic" effects of the proposed transaction, it conducts only a brief summary analysis of these issues. Channel 4 is concerned that the concerns listed in the report—a greater ability to cross-subsidise news operations; more cross-promotion between NewsCorp outlets including Sky; bundling together of goods and services; and a greater ability to bid for and win wholesale news deals—have not, therefore, been considered comprehensively. Moreover, several of the specific concerns raised by Channel 4 do not appear to have been considered.

In our view, Ofcom's conclusion that the proposed acquisition merited further review by the Competition Commission on the basis of "static" effects alone has had the effect of narrowing the debate such that the UIL do not address the "dynamic" effects on plurality. It is clear from its report that Ofcom considered "dynamic" effects to merit further evaluation, and that it expected the Competition Commission to consider them fully as part its review. Rather than address the wider concerns about plurality, the UIL would have the effect of limiting full consideration of the issues. We continue to believe that the proposed acquisition should, therefore, be referred to the Competition Commission for further review.

A transaction of this scale and significance requires a comprehensive review

In any case, we believe it is essential that full consideration is given to the proposed acquisition as it involves such a wide range of media assets. The number and variety of media businesses that are affected by the proposed acquisition include:

- The largest supplier of newspapers in the UK—37% of the UK national circulation in 2009, the same share as the next two competitors combined.
- The largest pay-TV provider in the UK—with c.75% of the market.
- The third largest provider of broadcast news in the UK by audience (second largest in relation to broadcast hours).
- One of only two suppliers of news for UK national radio.
- A key and rapidly growing player in the UK broadband market.
- Leading publishing house HarperCollins.
- Significant international operations.

In our view, a transaction of this scale and significance merits a comprehensive review, where all interested parties have the opportunity to provide, in full, their views and detailed evidence. By contrast, the statutory public interest process is truncated and provides only limited opportunity to comment—in particular, organisations had only 14 days to make submissions ahead of Ofcom's report on the public interest, and only 17 days to respond to the proposed undertakings in lieu. Referral to the Competition Commission would therefore provide an important opportunity for the public interest implications of the proposed acquisition to be considered in a thorough, transparent manner.

It is not possible to consider public interest media plurality issues at a later date

Finally, we note Ofcom's conclusion that the existing legislative framework may no longer be able to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. In particular, Ofcom expressed concern that the current framework does not provide for intervention on public interest grounds in the absence of a corporate transaction, and recommended that "the Government consider undertaking a wider review of the statutory framework to ensure plurality in the public interest" with a view to correcting this omission.

Since your speech at Oxford outlining your plans for a new Communications Bill, we have been considering the current legislative framework and assessing where reforms and improvements

could be made. Channel 4 believes that a new Communications Bill provides an ideal opportunity to also consider the operation of the legislative provisions relating to media plurality and the public interest. In our view, any future public interest legislation should provide for a mechanism to address concerns about media plurality that develop over time, absent any corporate transaction.

In addition, the absence of an ex post mechanism to consider public interest concerns is a further reason why the proposed acquisition should be subject at this stage to the full, comprehensive scrutiny that would be afforded by referral to the Competition Commission. Given the importance of this decision, and the fact there is no subsequent opportunity to address any plurality concerns that may develop in the future, Channel 4 believes that the time should be taken now to fully consider the issue of plurality.

### Conclusion

In summary, we remain concerned that the proposed acquisition of BSkyB by NewsCorp would have a negative impact on media plurality in the UK. Channel 4 believes that the public interest concerns raised by this merger are of sufficient magnitude to warrant further investigation, to enable comprehensive consideration of the short term and long term effects on media plurality.

We would be happy to provide any further information in relation to the arguments made in this submission, if it would assist you in coming to your final decision.

Yours sincerely



David Abraham  
**Chief Executive**  
Channel 4

Enc.

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**STRICTLY PRIVATE AND CONFIDENTIAL**

Ed Richards  
Chief Executive  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

**19 November 2010**

Dear Ed,

We welcome the opportunity to respond to Ofcom's invitation to comment on the anticipated acquisition of British Sky Broadcasting ('BSkyB') by News Corporation ('NewsCorp'). Our comments are set out below.

**Overview**

Channel 4's concerns arise from two perspectives. Firstly, as a public service broadcaster with a strong belief that a plural media landscape in the UK should be preserved. Secondly, as a direct competitor to BSkyB, concerned by the potential for the NewsCorp/BSkyB combined entity to cause direct harm to Channel 4's business model, leading to a loss of public service output.

This response starts by considering the implications for plurality in the wider media landscape. The remainder focuses on the area that we are best placed to comment on, namely the potential for the combined entity to cause harm to Channel 4, one of the key providers of public service content in the UK.

**Plural media landscape**

We note the argument advanced by some that NewsCorp already effectively controls BSkyB, and that this transaction would have little impact. However, we believe that the increase of NewsCorp's shareholding from its current level of 39% to 100% would have significant implications in practice. The removal of independent shareholders from BSkyB<sup>1</sup> would end BSkyB's duty to maximise independent shareholder returns for that business. This would allow the complete integration of the NewsCorp economic interests with those of BSkyB, and allow the pursuit of activities intended to benefit the broader combined organisation, even if not in the best interests of each division concerned.

<sup>1</sup> At the date of writing, independent shareholders in BSkyB include: Capital Research and Management Company (c.5%), The Capital Group Companies Inc (c.3%) and other institutional shareholders (each with less than 3%)



In relation to legislation (section 3(2)(d) of the Communications Act 2003 and section 58 of the Enterprise Act 2002), this transaction raises two concerns on the sufficiency of media plurality. The first is immediate: by increasing its stake in BSkyB from 39% to 100%, NewsCorp would reduce the number of media enterprises by one. The second is indirect and longer term: in that the economic combination would enable NewsCorp to use its combined resource to increase its market power in highly competitive but increasingly marginal media industries (such as the supply of newspapers), which could ultimately cause the withdrawal from the market of rival players. This would lead to a further loss of plurality in the longer term.

#### 1. Reduction in the number of media enterprises

An increase in NewsCorp's shareholding in BSkyB to 100% would reduce the number of media enterprises in the UK, by removing BSkyB's capacity to act independently. Currently, each of the directors of BSkyB has a general duty under the Companies Act 2006 to act in the way he or she considers, in good faith, would be most likely to promote the success of the company for the benefit of its shareholders as a whole and, in doing so, to have regard (amongst other matters) to the need to act fairly as between all such shareholders. As a listed company, BSkyB is also currently obliged to treat all shareholders equally. Further, BSkyB currently has an obligation to ensure that certain transactions with NewsCorp are carried out on terms that are fair and reasonable to its shareholders as a whole and, in the case of larger transactions, to seek the prior approval of its independent shareholders.

Currently, therefore, the directors of BSkyB may not legally seek to favour the interests of NewsCorp over those of its shareholders as a whole. If NewsCorp becomes BSkyB's sole shareholder, however, the directors and management of BSkyB (all of whose positions will be under the ultimate control of NewsCorp) will be able to direct the operations of BSkyB for NewsCorp's benefit. The same is true of NewsCorp, which is similarly constrained in its dealings with BSkyB, as its directors have to act in the best interests of its shareholders, in accordance with applicable US company law and the rules and regulations of the securities exchanges on which its shares are listed. If the takeover were to proceed, the interests of NewsCorp and BSkyB would coincide and NewsCorp would be free to support and subsidise BSkyB's business as it saw fit. In short, there will be an unambiguous reduction in plurality.

#### 2. Longer term impact on plurality

As a public service broadcaster with an interest in the preservation of a plural media landscape, we feel it is essential that full consideration is given to the change in circumstances were a single entity to own and control such a wide range of UK media assets. The number and variety of media businesses that would be controlled by NewsCorp if the transaction is allowed to proceed would include:

- The largest supplier of newspapers in the UK—37% of the UK national circulation in 2009, the same share as the next two competitors combined
- The largest pay-TV provider in the UK—with c.75% of the market
- The third largest provider of broadcast news in the UK by audience (second largest in relation to broadcast hours)
- One of only two suppliers of news for UK national radio
- A key and rapidly growing player in the UK broadband market

- Leading publishing house HarperCollins
- Significant international operations

The combination of all of these businesses would afford NewsCorp an unprecedented span of national influence. The impact of the activities this transaction would allow, including cross-subsidy of business divisions, unrestricted free cross-promotion, and a range of other aggressively competitive activities, could have serious consequences for competitors to the two combining entities across a wide range of markets.

The intervention by the Secretary of State therefore provides an important opportunity for the implications of such concentrations of media ownership for the wider market to be reviewed as a matter of public interest.

#### **Particular reduction in media plurality as a consequence of harm to Channel 4**

We now turn to the potential for the combined entity, as a direct competitor to Channel 4, to cause direct harm to Channel 4's business model and consequently its ability to deliver its public service remit.

While we do not envisage the extent of such harm on Channel 4 to be as direct or immediate as that which a rival newspaper group may face, we are however concerned that the sheer scale of the new combined entity, as well as its ability to cross-subsidise, could lead to a loss of market share and revenue for Channel 4.

Channel 4 is a publicly-owned commercially-funded public service broadcaster. It is a not-for-profit organisation that invests all of its revenues in content and the delivery of its public service remit. Due to this unique model, any harm arising that resulted in loss of revenue would lead to loss of public service output, and reduces Channel 4's impact as an integral part of the UK's plural media landscape and a central counterbalance to the BBC. For example, a reduction in revenues as a result of the acquisition would threaten the scale of Channel 4's investment in the independent production sector—which amounted to over £370 million spent on around 300 different independent producers in 2009.

Channel 4's vital contribution to the UK media ecology was recognised in the Digital Britain report, published in June 2009, which referred to Channel 4's *"key role ... in providing a balancing mix of public service content alongside the BBC"* and stated that Channel 4 *"should be the open new media authority providing the seed-corn for creative innovation in the multi-media world."*<sup>2</sup> This role was confirmed in the Digital Economy Act, and Channel 4 believes its ability to fulfil its obligations could be seriously harmed if NewsCorp's acquisition of BSkyB were allowed to proceed, as set out below.

There are five specific areas in which the combined entity's enlarged scale, span and scope for cross-subsidisation would have potential to cause loss of revenue to Channel 4 and consequent loss of public service delivery.

#### 1. Advertising revenues

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<sup>2</sup> Digital Britain Final Report, page 144.

The transaction would enable NewsCorp and BSkyB to combine their sales houses into one and cross-subsidise one set of inventory with another. For example, Sky Media (the advertising sales house of BSkyB) may be able to win campaigns at the expense of competitors by leveraging the ability to bundle advertising within the UK publications of NewsCorp. Our concern is that their scale and the potential for cross-subsidisation will enable them to take share from the market at Channel 4's expense.

Furthermore, the combined entity could share data on its customers' behaviour across multiple media in order to improve its ability to offer targeted advertising and other data-driven innovations at scale. BSkyB's focus on this area is underlined by its recent acquisition of a majority stake in a joint venture with Experian to provide consumer and media insight services and CRM capabilities, and we believe the use of data on newspaper consumption to inform a large-scale TV targeting campaign would be a likely next move which could deliver significant market advantages. This would reduce Channel 4's ability to compete effectively in the market for TV advertising. Further, we believe that combination would greatly facilitate the sharing of Sky Viewer panel data among NewsCorp companies.

Finally, bringing BSkyB under the control of NewsCorp would allow the combined entity to strike global advertising deals with advertisers such as Procter & Gamble (Channel 4's largest advertiser in 2010). The ability to offer a discount across the scale of a global sell would enable them to take a greater share of advertising revenues at the expense of others.

## 2. Cross-promotion

It would clearly be in the new entity's interest to use the extensive media outlets of NewsCorp (eg. *The Times*, *The Sun*, *News of the World*, *The Sunday Times*) to cross-promote BSkyB's television platform, channels, broadband provision and other services. Following Express owner Northern and Shell's acquisition of Channel Five earlier this year, there are numerous examples of how Northern and Shell's print assets including the *Express* and *OK! Magazine* now regularly feature Channel Five's programmes and talent, and the Express TV listings (which cover 7 or 8 channels) changed subsequent to the acquisition, removing ITV2, ITV3 and ITV4 and instead listing Fiver and Five USA.

The cross-promotional opportunities across the NewsCorp portfolio could also be expected to extend beyond obvious endorsements of the type indicated above, to include, for example, the replacement of newspaper DVD cover mounts with a code to watch Sky Movies for free; or the bundling of subscription services (eg subscribe to *The Times* club and get free Sky Sports for a month, get free access to *The Times* or *The Sun* online if you join Sky Broadband, or get a print subscription to *News of the World* free with any Sky HD package etc). Equally, the UK publications of NewsCorp could also be used far more extensively to market against established and emerging TV or broadband platforms which might be seen by NewsCorp as actual or potential competitors to BSkyB businesses, such as Virgin Media, BT Vision, TalkTalk or YouView (see section 5 below).

The sheer scale of the combined operations of the two businesses, coupled with the high levels of control of highly valued content (including but not limited to sports and movie rights, both of which have attracted ongoing competition concerns), suggests that such combined campaigns could have significant impact.

This potential benefit to News Corp and BSkyB might also be expected to be intensified by the likely exclusion of Channel 4, or any other media player, from any such cross-promotional opportunities – even on commercial terms – with either News Corp or BSkyB separately, thus decreasing our ability to promote our own business by, for example, association with The Times.

The effect of this scale of cross-promotion, on top of Sky's existing marketing budget (£1.118bn for the 12 months to June 2010, and thus significantly in excess of Channel 4's total revenue) would present a real challenge to Channel 4's ability to compete for audience share, making it harder for our public service content to reach a wide and diverse audience, in line with our remit.

### 3. Talent and rights acquisitions

Our concern over the ability of the combined entity to access and use the extensive media outlets of NewsCorp to promote its television business extends to its potential impact on Channel 4's ability to access top talent and acquire key programming rights. Key talent are critical to building Channel 4's appeal and its ability to deliver strong public service output to audiences.

In securing key talent and rights, we often include additional commitments for Channel 4 to promote and build the talent and programme. These may include: use of Channel 4 promotional airtime; external marketing spend; and providing innovative creative treatment. These provide incremental sources of value to talent and independent producers in addition to the value of the commission itself.

The transaction would enable Sky to access promotional inventory and commercial support from across NewsCorp's media assets on terms not readily available on a commercial arms length basis, enhancing their appeal to key talent and programme brands.

### 4. US programme acquisitions

Channel 4 currently bids for and acquires programme rights from Fox Studios in the US, which is wholly owned by the NewsCorp group. Fox Studios is by far the largest supplier of US content to Channel 4, making up £61m of spend in 2009 and 44% of our total expenditure with the US studios. Acquired rights include *The Simpsons* and *Glee*, two of Channel 4's most popular shows, as well as numerous feature films such as *The Devil Wears Prada*. Currently, the economic interest of Fox to maximise its returns from the sale of these rights incentivises it to go through a market rate bidding process and award the UK rights to the highest bidder.

If this transaction were to proceed, we expect that licensing decisions would be made at a group level taking into account the benefit of playing those rights out on Sky. The ability to cross-subsidise means that Sky could pay below market rates for such rights meaning that bidders such as Channel 4 could get locked out of a valuable and desired source of content supply.

This would have a negative impact on Channel 4's ability to invest in UK content. Channel 4's model ensures that profits generated from commercially valuable content such as US acquisitions are used to fund public service programming that does not command large audiences and high advertising revenues. Any reduction in

Channel 4's ability to acquire US programming at fair prices risks revenue loss and a decline in our programming budget.

5. YouView

Channel 4 is a 1/7<sup>th</sup> shareholder in the new connected TV platform YouView, set to launch in 2011. YouView is a critical evolution in the UK's television landscape, allowing viewers to benefit from the very latest technology and services, but without having to pay an ongoing subscription fee.

A NewsCorp/BSkyB transaction would wholly align the commercial interests of newspaper and television businesses and allow the entity, for example, to bundle newspaper subscription services with TV and/or broadband packages to create a compelling consumer proposition. The exclusive ability to use established mass market assets from one part of the business in order to protect operations in another would make it harder for new entrants such as YouView, not only to acquire customers but also to retain them. Further, as stated in section 2 above, the combined group would be able to use cross-promotion to market BSkyB's satellite television platform against new platforms such as YouView.

**Conclusion**

In summary, we are concerned that the economic integration and scale of the new combined entity could cause serious harm to the Channel 4 business model. The likely loss of revenue would in turn lead to loss of public service output, reducing Channel 4's impact as an integral part of the UK's plural media landscape and a central counterbalance to the BBC.

Whilst we have focused on the impact of the proposed transaction on Channel 4, we believe the implications for media plurality in the UK more generally go much further, given the combined entity's market strength across a variety of media, and need to be addressed.

We would be very happy to provide any further information or explanation with regard to the points we have made above.

Yours sincerely

[Redacted signature box]

David Abraham  
Chief Executive  
Channel 4

Cc:

[Redacted recipient box]

Ofcom  
Channel 4

095A

[Redacted]

**From:** OLDFIELD PAUL  
**Sent:** 23 March 2011 18:04  
**To:** [Redacted]  
**Subject:** RE: List of attendees from [Redacted]

[Redacted]

[Redacted] and I have been struggling to get through to you today on the phone. Could you confirm tomorrow morning receipt of these emails.

I think we are clear that Webber Shandwick should not attend the meeting -- ie it is the media groups and their lawyers, but not their PR representatives. I'm happy to tell them that but didn't want to cut across anything you are already doing....

Thanks

ul.

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**From:** [Redacted]  
**Sent:** 23 March 2011 15:27  
**To:** [Redacted]  
**Cc:** OLDFIELD PAUL  
**Subject:** List of attendees from [Redacted]

[Redacted]

This list was sent over from Weber Shandwick today.

Thanks,

[Redacted]

[Redacted] | Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport | Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH | [Redacted]

---

**From:** [Redacted]  
**Sent:** 23 March 2011 15:17  
**To:** [Redacted]  
**Subject:** Re: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Hello [Redacted]

The current line-up is:

- [Redacted] Trinity Mirror
- [Redacted] Guardian Media Group
- [Redacted] Telegraph Media Group
- [Redacted] Associated News and Media
- [Redacted] Slaughter and May
- [Redacted] Weber Shandwick
- [Redacted] Weber Shandwick

Apologies from [redacted] BT plc who is in the US.

Any emergencies, just email me.

Best wishes

[redacted]

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**From:** [redacted]  
**Sent:** Wednesday, March 23, 2011 09:56 AM  
**To:** [redacted]  
**Subject:** RE: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

[redacted]

I understand you're out of the office at an event today. I am seeking confirmation that the clients you represent will be attending the meeting with the Secretary of State, Jeremy Hunt at 15:45 tomorrow.

To make the necessary arrangements, I require a list of your attendees by close of play today.

Kind regards,

[redacted]

[redacted] | Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport |  
Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH [redacted]

---

**From:** [redacted]  
**Sent:** 22 March 2011 15:50  
[redacted]  
**Subject:** RE: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Dear [redacted]

Thank you – I will check with the parties and come back to you.

Regards

[redacted]

---

**From:** [redacted]  
**Sent:** 22 March 2011 14:49  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Dear [redacted]

I would like to schedule a meeting between the Secretary of State, Jeremy Hunt, and individuals represented by Weber Shandwick, to discuss their representations in relation to the Secretary of State's recent decision on the proposed News Corp acquisition of BSKyB.

The Secretary of State is available from 15:45 until 16:45 on Thursday 24 March at the Department for Culture, Media & Sport, 2-4 Cockspur Street, London, SW1y 5DH.

[Redacted] will act as your point of contact and can be contacted on [Redacted]

In the meantime, if I can be of assistance, please call me on the number below.

Kind regards,

[Redacted signature]

Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport | Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH | [Redacted]

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095B

[Redacted]

**From:** OLDFIELD PAUL  
**Sent:** 24 March 2011 09:22  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: List of attendees from [Redacted]

[Redacted]

Thanks for sending over this list.

We don't feel it is appropriate for you and your colleague from Weber Shandwick to join the meeting this afternoon. SoS is of course happy to meet with the media groups below and their legal representatives. He would like to conduct the meeting direct, and in confidence with them.

We'll look forward to seeing [Redacted] this afternoon.

Regards

Paul.

Paul Oldfield  
Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[Redacted]

---

**From:** [Redacted]  
**Sent:** 23 March 2011 15:17  
**To:** [Redacted]  
**Subject:** Re: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Hello [Redacted]

The current line-up is:

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- [Redacted] Guardian Media Group
- [Redacted] Telegraph Media Group
- [Redacted] Associated News and Media
- [Redacted] Slaughter and May
- [Redacted] Weber Shandwick
- [Redacted] Weber Shandwick

Apologies from [Redacted] BT plc who is in the US.

Any emergencies, just email me.

Best wishes

[Redacted]

---

**From:** [redacted]  
**Sent:** Wednesday, March 23, 2011 09:56 AM  
**To:** [redacted]  
**Subject:** RE: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

[redacted]

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To make the necessary arrangements, I require a list of your attendees by close of play today.

Kind regards,

[redacted] Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport |  
Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH | [redacted]

---

**From:** [redacted]  
**Sent:** 22 March 2011 15:50  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Dear [redacted]

Thank you – I will check with the parties and come back to you.

Regards

---

**From:** [redacted]  
**Sent:** 22 March 2011 14:49  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Dear [redacted]

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The Secretary of State is available from 15:45 until 16:45 on Thursday 24 March at the Department for Culture, Media & Sport, 2-4 Cockspur Street, London, SW1y 5DH.

[redacted] the Head of Digital TV Team will act as your point of contact and can be contacted on [redacted]

In the meantime, if I can be of assistance, please call me on the number below.

Kind regards,



Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport |  
Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH |

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0950

**From:** OLDFIELD PAUL  
**Sent:** 24 March 2011 09:35  
**To:** ZEFF JON; [redacted]  
**Cc:** [redacted]  
**Subject:** This afternoon

To confirm that the attendees from the Slaughter and May represented group for this afternoon will be

- [redacted] Trinity Mirror
- [redacted] - Guardian Media Group
- [redacted] Telegraph Media Group
- [redacted] - Associated News and Media
- [redacted] - Slaughter and May

I've told Weber Shandwick that we don't expect them to turn up.

[redacted] Jon - as per [redacted] previous email - it would be really helpful if you could come to the pre-brief with a summary/ list of issues which we think the group will raise for Jeremy to think through. He's clear he's in listening mode but I think he'll want to think about lines of attack beforehand.

[redacted] have we confirmed Daniel's attendance yet? If he could join us for the pre-brief as well that'd be helpful. I think we've then got OFT and OFCOM joining us for the meeting itself....

In terms of DCMS attendees I'm expecting [redacted] Jon, [redacted] Adam and Sue, me [redacted] would Jonathan want to join? - apols if I haven't invited before....

Paul Oldfield  
Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[redacted]

095D

[Redacted]

**From:** OLDFIELD PAUL  
**Sent:** 24 March 2011 13:15  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: List of attendees from [Redacted]

[Redacted]

Thanks for the email. Your role as co-ordinators is understood. We would still like to go ahead this afternoon just with your clients, and their legal representatives. That is consistent with the approach we have taken throughout the process in our dealings with all interested parties.

Paul.

---

**From:** [Redacted]  
**Sent:** 24 March 2011 12:20  
**Subject:** RE: List of attendees from [Redacted]

Hello Paul

Perhaps there is a misunderstanding about our role. There is nothing in Weber Shandwick's presence that would make the meeting indirect or non-confidential (if that is the basis of the discussion). We would not normally speak in such a setting and we routinely conduct meetings in confidence. Our role is one of co-ordination and reporting for the alliance.

If, notwithstanding this clarification about our role, it is still felt not appropriate that we attend, then we are, of course, quite happy to accede to that request - on the understanding that you have placed an equivalent stricture on the public affairs advisers to News Corporation and BSkyB plc.

Best wishes

[Redacted]

[Redacted]

Fox Court  
14 Gray's Inn Road  
London  
WC1X 8WS

[Redacted]

**Weber Shandwick**  
Advocacy starts here.

*Global Agency of the Year, The Holmes Report, 2009, 2010*

International Consultancy of the Year, PRCA Awards, 2009, 2010  
Public Relations Agency of the Year in Europe, International Business Awards 2010  
PR Lion Winner, Cannes Lions International Advertising Festival, 2009, 2010

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---

**From:** OLDFIELD PAUL [mailto: [redacted]]  
**Sent:** 24 March 2011 09:22  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: List of attendees from [redacted]

[redacted]

Thanks for sending over this list.

We don't feel it is appropriate for you and your colleague from Weber Shandwick to join the meeting this afternoon. SoS is of course happy to meet with the media groups below and their legal representatives. He would like to conduct the meeting direct, and in confidence with them.

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Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[redacted]

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- [redacted] Slaughter and May
- [redacted] Weber Shandwick
- [redacted] Weber Shandwick

Apologies from [redacted] BT plc who is in the US.

Any emergencies, just email me.

Best wishes



---

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**Subject:** RE: Meeting with the Secretary of State for Culture, Media, Olympics and Sport



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To make the necessary arrangements, I require a list of your attendees by close of play today.

Kind regards,



Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport |  
Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH | [Redacted]

---

**From:** [Redacted]  
**Sent:** 22 March 2011 15:50  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: Meeting with the Secretary of State for Culture, Media, Olympics and Sport

Dear [Redacted]

Thank you – I will check with the parties and come back to you.

Regards



---

**From:** [Redacted]  
**Sent:** 22 March 2011 14:49  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** Meeting with the Secretary of State for Culture, Media, Olympics and Sport

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[redacted] will act as your point of contact and can be contacted on [redacted]

In the meantime, if I can be of assistance, please call me on the number below.

Kind regards,

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[redacted] Diary Secretary to Rt Hon Jeremy Hunt MP | Secretary of State for Culture, Media, Olympics & Sport | Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH [redacted]

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095E

[redacted]

---

**From:** OLDFIELD PAUL  
**Sent:** 24 March 2011 13:26  
**To:** [redacted] SMITH, Adam; BEEBY, Sue; ZEFF JON; [redacted]  
**Subject:** RE: List of attendees from [redacted]

Done. I've told them, in firm but polite terms, they're not welcome this afternoon.

---

**From:** MARTIN LINDA  
**Sent:** 24 March 2011 13:22  
**To:** [redacted] SMITH, Adam; OLDFIELD PAUL; BEEBY, Sue; ZEFF JON; [redacted]  
**Subject:** RE: List of attendees from [redacted]

Actually, I think it's inappropriate. They are not a party to the action, they are lobbyists.

---

**From:** [redacted]  
**Sent:** 24 March 2011 12:50  
**To:** SMITH, Adam; OLDFIELD PAUL; BEEBY, Sue; ZEFF JON; [redacted]  
**Cc:** [redacted]  
**Subject:** RE: List of attendees from [redacted]

I can't see any harm in including them and refusing would seem to cause a bit of unnecessary friction. That said, though I don't feel strongly (and I should declare an interest as I know Jon).

---

**From:** SMITH, Adam  
**Sent:** 24 March 2011 12:40  
**To:** OLDFIELD PAUL; BEEBY, Sue; ZEFF JON; [redacted]  
**Cc:** [redacted] MARTIN LINDA  
**Subject:** RE: List of attendees from [redacted]

No public affairs advisors from News Corp were in any of our meetings with them. It was News employees plus lawyers wasn't it? So I still feel they shouldn't be there.

---

**From:** OLDFIELD PAUL  
**Sent:** 24 March 2011 12:39  
**To:** BEEBY, Sue; ZEFF JON; SMITH, Adam; [redacted]  
**Cc:** [redacted]  
**Subject:** FW: List of attendees from [redacted]

Views pls....

---

**From:** [redacted]  
**Sent:** 24 March 2011 12:20  
**To:** OLDFIELD PAUL  
**Cc:** [redacted]  
**Subject:** RE: List of attendees from [redacted]

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[Redacted]

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Department for Culture, Media & Sport | 2-4 Cockspur Street, London, SW1Y 5DH | [redacted]

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**Note of a Meeting with Media Organisations re News Corp Bid for BSkyB – 24 March 2011****Attendees****DCMS**

1. Secretary of State (SoS), Paul Oldfield (Private Secretary), Sue Beeby (Special Advisor), Adam Smith (Special Advisor), Jon Zeff (Directors Media), [redacted] (Media Team) [redacted] (Legal), Daniel Beard (Counsel),

**Others**

2. [redacted] (OFCOM), [redacted] (OFT), [redacted] (OFT) [redacted] (Slaughter and May), [redacted] Trinity Mirror), [redacted] Guardian Media Group), [redacted] Telegraph Media Group), [redacted] Associated News and Media).

**Points Discussed**

3. The Secretary of State met with Slaughter and May and a selection of the media organisations they represent, as part of the consultation process following the SoS' decision not to refer the proposed News Corp acquisition of BSkyB to the Competition Commission.
4. The media organisations and their lawyers made the following points in discussion:
  - i. The importance of a diverse strong media industry and the dangers of reduced diversity in the market place. Fundamentally the group of companies represented at the meeting did not believe that the proposed News Corp. takeover deal for BSkyB – including the UILs – would preserve the independence of Sky News.
  - ii. As Sky News was beholden to BSkyB for revenue, distribution, advertising and cross promotion, Sky News would heavily fall under the influence of News Corp – whose shareholding in BSkyB would increase from 39% to 100% under the proposed deal.
  - iii. Experience from other (newspaper) takeovers by News Corp. suggested that behavioural remedies had not preserved editorial independence for those publications.
  - iv. Whether Sky would continue to cross-promote Sky News as heavily once it was spun off.
  - v. The solution was not clear cut so the merger should therefore be referred to the Competition Commission.
  - vi. Consistent with OFT/Competition Commission procedures, the proposed solution should be in place indefinitely until circumstances require a change, rather than it being in place only for 10 years, after which point it is reviewed. The media organisations also argued that in acting this way the SoS had put risk on the public, rather than the parties to the agreement.
5. In responding to these concerns the SoS made the following points in discussion:
  - i. SoS stressed that his decision was not, and could not be based on market power, and that his decision was based on media plurality in relation to this specific transaction. He explained that he took some elements of competition law best practice in reaching his decision – ie taking advice of experts and publishing that advice, but this was not a decision made under competition law.
  - ii. SoS said that the UILs were offered by News Corp to protect media plurality, and that OFCOM had confirmed that they met its concerns. They did in his view make

Sky News more independent and less subject to influence from News Corp. Enshrining that Sky News was subject to the principle of editorial independence and integrity, as well as the Broadcasting Code in the Mem & Arts was also an important step in ensuring the viability of Sky News as an independent news provider. SoS said that both the proposed carriage agreement and brand agreement would provide protection and certainty of funding and exposure for Sky News. SoS also said that the proposed corporate governance changes (including independent Directors etc) were legally binding, and were structural rather than behavioural remedies.

- iii. SoS said that, if News Corp wanted to reacquire Sky news after 10 years, this could trigger a further media plurality public interest test.
- iv. SoS also made clear he could only consider the UILs that News Corp. presented, rather than suggesting different remedies or solutions. OFCOM made clear that they did not believe that the UILs would be effective in perpetuity – given rapidly changing media landscape and therefore 10 years was sufficient to meet concerns over plurality.

[Redacted]

**From:** [Redacted]  
**Sent:** 24 March 2011 12:56  
**To:** OLDFIELD PAUL; ZEFF JON; [Redacted]  
**Cc:** [Redacted]  
**Subject:** RE: This afternoon  
**Attachments:** [Redacted] 11 03 24 - SoS meeting with S&M.docx  
**Importance:** High

Dear all,

Please find a summary of the opponents' points in advance of this afternoon's meeting. Let me know if you have any comments. (I have to go to [Redacted] retirement lunch but will be back at my desk by 2pm.)

[Redacted]  
 [Redacted]

DCMS  
 2-4 Cockspur Street  
 London SW1Y 5DH

[Redacted]

---

**From:** OLDFIELD PAUL  
**Sent:** 24 March 2011 09:35  
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**Cc:** [Redacted]  
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Paul Oldfield  
Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[redacted]

## **SUMMARY OF MAIN POINTS RAISED BY SLAUGHTER & MAY**

*(Sections in italic refer to more detailed points which could be included in a revised set of UILs)*

### **Proposed UIL will remove Sky News' Independence**

#### (A) Revenue Dependence

About 85% of Sky News' revenues will come from News Corporation, and this dependence will increase over time.

A divestment remedy is unlikely to be effective where the divestment business has an ongoing supply relationship with the merged entity because "there will be a multitude of means through which the merged entity could influence the divestment business".

Wrong to assume that an interest in the success of Sky News acts as a safeguard against editorial influence.

- Even a threat by News Corp to use its financial and commercial leverage could change Sky News policy without necessarily endangering the success or ongoing operation of Sky News.
- The benefits of influencing editorial policy (e.g. increased exposure for News Corporation newspapers) could outweigh any costs involved in disciplining Sky News.

It is therefore "highly irregular" for the Secretary of State to accept such a UIL.

*Lack of clarity over definition of "material breach"*

#### (B) Distribution Dependence

Sky News will rely heavily on the BSkyB network for almost all of its TV distribution activities. The ability to "degrade or reduce distribution of Sky News" gives News Corp:

- the ability to reduce directly Sky News' capacity to reach an audience and therefore contribute to news plurality;
- leverage which could be used to influence Sky News' editorial policy.

(C) Dependence on Contract Renewal

Continued viability will depend upon winning a renewal of the News Corporation carriage agreement. Maintaining the approval of News Corporation must be the directors' first priority, since renewal of the carriage agreement will be essential to the continued viability of the company.

Staff will be aware that choosing to adopt an editorial policy disapproved by News Corporation would run counter to the clear incentives of those responsible for hiring, firing and promotions within Sky News.

- "Were another News of the World phone-hacking scandal to arise before or during the re-negotiations of the carriage agreement, is it realistic to expect that Sky News would rigorously investigate and report on any such illegal activities within News Corporation?"
- "Were there to be a general election campaign before or during the renegotiation of the carriage agreement and all of the News Corporation newspapers supported one party, is it realistic to expect that Sky News would rigorously investigate and report on a major scandal affecting that party?"

**Governance Provisions do not Address Dependence**

Any independent director will have a commercial incentive (and legal obligation) to promote the success of Sky News. Taking a stand against News Corp would be contrary to other incentives and duties.

Behavioural obligations are entirely ineffective in ensuring editorial independence. Since editorial independence is difficult to define it is very difficult to identify and prove clear breaches of the principle.

*Were News Corporation to attempt to influence the editorial independence of Sky News, there is no explicit right of redress provided for in the UIL in order to address such concerns.*

*Only one of the independent directors will be required to have editorial or senior journalistic experience.*

### **News Corporation's shareholding should in fact be reduced**

News Corporation will hold increased influence over Sky News post-Takeover (eg carriage agreements). Any remedy envisaged by the UIL should reduce News Corporation's shareholding in Sky News post-Takeover

### **No Lasting Remedy**

OFCOM has not endorsed SoS's view that a 10 year contract is an appropriate lasting remedy. OFCOM is not sure whether or not it will be necessary to have an independent Sky News in 10 years. The uncertainty should be borne by the merging parties, not the public who would be affected by a reduction in plurality. If market conditions change, then the merged entity has the option to apply to the OFT for the obligations to be released or modified.

The Secretary of State's "only answer for the longer term is to hope something might happen which causes the concerns to disappear."

"It is not clear why the Secretary of State considers (contrary to standard UK merger control policy) that the general public rather than News Corporation should bear the risk of uncertainty over the future outlook. This approach is not only at odds with standard UK merger control policy, but is also irrational and shows insufficient regard for the seriousness of the issues at stake."

### **Insufficient Consultation**

The key terms of carriage agreement are essential to the assessment of the UIL, including details of the financial commitments agreed between the parties. Third parties will be given no opportunity to comment.

### **Reacquisition**

The UIL does not appear to prevent the acquisition of shares in Sky News by Rupert Murdoch (or other members of his family) acting in a personal capacity.

29 March 2011

Rt Hon Jeremy Hunt MP  
Department of Culture Media & Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

Dear Mr Hunt

**News Corporation/BSkyB**

Thank you for meeting us on Thursday.

We are however no closer to seeing how you could sensibly claim that that Sky News would have "more independence from News Corporation than it currently has".

Our earlier submission to you sets out our thoughts in greater detail, but we did want to have one last go at highlighting the key flaws in the remedy you envisage.

The proposed merger would have profound implications for our businesses but also for plurality (which is what we are concerned with here). This is about the UK media landscape over the long term. You will understand therefore our need to make sure we leave no stone unturned in seeking to preserve the current position.

***Remedy makes Sky News more dependent on News Corporation***

Currently, Sky News is part of BSkyB and as such part of a large and hugely successful business which enjoys income from a wide range of third party customers. While News Corporation is a major shareholder in BSkyB, BSkyB is not dependent upon it for its revenues.<sup>1</sup>

In contrast, under the remedy you are proposing, Sky News would be a separate entity reliant on a subsidy from News Corporation (now 100% owner of BSkyB) for its survival. Moreover, News Corporation would be given the ability to decide whether or not to continue the subsidy after 10 years (through the carriage agreement renewal decision).

Such an arrangement must by its very nature undermine the ability of Sky News to make a contribution to media plurality independent of its new paymaster News Corporation.

Furthermore, we are concerned that no proper thought seems to have been given to the commercial realities that will face the "stand-alone" Sky News. We suspect that this is a direct

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<sup>1</sup> You should also be aware that the CC has found (in the context of BSkyB/ITV) that News Corporation currently has no ability to influence the news agenda of Sky News.

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result of your refusal to allow any input into the shaping of the UIL from third party commercial practitioners.

For instance, it is quite clear that much of the Sky News audience is as a direct result of the very heavy promotion of its programming on other BSkyB channels. Clearly those channels would not use up so much promotional time unless BSkyB's current managers believed it was needed by Sky News. What will happen under the new arrangement? Will Sky News be charged "rate card" for the time as paid for advertising? If so, will it be able to afford the bill? If the time is to be given free or at a discount, Sky News becomes further beholden to BSkyB and therefore News Corporation. And, if Sky News doesn't get the promotion it won't get the viewers and will become even less viable.

Sky News will also be dependent on News Corporation to sell its advertising airtime. Moreover, its ratings are too few for its airtime to be sold on a stand-alone basis. It will only attract advertising as part of a "package sale" – presumably with other BSkyB channels.

Yet again, Sky News will be further intertwined with News Corporation.

#### ***Not a viable company***

You have made much play in your public statements about the fact that the Newco will have freely and publicly tradable shares. We doubt that this will prove to be the reality.

Apart from the lingering doubt as to whether the Newco would even be capable of being listed, we question which serious investor would wish to hold the shares. Newco would have a life which could be extinguished after 10 years by News Corporation and during that period its health and well being would be wholly dependent on News Corporation. It would have no real prospect of raising capital or of investing in its future. We have to ask – what is the investment case?

#### ***Governance provisions are insufficient***

We cannot see how you can sensibly come to the view that the governance provisions in the remedy proposal can safeguard Sky News' editorial independence in circumstances where it is financially and commercially dependent on News Corporation.

Previous experience shows that obligations of this type have not prevented News Corporation from influencing editorial policy. For example, our earlier submissions outline the widespread evidence (endorsed by the House of Lords Communications Committee) that the Independent National Directors system governing the Times newspapers failed to prevent News Corporation from influencing the editorial policy of those titles.

Nor do we think you can rely (as you seek to) on the independent directors to act as the guardians of editorial independence. The independent directors will have a legal obligation (and financial incentive) to promote the best commercial interests of Sky News which, as above will in effect equate to maintaining the financial support of News Corporation on which Sky News will be dependent.

In our meeting you referred to the inclusion of editorial independence principles in Sky News' articles of association as providing an additional safeguard. This fails to address the reality that there will be no independent external oversight of Sky News' editorial policy. The articles of associations are a matter for Sky News, its directors and shareholders (all of whom will have a commercial incentive not to act contrary to the wishes of News Corporation).

Therefore, we remain of the view that you cannot reasonably conclude that the governance provisions are sufficient to counter-act Sky News' structural dependence on News Corporation.

**No lasting solution**

The finite duration of the carriage agreement means it is entirely in News Corporation's gift to decide whether Sky News continues to exist after 10 years. We share the OFT's view that this is an "essential structural limitation" of the remedy.

We cannot see any valid reason not to require a lasting solution. You accept that the merger gives rise to plurality concerns (and are therefore requiring a remedy) but you have not explained how or why these concerns would disappear over the next few years. You are only able to refer to Ofcom's view that "the situation with regard to plurality may [but may not] be significantly different in 10 years time".

We believe that media plurality is far too important to be treated in this manner. It is not sufficient to tackle the problem for a few years and hope that it disappears. The merger should not be cleared unless News Corporation can provide a remedy that safeguards plurality on a lasting basis.

**Conclusion**

You expressed the view in your announcement that "nothing was more precious to [you] than the free and independent press for which this country is famous" and reiterated this in our meeting.

We urge you to act in a manner consistent with that worthy sentiment by referring the merger to the Competition Commission for a thorough review.

Yours sincerely

[Redacted signature area]

Sly Bailey

For and on behalf of:  
Associated Newspapers  
Guardian Media Group  
Northcliffe Media  
Telegraph Media Group  
Trinity Mirror



HOUSE OF COMMONS  
LONDON SW1A 0AA

Rt Hon Jeremy Hunt MP  
Secretary of State for Culture, Media and Sport  
Department of Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

30<sup>th</sup> March 2011

*Dear Jeremy*

**Newscorp acquisition of BSkyB and new Communications Act**

Throughout the quasi-judicial process I have sought to ensure maximum transparency consistent with the public interest. In this context, I have a number of questions with regard to the remedy proposed by Newscorp and accepted by you subject to consultation. All of these questions relate to your proposition that the independence of Sky News is protected by the proposed remedy. It is essential there is clarity on a number of issues before people can make proper judgements about your decision.

Under the proposed remedy:

1. Who will appoint the Board of Newco?
2. What proportion of the Board will be independent non-executive Directors?
3. Who will appoint the independent Chair of the Board?
4. Do you accept the following in relation to Newco?
  - a. It will be dependent on a contract with News Corporation for 85% of its revenues and 25% of its costs.
  - b. It will be dependent on News Corporation to distribute its TV news output on the BSkyB network.
  - c. It will only be viable long-term if Newscorp are willing to renew the Carriage Agreement.
5. How is the proposed remedy consistent with the OFT's guidance that it is rare to accept even interim purchase/supply arrangements between merging partners and the divestment business given the requirements for a clear cut remedy in lieu of a Competition Commission reference?



HOUSE OF COMMONS  
LONDON SW1A 0AA

6. Company Directors have a duty to act in the interests of their company and shareholders. Therefore is it not the case that as Newscorp are the main customer and distributor for Sky News the Directors of Newco will have a duty to respond positively to the interests of Newscorp?

Finally you have confirmed that it is the Government's intention to introduce a new Communications Bill. Will you accept my offer to work with you to ensure the Act can be passed by 2013 rather than 2015? Creating a new regulatory environment is a jobs and growth issue and therefore we should move quickly. In light of the very real issues of impartiality that have arisen in relation to this case, will you consider including provisions in the Bill which would remove politicians from having any quasi-judicial role in relation to specific plurality and cross media ownership decisions?

I look forward to your reply.

Yours Sincerely

Ivan Lewis MP  
Shadow Secretary of State for Culture, Media and Sport.

100

[Redacted]

**From:** [Redacted]  
**Sent:** 05 April 2011 12:58  
**To:** [Redacted]  
**Cc:** [Redacted]; GEIST-DIVVER CAROLA; [Redacted]  
**Subject:** NEWS CORP/SKY MERGER: CONSULTATION ON UILs  
**Attachments:** [Redacted] 11 03 25 - analysis of consultation responses.docx  
**Importance:** High

[Redacted] and [Redacted]

Attached is a first go at analysis the main representations on the UILs. As you can see, a lot of sections are in square brackets and there are also a lot of more detailed points on the UILs where we need an initial view from OFT and Ofcom before we can reach a position.

Any changes to the UILs will need a further period of consultation, so it would be useful to know if you think any changes are essential. If that is the case, we may as well consider making a number of less essential but desirable changes at the same time.

As you probably know, my last day in the office for three weeks is Thursday. Any comments before then would be very welcome. If you would find it helpful, we could have a meeting (jointly or separately) to go through the points tomorrow or Thursday, or we can do it through correspondence and/or over the phone. Let me know what you would find most convenient.

In my absence, [Redacted] (included in the cc list above) will be covering.

[Redacted]  
[Redacted]

DCMS  
2 Cockspur Street  
London SW1Y 5DH

V [Redacted]  
N [Redacted]

## MAIN POINTS RAISED BY OBJECTORS TO THE MERGER

(There are also summaries of all the substantive responses attached to this document)

### **Proposed UIL will remove Sky News' Independence**

Slaughter & May act on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group. You saw representations from these groups (apart from BT) on 24 March when they outlined their concerns to you.

Their main concern was that, whereas News Corp owned 39.1% of Sky and thus Sky News, under the new arrangements Sky News would be heavily dependent on an organisation which will be 100% controlled by News Corp. They took as their starting point that "Currently News Corporation does not exercise control over Sky News or its output" [para 5.2]. They then argued that the new arrangements "will make Sky News almost entirely dependent on News Corporation" and give three main areas where they think dependence will be such that News Corp will be able informally or formally to influence Sky News:

- The contract with News Corporation will make up for 85% of its revenues;
- It will be dependent on News Corp to distribute its TV news output;
- Its future existence will be responsible on getting a further contract from News Corp.

The TUC make a similar point: "Newco's economic dependency will therefore make it vulnerable if News Corporation exerts its influence. The close relationship between editorial independence and financial independence [has] been widely recognised in many instances, perhaps most relevantly, by parliament in ensuring separation of the BBC licence fee from general taxation as a guarantee of BBC independence from political influence." Similar points were made by a number of other organisations including The Campaign for Press and Broadcasting Freedom, BECTU and Jewish Funds for Justice.

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**Comment:**

*It is debatable how independent in principle Sky News currently is (though there is no evidence to suggest that this influence has in fact been used to influence editorial independence). The Ofcom report concluded that at present News Corp has "material influence" over Sky [and therefore Sky News] so it is arguable that the Slaughter & May starting point is wrong and that the increase in influence they identify is therefore overstated. Moreover, the proposals for independent directors, an independent chair and an editorial board are all specifically designed to address this concern.*

**Inadequacy of arrangements for independent directors**

Slaughter & May argue that the behavioural aspects of the UILs, especially the arrangements for independent directors, will be insufficient to counter the influence outlined above. In particular, they argue that "Any independent director will have a commercial incentive (and legal obligation) to promote the success of Sky News. Taking a stand against News Corp would be contrary to other incentives and duties." The NUJ and TUC also made similar points.

Avaaz argue that the UILs should have provisions "preventing News Corp from being involved in [the independent directors'] selection and approval."

**Comment**

*The effectiveness of the arrangements for ensuring independent directors is an important aspect of the UILs. The undertakings operate at a number of levels and taken together should ensure the editorial independence of Sky News. In particular:*

- *News Corp will remain a minority owner (unlike with the Times).*
- *The new company will have a majority of independent directors and be independently chaired.*
- *At least one independent regulator must have senior editorial and/or journalistic experience.*

- *The company's articles of association explicitly embed the principle of editorial independence and integrity in news reporting.*
- *There will be a corporate governance and editorial committee to ensure compliance with these requirements, which will also have a majority of independent directors and be independently chaired.*

*These are explicit primary functions of the directors and they will be legally required to act in an independent fashion.*

*The directors of Newco, as with any other company, have to act in accordance with the Articles of Association. These Articles will have the independence duties set out in the UILs enshrined in them. Fiduciary duties do not trump the duties in respect of independence.*

*[How the initial Board of Newco will be appointed is something that remains to be determined. Going forward, the selection of the Board will be a matter for the company to determine. Our view is that it is not necessary to exclude News Corp from this process since the UILs make it clear that the majority of the board should be properly independent and set out in some details what is meant by independent in this context.]*

Slaughter & May also argue that "Sky News could only be expected to provide an independent news voice if its directors and editorial staff are expected to act with complete disregard for their own job security and success of the company."

Carline Lucas MP makes a similar point:

"I am also concerned about the weakness of the definition of independence in the undertakings, which relies on an unspecified 'principle of editorial independence'. I further understand that the safeguards on independence require editorial staff to put themselves into dispute with their employer in defence of editorial independence. I believe that this is likely to be regarded by staff as an extreme and risky step, which will, therefore, only be taken in the most extreme cases."

The Campaign for Press and Broadcasting Freedom also echoed this point.

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*Comment*

*It will be the task of the independent directors and the editorial committee to ensure that Sky News continues to be editorially independent. [Failure to do so will put them in breach of their legal duties [DN true? Sanctions?] and could lay the company open to regulatory action by Ofcom.]*

*We think that the principle of editorial independence will be well understood by those in the industry and by the regulators, and that there is nothing to be gained by seeking a fuller description, which could have the unintended consequence of appearing to limit the scope of the principle.*

**Guarantees of editorial independence**

The NUJ Parliamentary Group "is concerned that previous guarantees and assurances given by Rupert Murdoch have been disregarded" and include anecdotal evidence from previous editors of his papers, including *The Times* and *Sunday*. The NUJ and TUC made similar points as did BECTU, Graeme Morrice MP and Carline Lucas MP.

Steve Barnett makes similar points:

"The new company will be almost entirely financially dependent on News Corporation, who will presumably be responsible for paying the bulk of the salaries of the independent directors. On the two previous occasions when similar boards have been established to safeguard editorial "independence" within News Corporation – at Times Newspapers and the Wall Street Journal – the structure has manifestly failed. Within both organisations, there is substantial evidence of Rupert Murdoch exercising influence over the appointment of key editorial figures and over the general editorial agenda (at The Times newspapers, for example, over its approach to Europe)."

"On a news channel...as with broadsheet newspapers, the process [of editorial influence] is more subtle and inchoate: influence is exerted through the appointment of senior editorial figures, through informal conversations with

editorial staff, over a longer period of time, and in ways that are not easily discernible. One recent example is the remarkable absence in *The Times* newspapers of coverage of phone hacking allegations made against News Corp's *News of the World*. These are not issues on which an editorial board can intervene, however "independent" it may be."

#### *Comment*

*We think the undertakings offered by News Corporation provide a stronger degree of independence for Sky News than the provisions for The Times. These safeguards operate at a number of levels and taken together should ensure the editorial independence of Sky News. In particular:*

- *News Corp will remain a minority owner, unlike in the case of the Times where it owned 100% of the company.*
- *The new company will have a majority of independent directors and be independently chaired.*
- *At least one independent regulator must have senior editorial and/or journalistic experience.*
- *The company's articles of association explicitly embed the principle of editorial independence and integrity in news reporting.*
- *There will be a corporate governance and editorial committee to ensure compliance with these requirements, which will also have a majority of independent directors and be independently chaired.*

*It is important to recognise that these independent editors are working in a very different environment from independent directors on a newspaper. Unlike newspapers, broadcasters are bound by the Ofcom impartiality requirements so the starting point is different. Ofcom's report recognised that the impartiality requirements were not in themselves enough but, taken together with the arrangements for independent directors and the other requirements in the UILs, they concluded that their plurality concerns has been addressed.*

**The remedy is not long-term enough**

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Slaughter & May argue that all Ofcom's report shows is that possible changes in plurality over the next 10 years means that OFCOM is not sure whether or not it will be necessary to have an independent Sky News in 10 years. They argue that this uncertainty should be borne by the merging parties, not the public who would be affected by a reduction in plurality. Consequently, the remedy should be for much longer than 10 years on the grounds that, if market conditions do change in a way which reduce concerns about plurality, the merged entity can apply to the OFT for the obligations to be released or modified. Avaaz make the same point. Representations that 10 years was not long enough were also made by BT and Channel 4 amongst others.

Steve Barnett argues that "It is .... difficult to understand why a time limit has been imposed given the uncertainty over how media plurality and consumption will unfold" He argues that there will be pressure toward greater concentration as media enterprises struggle to identify new business models and that funding of the BBC will decline;

"It is entirely possible – indeed likely – that in ten years time there will be an even greater concentration of media ownership. And yet, that is the very point at which News Corporation will be allowed to take complete control of a TV news operation which may well – by then – be the *only* commercial broadcast news operation remaining in the UK. It must surely be contrary to the public interest to permit the potential for such untrammelled power to be exercised by a single organisation without proper scrutiny and consultation."

**Comment**

*Ofcom said that "we consider that a carriage agreement of a 10-year term in the context of industry dynamics in this sector is long term. This is because we consider there is likely to be significant evolution of the market and consumers' use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time." Consequently they concluded that the revised undertakings "address the plurality concerns identified in our report of 31 December".*

No doubt a longer contract could offer greater protection of plurality but Ofcom's view was that 10 years was sufficient to allay their concerns about plurality. The proposal that the carriage and other agreements should be indefinite was not something which was offered by News Corp. Clearly as a result of the consultation, you can ask News Corp to modify their undertakings in lieu, but this represents such a departure from their proposal that, if you were to make a counter proposal as radical as this, it could lead to a protracted further round of negotiation. We have no evidence to suggest that News Corp would accept such an undertaking and there is at least the possibility that, faced with such an imposition, it would rather shut down Sky News which would result in a diminution of plurality. Alternatively, the Secretary of State [and/or regulators] could be in the position of having to consider regular requests for News Corp for the arrangements to be discontinued which could mean an on-going involvement in the deal over a large number of years. ]

It is in any case possible that any attempt by News Corp to acquire the remaining shares in Sky News at the end of 10 years would represent a relevant merger situation which could allow the then Secretary of State to consider referring the matter to the Competition Commission on plurality grounds. A public interest test can be triggered in relation to a "relevant merger situation" ie where (a) Newco's turnover would be over £70 million or (b) in relation to the supply of goods or services, at least a quarter of those goods or services are supplied by the merged entity. It is hard to predict at this stage whether these thresholds would be met at the time of any future merger.

**[Query: are Ofcom's change of control provisions relevant?]**

**[It is also worth noting that the Communications Bill may introduce new provisions to deal with media plurality though this should not form part of your deliberations as nothing has yet been implemented.]**

**10 years should be a minimum**

Avaaz argue that:

"we see no reason why (even with consent) it should be open to News Corp to be

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allowed to acquire additional shares in Sky News during the first 10 years.....Sky News needs to be given time to develop independently, and this will be significantly hampered if there is a threat it could still be acquired by News Corp at some future date."

*Comment*

*This is merely a permissive power. If there is a major change in plurality before 10 years such that continued separation is no longer necessary, it would be perverse that no changes could be made to the arrangements in the ULLs covering shareholdings.*

**News Corp can reacquire Newco after 10 years**

BT argues that it is not certain that a take-over bid for Newco would trigger the merger control provisions of the Enterprise Act since:

- Newco's gross assets may be below the £70 million threshold and the merger may not increase a share of supply of 25% or more (no referable merger);
- it is unlikely that a quarter of broadcasting will be supplied by the merging parties (no special merger situation);
- even if the merger gives rise to a referable merger or special merger situation, the Secretary of State is not obliged to intervene.

News Corp would be well placed to bid for Newco after 10 years. The impending expiry of the carriage agreement between BSkyB and Sky News that underpins the viability of Newco [and] will make Newco less attractive to competing bidders, leaving the field open for News Corp.

*Comment*

*s discussed above, the merger control provisions may be triggered by a reacquisition. More generally, if you take the view that 10 years is a long as realistically can be required given the likely changes in plurality in the next ten years, then clearly the reacquisition of Sky News by News Corp need not necessarily be a concern from a*

*plurality perspective, particularly if new provisions covering media plurality are introduced by the proposed Communications Bill.]*

**News Corps share of Sky News is too great.**

Avaaz argue that 39.1% of the shareholding and 37.19% of the voting rights gives News Corp too much influence. The new company is much smaller than Sky and is therefore likely to attract different types of shareholders than at present. "There is no guarantee that the new Sky news shareholders will be sufficiently strong or interested to vote against News Corp if the need arose." Avaaz argue that in practice News Corp "will be able to ensure its desired commercial strategy is adopted". Their proposal is that

"News Corp could retain the equivalent of the economic rights it currently has in Sky News (ie 39.1%) but that its voting rights should be limited to 25% of Ordinary Shares (so that it cannot veto ordinary resolutions) and only have voting rights as are normally accepted to protect a minority shareholder's investment, but not such that News Corp can veto the commercial strategy, budget or appointment of senior management of Sky News"

*Comment*

*[Ofcom/OFT]*

**Key agreements between News Corp and Sky**

Slaughter & May argue that interested parties should have the opportunity to comment on the key agreements between News Corp and Sky, in particular the carriage and licensing agreements given their importance to the spun-off business. At the meeting Sly Bailey raised particular concerns about whether Sky would continue to cross-promote Sky news as keenly as it does now, and Arqiva and Virgin made the same point.

*Comment*

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*[These agreements have been reviewed by OFT, Ofcom and our external lawyers who believe that they achieve what they are meant to do.] [They obviously contain confidential information and it would not therefore be right to share them with third parties. We have considered publishing redacted versions but do not think that doing so would add anything of substance to what is known already as all the key information would, quite properly, be missing.]*

**Transfer of Agreements**

Virgin has a contract with Sky for the carriage of Sky News over its cable network. News Corp has undertaken to use all reasonable efforts to transfer the agreements to Newco but Virgin is concerned that it should not be prejudiced by this process. They are worried that they will have to pay more than the going-rate for this service as part of the subsidy to keep Sky News financially viable: "Virgin Media cannot accept being faced with the choice of paying an inflated carriage fee for a news channel, effectively to subsidise News Corporation's structure in the Proposed Undertakings, or losing the right to distribute the Sky News on the cable platform."

*Comment*

*[It is not clear that this is a matter for the UILs and Virgin appears to be using the consultation on the UILs to carry on their commercial negotiations by other means. In our view the issues raised by Virgin are purely commercial matters and not issues which it would be appropriate include further undertakings in the UILs.]*

**Re-acquisition**

Slaughter & May argue that the UIL does not appear to prevent the acquisition of shares in Sky News by Rupert Murdoch (or other members of his family) acting in a personal capacity.

*Comment*

*The undertakings make it clear that the restriction on share ownership includes*

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interconnected Bodies Corporate. It would therefore be possible for an individual associated with News Corp to buy shares in a personal capacity. However, even if they did so, the articles of association would still remain in force, so all the requirements about independent directors, etc would continue to apply. The articles of association can only be changed with the agreement of 75% of the shareholders and News Corp has to vote against any such change to the articles unless they own more than 50% of the shares. In other words, unless the Secretary of State allows News Corp to increase its current share holding, the articles of association could only be changed if News Corp first sold down its share to 25% or less. So while it is possible for an individual associated with News Corp to join forces with News Corp to change the articles of association, it is not-straightforward. As Ofcom and OFT have said in meetings, there has to be a degree of trust with any undertakings as it is not possible to anticipate and prevent every loophole. There will also be a certain amount of moral/political pressure on News Corp to comply with the spirit as well as the letter of the agreement. [Neither Ofcom, OFT nor we think that this is a serious weakness in the undertakings.]

**UILs should ensure that Newco's borrowing powers are enshrined in the Articles.**

BT are concerned that News Corp "is likely to have a majority of voting rights at general meetings of Newco." This could allow them to block a share issue. They could also prevent the company from borrowing by voting to remove the power to borrow in Newco's articles, making them entirely dependent third party contracts.

#### Comment

OFT looked at this specific issue and reported Sky's view that "Sky News was well positioned in terms of technological status in terms of its competitors. However, to the extent that it did wish to fund new developments, it could do this either by way of borrowing and [sic] by seeking to renegotiate an enhanced carriage fee." This led OFT to conclude that it "does not believe that the changed shareholder base of Newco, as compared to Sky at present, provides any reason to believe the viability of Newco would be materially undermined for the foreseeable future." (11 Feb redacted report, para 7.26). The OFT's position assumes that borrowing would be possible [and we therefore agree that the UILs should be amended to ensure that Newco will be able to borrow.]

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**Senior editorial/journalistic experience on the board**

BT and Slaughter & May are concerned that only one director has to have senior editorial/journalistic experience. "This may effectively result in a majority of industry experts on Sky News' board being BSkyB appointees. Independent non-experts, however well intentioned, may not have the experience required to probe some of the more complex board proposals."

BT also argues that "there is not enough in the UILs to support the director with senior editorial/journalistic experience – no fellow independent expert board members, no requirement that he/she should be present at meetings, no provision to cover for any long-term absence."

*Comment*

*[We think these are valid points and would suggest that the UILs are amended so that board meetings and meetings of the editorial committee should not be considered quorate unless at least one independent director with senior editorial/journalistic experience is present, thus making it highly likely that the Board will contain more than one such expert. Or alternatively, we could increase the minimum number of such directors to two.]*

**Brand Licensing Agreement**

BT argues that it "is not satisfactory that the Carriage Agreement should end once Newco ceases the Brand Licensing Agreement. This prevents Newco from ending the Brand Licensing Agreement after the initial 7 year term, in readiness for the Carriage Agreement elapsing."

*Comment*

*There is no explanation of why this is undesirable and therefore we would not propose making any changes to the UILs.*

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### **Premises and facilities sharing**

BT argues that "The UILs, instead of enshrining long-term premises and facility sharing, should ensure that News Corp provides Newco with the financial means to be physically separate. By analogy, BT's undertakings required Openreach to be operationally separate and Ofcom saw to it that Openreach was located in a different building not shared by other parts of BT."

#### *Comment*

*[The comparison with BT Openreach is misleading as it was a profitable business. Requiring Sky News to relocate would add to its costs and make it less able to support itself financially in the future and hence more, not less, dependent on Sky.]*

### **Operational Agreements**

BT argues that "The UILs should require advertising to be handled by a third party, albeit funded by B SkyB. In addition, to safeguard against B SkyB interference, advertising should be placed on terms that do not favour News Corp or B SkyB or deny access to any legitimate advertising buyer."

#### *Comment*

*[OFT/Ofcom]*

### **The UILs fail to ensure a sufficiency of independent contracts**

BT argues that "The UILs should ensure that Newco positively pursues independent revenue streams, without discriminating against competitors of News Corp or B SkyB."

#### *Comment*

*[OFT/Ofcom]*

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**Audit**

BT argues that:

“The Audit committee should ensure fairness in transactions between News Corp/ BSkyB and Sky News, but only protects material transactions. Materiality is insufficiently defined and appears to refer only to financials thresholds. An agreement may be essential but have a low monetary value. The Audit committee’s powers are too vague to be effective. A fairness opinion obtained by the Audit committee need not be followed.”

Avaaz also argue that the UILs should be changed so that Sky News should be able:

“to appoint an independent auditor to review the pricing which Sky provides for various services to Newco, including full access to verify that Sky is in compliance with its obligations under the proposed undertakings. If any discrepancies are found, the cost of such an audit should be payable by Sky/News Corp”

*Comment*

*[Both sets of proposals are reasonable and would improve the effectiveness of the UILs]*

**Editorial committee**

BT argue that the UILs should include “a requirement for breaches [on compliance with the principle of editorial independence] to be reported to the Editorial committee, and from there reported to the OFT or Ofcom, who should be given formal responsibility for supervision of the operation of the undertakings. The prospect of breaches being reported acts as an important deterrent.”

BT further argues that the UILs “should require the head of Sky News, not just empower him, to make representations to the Editorial committee on compliance with the principle

f editorial independence, and require him to report breaches to the Editorial committee." [DN same point as above?]

Avaaz argue that in addition to a requirement for the editorial committee to include a statement in the company's annual report, there should be a requirement to produce an annual report to the Secretary of State and Ofcom.

*Comment*

*[We think [both] the BT suggestions are sensible and that the UILs should be amended accordingly. It is hard to see, however, that the Avaaz suggestion adds anything significant to the arrangements already proposed.]*

#### **Dispute resolution process**

BT argues that the dispute resolution process should be extended to Operational Agreements.

*Comment*

*[OFT/Ofcom.]*

#### **No fairness requirement**

There should be a requirement in the UILs for News Corp and BSkyB not to discriminate against Newco in their commercial deals, and to grant Newco no less favourable terms than to a third party.

*Comment*

*[It is hard to take exception to this proposal and we will amend the undertakings in lieu accordingly.]*

#### **Controls fall away**

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BT argues that "the corporate governance provisions rules may be voted out of the Articles by a majority of shareholders that are not related to News Corp".

*Comment*

*This is not completely correct. The articles of association can only be changed by 75% of the shareholders. News Corp has to vote against any such change to the articles unless they own more than 50% of the shares. This could happen only if News Corp was to sell down its shareholding.*

**Ofcom Code**

Avaaz argue that this should also be extended to on-line services and that "in addition to any other consequences which would normally follow, News Corp will itself pay a financial penalty of a material amount (perhaps determined by Ofcom) each time Ofcom make a finding that Newco has breached the Code.

*Comment*

*This feels like double jeopardy and a bit draconian as Ofcom can already fine in these situations. Furthermore it does not have to be shown that the breach of the Code by Newco was a result if anything done by News Corp who will be the one getting fined.*

*The UILs already provide that the Ofcom broadcasting code will apply to on-line services "where appropriate".*

**Inadequate safeguards in the 9 month interim period**

The UILs will not prevent News Corp interfering in Sky News for the first 9 months of its operation. BT argues that this "is a very long period compared to the three months that are normally considered acceptable to implement a remedy. It is a crucial window which can be used by News Corp to influence Sky News' future agenda."

RESTRICTED

vaaz argue that "Sky News should be spun off before News Corp completes the proposed acquisition of Sky...".

Avaaz also suggest a number of detailed changes to the UILs concerning protecting Sky News in the interim period before spin-off:

- The UILs should state that News Corp should "not take any action which might prejudice or impede the spin-off of Sky News";
- the requirement to maintain and preserve the business should include a specific reference to "facilities and goodwill";
- The non-solicitation provisions should also apply to the interim period.

*Comment*

[Ofcom/OFT]

### **Monitoring Trustee**

Avaaz propose that there should be a Monitoring Trustee who would report to OFT and/or the Secretary of State on a regular basis "so that steps might be taken if the spin off is being unduly delayed, particularly if this is due to News Corps's action." The Monitoring Trustee (who would be appointed and paid for by News Corp) could also advise on the key agreements.

*Comment*

[Ofcom/OFT]

### **"Upfront Buyer"**

Avaaz argue that "the majority of existing Sky shareholders should provide the Secretary of State with a 'commitment in principle to purchase Newco shares'".

*Comment*

**RESTRICTED**

[Ofcom/OFT]

**Diversity**

The UK Coalition for Cultural Diversity is concerned that BSkyB broadcasts too much American content and “unfairly benefits from its dominant position to further expand its subscriber base.” Similarly, Patricia Holland (Senior Lecturer, Bournemouth Media School) argues that “The dominance of a powerful, internationally based commercial company has cultural consequences which are outside the terms of reference of the Competition Commission. This is a problem which needs to be addressed.”

*Comment*

*This is a competition matter and therefore outwith the scope of your decision.*

**Investment in local and European content**

The UK Coalition for Cultural Diversity is concerned that you have “not asked for assurances that News Corporation will comply with the Audio Visual Media Services Directive by making proper, proportionate investment in local programming, particularly feature film, documentary and drama, to fulfil its obligations to UK citizens’ right of access to diversity of programming.”

*Comment*

*[Ensuring compliance with this directive is a legal requirement and does not need to be enshrined in the UILs.]*

**Dynamic Effects of the merger**

Channel 4 argue that “Ofcom’s conclusion that the proposed acquisition merited further review by the Competition Commission on the basis of the “static” effects alone has had the effect of narrowing the debate such that the UIL do not address the “dynamic” effects on plurality”. The Campaign for Press and Broadcasting Freedom also argued

that "the narrow scope of the consultation, also means that there will be no consideration of the **future impact** of the merged company on other UK media companies [para 2.3]"

*Comment*

*Ofcom's dynamic analysis led them to conclude that "we do not consider that there is sufficient evidence for the view that these issues may be expected to result in additional plurality concerns to those identified by our static analysis [6.71]". Ofcom went on to say that "while we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, if a reference is made then these issues merit further evaluation [6.73]."*

*Given that Ofcom has concluded that the revised UILs meet their plurality concerns, it is hard to see why the UILs should also seek to address the dynamic issues which Ofcom concluded did not of themselves justify a referral.*

**Inadequate Time to Consider the UILs**

Channel 4 argue that more time is needed to consider the implications of a transaction "of this scale and significance" and hence the merger should be referred.

The Campaign for Press and Broadcasting Freedom state that "the OFT advised that the Culture Secretary should 'test further the viability and robustness' of the commitments made by News Corporation during the consultation process. We question how such a process could be undertaken with any rigour in the eighteen days allowed for the consultation."

DLA Piper writing on behalf of Avaaz (who organised the internet campaign) said:

*"A month of negotiations behind closed doors between news Corp and the Secretary of State and the OFT, with then just 17 days for public consultation on complex and novel UIL is insufficient time to take into account the very significant public concerns...."*

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*Comment*

*You have complied with the requirements of the legislation [and only a few organisations have argued that the timescale for comment was inadequate].*

*Furthermore, CPBF's criticism overlooks the fact that the OFT and Ofcom have spent considerable time after the end of the consultation period analysing the key agreements.*

**Lack of ex ante remedies**

Channel 4 argue that the fact there is no *ex ante* remedy once the merger is allowed to go ahead means that it is all the more important that the merger "should be subject at this stage to the full, comprehensive remedy that would be afforded by referral to the Competition Commission."

*Comment*

*There is no requirement to refer a merger simply on the basis of its size. If you are satisfied, based on the advice of the regulators, that the UILs meet the plurality concerns and are practically and financially viable, then there is no clear reason for referring the merger.*

**Market Power and its effect on plurality**

The NUJ argue that the new company's "financial power, combined with huge influence in terms of merged marketing and programming strength, can only damage the sustainability of the other media groups which are an important factor in media plurality, as well as strengthening any political or other causes which News Corporation/ BSkyB or its proprietor chooses to support." [Many other organisations made very similar points.] Caroline Lucas MP, campaign for Press and Broadcasting Freedom.

*Comment*

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*Ofcom recognised that its role was to look at plurality issues rather than competition issues which were a matter for the EU. However, it recognised in its dynamic analysis that competition issues could potentially have an effect on plurality. For example:*

*“Economic power can allow a company to take strategic decisions that might ultimately have an impact on plurality. Economic power may allow a media enterprise to invest in new ventures, business developments or adopt pricing strategies that others do not have the resources to compete with. There may be a consequential reduction in other players’ share of voice and hence plurality [6.42].”*

*Nevertheless, Ofcom’s dynamic analysis led them to conclude that “we do not consider that there is sufficient evidence for the view that these issues may be expected to result in additional plurality concerns to those identified by our static analysis [6.71]”. Ofcom went on to say that “while we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, if a reference is made then these issues merit further evaluation [6.73].”*

### **Too much involvement of the SoS**

Caroline Lucas MP is:

*“concerned that the ongoing management of these proposals relies too heavily on decisions by the Secretary of State, rather than independent regulators. Such direct oversight by Government risks politicising the agreement, and is further demonstration of the need to strengthen laws to protect both media and news plurality. I therefore urge the Government to heed the warning from OFCOM that the current system for protecting plurality is deficient because it fails to provide for intervention to be considered where plurality concerns arise in the absence of a proposed takeover.”*



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Graeme Morrice MP is also concerned about the UILs "putting too much power in the hands of the Culture Secretary rather than independent regulators" (this point comes from the letter written by the main opponents to the merger to MPs and others) and the TUC add that "It is therefore conceivable that any politician would think twice before acting in a way that could offend News Corporation and thus potentially damage their party and their own career prospects."

*Comment*

*The Secretary of State and OFT can require information from News Corp and the Secretary of State can direct News Corp to comply with the UILs. In practice, compliance will be a matter for the regulators and the Secretary of State is unlikely to get involved other than on the advice of the regulators, so there is little risk of politicisation.]*

*You are proposing to consider Ofcom's wider points about the scope of the public interest test limited to mergers in the context of the proposed Communications Bill.*

**Definition of Plurality**

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*Comment*

*It is true that the legislation does not define what is meant by "media plurality" and Ofcom based its approach in part on representations from merging parties and third parties. This was also the approach used in Sky/ITV case in 2007. It is also clear from the debates in Parliament that the concern was about the risks associated with one person controlling too much of the media because of the scope for influencing opinions and setting the political agenda.*

*We therefore conclude that Ofcom's approach was soundly based.*

*" is worth noting that Slaughter & May have not made this argument.*

**Sky News and Freeview**

DMOL (who manage the DTT platform) point out that Sky have not signed an LCN (logical channel number) agreement with DMOL and should be made to so under the UILs so that Sky News does not run the risk of "losing any security over its current LCN and the continued engineering support from DMOL for service information relate changes".

*Comment*

*Sky News currently has a slot on Freeview [DN Check] and News Corp have undertaken to use "all reasonable endeavours" that this capacity will be made available to Sky News. Moreover, as DMOL note, there is nothing to prevent the new company signing such an agreement itself. It is not clear what the problem is that the proposal is meant to remedy, and it may be the case that DMOL is using this consultation to drive its own business interests. We can see no reason from a plurality perspective as to why the UILs should be amended in the way suggested.*

**Sky News and Freeview DTT**

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Arqiva are concerned that the carriage agreements with Sky News should factor in the increase in capacity charges after the current contract with Arqiva expires in 2014. This is because Sky currently benefits from a legacy deal with "very beneficial terms" and post-2014 costs are like to increase about twenty-fold. "The disappearance of Sky News from Freeview would....represent a reduction in plurality itself."

*Comment*

*[OFT and Ofcom advise that this has been taken into account in the carriage agreement.]*

Arqiva is concerned that if Sky remains on the Board of Freeview it will give News Corp the ability to influence the development of the DTT platform which is a rival to Sky's pay TV offering:

"News Corp will have will have the ability to influence the strategy and direction of Freeview's development (eg marketing budget), not to mention advance notification of developments on Freeview that might compete with aspects of Sky pay TV offering."

*Comment*

*[OFT/Ofcom]*

**Definitions**

Slaughter & May argue that there needs to be greater clarity over definition of "material breach"

*Comment*

*[OFT/Ofcom]*

**Lack of redress**

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Were News Corporation to attempt to influence the editorial independence of Sky News, there is no explicit right of redress provided for in the UIL in order to address such concerns (S&M).

Avaaz argue that there should be a fixed penalty clause in the undertakings, that the Government should have greater monitoring powers and that the Secretary of State as well as OFT should be able to injunct News Corp.

*Comment*

*[redress: OFT/Ofcom]*

*In practice, monitoring and compliance on an on-going basis will be responsibility of the two regulators and there is no need to give more power to the Secretary of State, something that other respondees have argued strongly against.*

#### **Rival news service**

Media Matters for America argue that there is nothing to stop BSkyB from setting up a rival news service along the lines of Fox News.

Avaaz argue that there should be a non-compete obligation otherwise there would be a significant risk that a competitor set up by Sky/News Corp could lead to the demise of Newco.

*Comment*

*News Corp could do this but, it would still have to pay and for and carry Sky News. It would also have to set up a new organisation from scratch, as there is a non-solicitation clause (para 4.2), and without the use of the Sky brand. The OFT report looked at this question and concluded that "While the carriage agreement remains in force, this may provide a significant disincentive to set up a competing news service, which would undermine Newco, diminishing the return from Sky's 39% share in Newco" (para 12.4 of*

**RESTRICTED**

OFT's 11 February report).

*Provided that the UILs are robust enough to ensure the survival of Sky News, a competing company would add to rather than detract from plurality.*

**Ofcom's methodology is flawed**

David Elstein believes that the Ofcom analysis of reach and share are flawed and that this exaggerates the impact on plurality. He believes that the merger should not be referred to the Competition Commission and that the best outcome would be for the merger to proceed without any restrictions ("the optimum circumstances for Sky News to flourish"). Failing this:

"the best that can be hoped for is that the UILs offered by News Corp, and accepted by Ofcom and the OFT (however reluctantly) will do as little damage as possible. For the Secretary of State now to refer the transaction to the Competition Commission would inexcusably put at risk an excellent news service, whose viewers trust it much more than viewers of its terrestrial rivals trust those services."

*Comment*

*You have already accepted Ofcom's view that the merger satisfied the relatively low "double may" test for referral.*

[Redacted]

Department for Culture, Media and Sport  
2-4 Cockspur Street  
London SW1Y 5DH

Allen & Overy LLP  
One Bishops Square  
London E1 6AD United Kingdom

Tel [Redacted]  
Fax [Redacted]  
Direct [Redacted]

Our ref [Redacted]

6 April 2011

Dear [Redacted]

**News Corporation - British Sky Broadcasting Group Plc**

As you know we are currently in discussions with OFT and Ofcom in relation to the drafts of the Carriage Agreement and the Brand Licensing Agreement which we submitted for the Secretary of State's approval on 21 March 2011. We have received a first set of questions last week, to which we have replied and we are now waiting to hear from the OFT.

In the meantime the period for public consultation on the draft UIL submitted by News on 1 March 2011 (the **Draft UIL**) has expired. I should therefore be grateful if you would confirm that the Draft UIL is in a form acceptable to the Secretary of State subject of course to the approval of the Carriage Agreement, the Brand Licensing Agreement and the Schedule of Assets.

Given that the terms of the Carriage Agreement and the Brand Licensing Agreement will be governed by the commitments offered by News in the final form of the UIL (e.g. at paragraphs 4.4 to 4.8 inclusive of the Draft UIL), it is essential for the ongoing discussions with the OFT and Ofcom that we have confirmation that the relevant provisions of the Draft UIL will need no further changes.

I look forward to hearing from you.

Yours sincerely

[Redacted signature]

[Redacted name]

cc: [Redacted] News Corporation; [Redacted] Allen & Overy LLP

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10/A

[Redacted]

**From:** [Redacted]  
**Sent:** 07 April 2011 09:22  
**To:** [Redacted]  
**Cc:**  
**Subject:** Meeting request re BskyB takeover, plurality

Dear Jeremy Hunt,

I would like to request a meeting on behalf of Avaaz and 38 Degrees to discuss the BskyB takeover, media plurality and the upcoming process towards a new Communications Act.

As you may know Avaaz and 38 Degrees - multi-issue campaign groups - have been active on the issue of media regulation and the BskyB takeover since last year. Tens of thousands of our members have responded and are keen for us to continue working hard on this agenda this month as we approach another announcement on News Corporation undertakings, and during the following months when you will initiate a debate towards a new Communications Act.

In that context we would like to request a short meeting with you to discuss your process of reviewing the consultation inputs, what are the main issues arising, and how you plan to consult the public at the various stages of the Communications Act.

The people attending the meeting would be myself and [Redacted] Avaaz's media adviser and [Redacted] from 38 Degrees.

I look forward to your reply.

Sincerely,

[Redacted Signature]

AVAAZ

Tel: [Redacted]  
Skyp [Redacted]

[www.avaaz.org](http://www.avaaz.org)

Avaaz.org is a 7-million-person global campaign network that works to ensure that the views and values of the world's people shape key decisions.

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**The Office of The Rt Hon Lord Prescott  
House of Lords  
London  
SW1A 0PW**

11 April 2011

Rt Hon Jeremy Hunt MP  
Secretary of State  
Department for Culture, Olympics, Media and Sport  
1-4 Cockspur Street  
London SW1Y 5DH

Dear Secretary of State,

I wrote to you four weeks ago following the Government's statement to the House of Lords in which it indicated your agreement to approve Rupert Murdoch's News Corps application to takeover BSkyB.

The reopening of the criminal investigation into Murdoch's News of the World by Assistant Commissioner Akers of the Metropolitan Police revealed many, many more cases of phone hacking and I called on you to delay confirmation of your decision to grant approval until the completion of these enquiries into these criminal acts by Murdoch's paper.

I received no reply to my letter but since then we have seen disturbing developments which strengthen my call for you to delay your decision.

Firstly, two senior News of the World executives, former Head of News Ian Edmondson and Chief Reporter Neville Thurlbeck were arrested and questioned about phone hacking.

Secondly, the News of the World finally admitted mass criminality by conceding that the practice of phone hacking was rife at the paper between 2004 and 2006. It has set up a compensation fund and apologised to eight people who had brought phone-hacking claims against the paper. One of them was my former Chief of Staff Joan Hammell who was told by police that her phone had been hacked over 40 times by the News of the World to listen to messages I had left on it.



Another of those targets to whom News International and the News of the World have apologised for phone hacking is your predecessor as Secretary of State for Culture Media and Sport, Tessa Jowell.

I am concerned that your department's response is that the decision whether or not Murdoch's takeover of BSkyB should be approved is a 'quasi-judicial decision' and that you cannot consider the phone hacking case.

The statement from a DCMS spokesman said: "The culture secretary has to make a quasi-judicial decision about the impact of the proposed merger on media plurality issues alone. Legally the culture secretary cannot consider other factors as part of this process and under law phone hacking is not seen as relevant to media plurality." This interpretation is fundamentally wrong. Media plurality has never been defined by Parliament. The culture at News Corps was quite clearly to get the story at all costs. Senior executives were either fully aware of the mass criminality being committed by its reporters as Steven Barnett, Professor of Communications at the University of Westminster, said in the Guardian: "The phone hacking scandal, and the corporate culture that facilitated it, is right at the heart of media plurality. It was precisely what concerned the House of Lords when the second chamber, led by Lord Puttnam, forced through the last-minute amendment to the 2003 Communication Act on which Hunt's decision will be based."

What's more the admittance that the News of the World was illegally listening to the Cabinet minister responsible for media policy, begs the question what other information was obtained and acted upon by News International.

If you agree to this takeover it will leave you and this Government open to accusations of complicity and bias to Murdoch. I queried your party's judgement for employing a former News of the World editor who was forced to resign after the original phone hacking case was exposed.

It could also leave your decision on BSkyB open to a legal challenge.

I repeat what I said last four weeks ago. These many reopened enquiries into criminal acts by Murdoch's newspaper raise the issue of Murdoch's News Corps integrity and whether it would pass any 'fit and proper' test to have full control of a major part of television and press.

The best way to avoid this is to delay any decision until all the ongoing criminal enquiries are over and ultimately in the interests of transparent government and media plurality, to refer the final decision to the independent Competition Commission.



If you are not prepared to delay your decision, I strongly advise you not to make an announcement until both Houses are sitting again. Otherwise it will be seen as a cynical attempt at news management and avoiding parliamentary scrutiny.

I would also call on you to consider using your review powers if further criminal acts are proven.

This Government made a considerable error of judgement in employing the former editor of a newspaper where phone hacking was endemic. I urge you not to make a similar error by approving Murdoch's bid to takeover BSkyB.

Yours sincerely



**Rt Hon Lord Prescott**

Dictated by Lord Prescott and signed in his absence

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

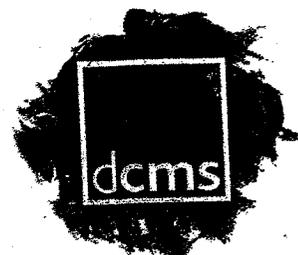
2-4 Cockspur Street  
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www.culture.gov.uk

Tel  
Fax



Your Ref:  
Our Ref: 169646/JB/13

Rt Hon Lord Prescott MP  
House of Lords  
London SW1A 0PW



department for  
culture, media  
and sport

12 April 2011

Dear Lord Prescott

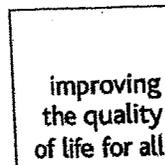
Thank you for your letter of 15 March about News Corporation's proposed acquisition of BSkyB.

I note your concerns about the criminal investigations into phone-hacking and your request that I delay my decision about the merger until after these investigations have been completed.

It is worth reiterating that the merger has been investigated on the basis of the effect it could have on media plurality in accordance with the provision of the Enterprise Act 2002. The phone-hacking allegations are of course very serious, but they are matters for the criminal courts. They have no bearing on the separate matter of media plurality, and my decision on the merger could be challenged if I allowed these allegations to colour my view.

Furthermore, this merger involves two established, reputable media enterprises. When the intervention notice was considered in November last year, it was made on the basis of plurality concerns. An intervention notice could also have been made if it was considered that there might be a concern that persons with control of media enterprises might not have a genuine commitment to relevant broadcasting standards. The Government had no reason to consider any such impact was likely. Therefore the intervention has been made only with regard to plurality concerns. Importantly, once an intervention notice has been made on one basis, the legislation (Section 67(5) of the Enterprise Act 2002) does not permit a second intervention.

I can confirm that your letter has been included as a response to the consultation on the undertakings in lieu offered by News Corporation and may be published as part of that

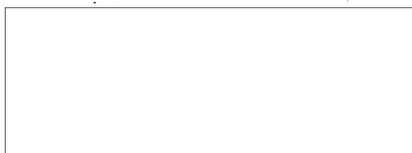


Department for Culture, Media and Sport

process. I am now considering the responses made to the consultation, and will make a statement in due course.

Related documents are available on the DCMS website at:  
[http://www.culture.gov.uk/news/news\\_stories/7883.aspx](http://www.culture.gov.uk/news/news_stories/7883.aspx). I enclose a copy of the statement and undertakings in lieu for reference with this letter.

With best wishes



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

*Encl. Copy of the statement and undertakings in lieu*

[Redacted]

**From:** [Redacted]  
**Sent:** 15 April 2011 12:43  
**To:** [Redacted]  
**Subject:** Re: BskyB Timings

[Redacted]

Grateful for your advice on this in [Redacted] absence.

I recall that we now think it will be early May until we have worked through all the responses and mid-may until the licence and branding agreements are complete? Is that right?

What sos is likely to want to do is to take his final decision as early as possible.

For example, once we have completed our analysis (assuming no need to consult further) I expect he will want to go public on his decision and say it's subject to the detail on the carriage agreements being completed.

Is it possible for him to do this at that stage or will he have to wait until all the details are worked through before saying anything/taking a final decision?

If we have to wait when are we likely to be able to announce?

Grateful for quick response pls on these and [Redacted] questions.

Many thanks

[Redacted]

Sent from my BlackBerry Wireless Device.

---

**From:** [Redacted]  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Date:** Fri Apr 15 11:20:30 2011  
**Subject:** BskyB Timings

Could you give me a brief update on where we are with the BskyB takeover process? Specifically:

- 1, what are the current timings?
- 2, when is the next advice going to JH on this?
- 3, Can we expedite the process so it is ready to go after the local elections?

Many thanks,

[Redacted]

Private Secretary  
Office of the Special Advisers  
Department for Culture Media and Sport  
2-4 Cock Spur Street

Tel: 0  
Fax: 0  
Email

104A

[Redacted]

**From:** OLDFIELD PAUL  
**Sent:** 18 April 2011 10:42  
**To:** SMITH, Adam; MARTIN LINDA; ZEFF JON; SMITH, Godric  
**Cc:** [Redacted]  
**Subject:** Comms Meeting Actions

Actions for our Comms meeting this morning

- Adam to speak to M Gove's SpAd re changes in curriculum affecting number of children studying Sports, Arts and Music. **ACTION - Adam**
- SoS asked whether we could/ should look to invoke the PI test re 'fit and proper person' re Newscorp/ Sky merger. SoS also asked for a likely timetable in concluding the process- ie what are next steps and dates. **ACTION - Rita**
- LM reported on DEA JR decision which was due this week. SoS would like Adam and Linda to work together on getting tone of any statement right.
- SoS wants to see Steve Hilton on Wed re 2012 Ceremonies. **ACTION - [Redacted]**
- SoS would like an update from Tanni Grey Thompson on honours for Paralympians. **ACTION - [Redacted] o**  
**chase up**

Paul Oldfield  
Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[Redacted]

RESTRICTED

To Secretary of State cc Jonathan Stephens   
Jon Zeff  
From  Rita Patel Adam Smith  
Carola Geist-Divver Sue Beeby  
File Ref   
Date 18 April 2011

## NEWS CORP/BSKYB MERGER

This minute is a brief update on progress and likely timings. We explored this morning with the OFT and OFCOM the outstanding issues, the process of handling them between News Corp, OFT/Ofcom and you, and the timetable.

2 We assumed that you would want to move as early as possible to a decision on the UILs, even if there was a subsequent need for a further, short (7 day) consultation on agreed changes to the undertakings (likely), subject to following due and secure process. You will also need to assess the risk involved in agreeing the UILs before the operational agreements (see below). On the other hand, the longer before your decision, the more opportunity for other difficulties to arise.

3 The carriage and brand licensing agreements must, according to the UILs on which we consulted, be agreed prior to the date the UILs are themselves accepted (if they are accepted) by you. OFT/Ofcom have had two rounds of clarification with News Corp on these agreements to ensure that they are meeting what they committed to in the UILs and associated Business Plan. These agreements depend on a number of operational agreements (eg ad sales and broadcast and technical services). These operational agreements could be agreed before or after a decision on the UILs: the News Corp assumption is that they would follow, and your decision could then be made more quickly (though there need be no impact on the overall timetable to completion). The OFT will advise, in the light of their discussions, on the level of risk involved, since, once the UILs are approved, your leverage over the essential operational agreements would be considerably reduced.

4 OFT have identified four key issues: Finance (especially the inflation cap); levels of Marketing and Promotion; Diversification (extent to which New Co will be able to diversify); and the mechanics of the process – there are complex interactions between the timings of the bid process and the establishment of New Co which have to happen in a sensible order if risks are to be minimised and the UILs have the desired effect.

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Department for Culture, Media and Sport

5 Our current expectation of the timetable is:

W/c 18 April – OFT will be communicating with News Corp in relation to points raised in the consultation.

W/c 3 May - DCMS appoints external lawyers to examine the carriage and licensing agreements from a contractual perspective.

W/c 9 May DCMS conference with Counsel on proposed consultation responses.

W/c 16 May (or possibly the week before): the OFT proposed this morning that they submit to you their initial advice on the agreements (including whether amendments to the UILs should be pursued).

6 This suggests that a final decision might be possible (just) by the end of May, if you leave the operational agreements to be agreed by you subsequently.

#### Implications of the Phone-Hacking investigations

7 The Phone-hacking issues as currently admitted by News Corp cannot properly be considered by you when making your decision on the matters of plurality which were the subject of the public interest intervention. However, it is the nature of undertakings that they depend to a certain extent on trust. Our advice is therefore that those activities may be relevant to your decision, but only to the extent that they suggested that you could not reasonably expect News Corp to abide by their undertakings, for example if the wrong-doing was known-of and endorsed or ordered at a senior level within News Corp. This might also be relevant to the level of risk you want to assume in relation to the operational agreements (see above).



RESTRICTED

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106

[Redacted]

**From:** ZEFF JON  
**Sent:** 19 April 2011 11:44  
**To:** PATEL RITA  
**Cc:** [Redacted]  
**Subject:** Fw: Comms Meeting Actions

Rita

See below. SoS raised two points:

A) are we sure the process is going as fast as it can - sofs keen to make decision asap post-holidays. I said I thought it was but we'd stay on the case.

B) wants to make sure we've thoroughly kicked the tires on scope for invoking the standards limb of th pi test. Someone has suggested to him that we could instigate a new reference because information has come to light (on phone hacking) which wasn't available to vince c when he took the original decision. I was doubtful but agreed to check.

sent from blackberry

---

**From:** OLDFIELD PAUL  
**To:** SMITH Adam; MARTIN LINDA; ZEFF JON; SMITH, Godric  
**Cc:** [Redacted]  
**Sent:** Mon Apr 18 10:41:39 2011  
**Subject:** Comms Meeting Actions  
Actions for our Comms meeting this morning

- Adam to speak to M Gove's SpAd re changes in curriculum affecting number of children studying Sports, Arts and Music. **ACTION - Adam**
- SoS asked whether we could/ should look to invoke the PI test re 'fit and proper person' re Newscorp/ Sky merger. SoS also asked for a likely timetable in concluding the process- ie what are next steps and dates. **ACTION - Rita**
- LM reported on DEA JR decision which was due this week. SoS would like Adam and Linda to work together on getting tone of any statement right.
- SoS wants to see [Redacted] on Wed re 2012 Ceremonies. **ACTION - [Redacted]**
- SoS would like an update from Tanni Grey Thompson on honours for Paralympians. **ACTION - [Redacted] to chase up**

Paul Oldfield  
Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[Redacted]

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

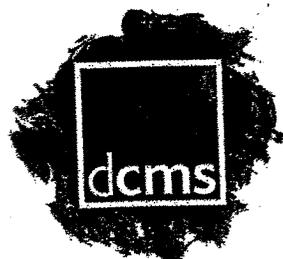
2-4 Cockspur Street  
London SW1Y 5DH

Tel  
Fax  
www.culture.gov.uk

107

CMS 172104/asg

Ivan Lewis MP  
House of Commons  
LONDON  
SW1A 0AA



department for  
culture, media  
and sport

19 April 2011

Dear Ivan

## NEWS CORP ACQUISITION OF BSKYB AND NEW COMMUNICATIONS ACT

Thank you for your letter of 30 March.

I think it is simplest if I answer your questions in order. Before doing so, though, I should stress that we are still considering the representations on the consultation and the details of the carriage and brand licensing agreements, and I have not reached a final decision on this matter.

### 1. Who will appoint the Board of Newco?

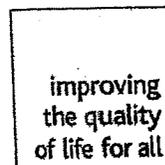
How the initial Board of Newco will be appointed is something that remains to be determined. Going forward, the selection of the Board will be a matter for the company to determine. As you will have seen, the UILs provide that the majority of the board should be properly independent. The Interpretation section of the UILs sets out in some details what is meant by independent in this context.

### 2. What proportion of the Board will be independent non-executive Directors?

The majority will be independent.

### 3. Who will appoint the independent Chair of the Board?

The mechanism for appointment of the Chair of the Board is to be determined, but I would note that the Chair of the Board must be an Independent director, as set out in the UILs.



**4. Do you accept the following in relation to Newco?**

- a. It will be dependent on a contract with News Corporation for 85% of its revenues and 25% of its costs.**

The precise figures are commercially sensitive and will depend on a number of variables but I can confirm that the carriage agreement will be of key importance for Newco. The ten year carriage agreement and the 7 years renewable brand licensing agreement are important elements in ensuring that Sky News will be economically viable and so continue to contribute to plurality. To the extent that Newco is able to secure any significant new business, the balance of funding could change.

- b. It will be dependent on News Corporation to distribute its TV news output on the BSkyB network.**

This is correct. In this respect, it is in exactly the same position as any other broadcaster carried on Sky. It is important for plurality that Sky News continues to be available on the Sky platform and this does not preclude Sky News from being carried on other platforms such as Virgin.

In terms of substantive dependency, I would note that the importance of the carriage agreement with News Corporation for Newco has been addressed in the UIL by means of the fact that News Corporation can terminate the carriage agreement only in the event of a material breach that has not been cured or in the event that Newco ceases to provide output which is branded "Sky News".

- c. It will only be viable long-term if Newscorp are willing to renew the Carriage Agreement.**

It is not possible to predict with any certainty what the position will be in ten years and whether Newco will enter into a new contract with News Corporation or obtain new or additional sources of revenue/business. You will recall that Ofcom advised me in its letter of 1 March that the UILs, including the 10 year carriage agreement, addressed its earlier plurality concerns.

5. **How is the proposed remedy consistent with the OFT's guidance that it is rare to accept even interim purchase/supply arrangements between merging partners and the divestment business given the requirements for a clear cut remedy in lieu of a Competition Commission reference?**

The OFT's guidance relates to different issues from those I have to deal with. The OFT remedies are designed to solve competition concerns and the guidance is tailored to those sorts of issues. Where merging parties and a divested business are direct competitors, I can understand that it may be rare for purchase/supply arrangements to be accepted. Here, however, I am dealing with a plurality issues in circumstances where all of the competition issues have been dealt with by the EU Commission, so the guidance is not quite on point. In addition, it is worth noting that whereas with the OFT, if it refers a competition case to the CC, that is the end of its involvement, with plurality matters, the structure always leaves the final decision to me, even if the CC were to be involved. In any event, I have taken into account the advice of both the OFT and Ofcom in this process.

In the end, under the statutory scheme, I have to consider whether the proposed remedy prevents, mitigates or remedies concerns about plurality. The remedy in this case is designed purely to address the plurality issue. To that extent I am conscious of ensuring the Newco is a viable provider of news.

Ofcom provided its report identifying its concerns regarding plurality which I took seriously. Whilst there were issues in that Ofcom analysis about which questions might have arisen, in reaching the view that I should consult on the proposed remedy, I sought to ensure that the remedy dealt with the concerns identified by Ofcom. I will, of course, consider carefully the issues raised in the course of the consultation and will then reach my view whether the proposed remedy will fulfil the relevant statutory test..

6. **Company Directors have a duty to act in the interests of their company and shareholders. Therefore is it not the case that as Newscorp are the main customer and distributor for Sky News the Directors of Newco will have a duty to respond positively to the interests of Newscorp?**

The directors of Newco have a duty to act in the interests of Newco. This will clearly involve consideration of Newco's relationship with Newscorp as Sky News' main customer, but decisions in each instance will depend on individual circumstances. There could equally be circumstances in which independent directors advise the board to pursue a strategy that makes Newco less dependent on Newscorp. It is worth noting also that, as with any other company, the directors of Newco will act in accordance with the Articles of Association, which will have the provisions relating to independence enshrined in them.

7. Finally, you have confirmed that it is the Government's intention to introduce a new Communications Bill. Will you accept my offer to work with you to ensure the Act can be passed by 2013 rather than 2015? Creating a new regulatory environment is a jobs and growth issue and therefore we should move quickly. In light of the very real issues of impartiality that have arisen in relation to this case, will you consider including provisions in the Bill which would in future remove politicians from having any quasi-judicial role in relation to specific plurality and cross media ownership decisions?

I am grateful for your offer to work constructively on a new Communications Bill. In view of the importance of the issues involved though I do not think the timetable you suggest is realistic. As we have seen from the Digital Economy Act, the last time Government rushed through legislation in this area, hastily constructed legislation can cause problems that take time to resolve. In addition I thought you had only just started a policy review into this sector and so I am uncertain what exactly you are calling for. But I can assure you that I share your view of the importance of the legislation and will want it introduced as soon as is realistically possible. I will certainly be considering whether we need to introduce new provisions in respect of media plurality. I will be publishing a green paper by the end of the year and seeking views this year in order to scope what it should include. Following the green paper consultation we will look to make necessary changes as soon as practicable; not everything will necessarily require primary legislation and we are open to looking at what can be done more quickly where appropriate.



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



HOUSE OF COMMONS

The Rt Hon Jeremy Hunt MP LONDON SW1A 0AA  
Secretary of State  
Department for Culture, Media & Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

19 April 2011

Dear Jeremy,

**Proposed acquisition by News Corporation ("News") of British Sky Broadcasting Group Plc ("Sky")**

I am writing further to my letter to you of 24 January 2011. There have of course been further developments and revelations since the date of that letter.

On 25 January you announced that on the evidence available you considered that it may be the case that the merger may operate against the public interest in media plurality but that you are willing to consider undertakings in lieu ("UIL") offered by News which have the potential to prevent or otherwise mitigate the media plurality concerns identified in Ofcom's report.

You subsequently asked the Office of Fair Trading ("OFT") to work with News and Sky to agree the UIL in order for you to be able to make a final decision as to whether or not to accept those undertakings, taking into account the OFT's further recommendations on whether they are practically and financially viable.

The OFT has since engaged with News and amended the UIL offered in the light of the comments and recommendation in the OFT report; and the OFT has also consulted with Ofcom in its role as sectorial regulator.

This process has led to a revised set of UIL submitted by News on 1 March ("the Revised UIL"), a copy of which has been made publically available.

The OFT has advised you that the Revised UIL are likely to be "practically and financially viable in the short and medium term (that is, no more than 10 years)".

The OFT has said that you may wish to consider whether the Revised UIL, which the OFT considers likely to be effective only in the short-to-medium term, are of sufficient duration to meet the media plurality concerns identified by Ofcom or are effective in relation to them.

OFT have also advised that it would be appropriate for you to test further the viability and robustness of the commitments offered.

You are of course aware that since the date of my last letter the scandalous illegal hacking of mobile phones by the *News of the World* has come to a head, News has now said that it will admit liability and pay compensation in some civil cases. Three employees have been arrested and their homes and office desks have been raided by the police. Given News's previous denial that it knew its journalists were unlawfully intercepting communications (and as I and other observers have previously pointed out it is very hard indeed to believe that senior journalists would undertake illegal phone hacking activities unless they believed they were supported by their senior management), and the other criminal and otherwise unlawful and improper activities undertaken by *News of the World* journalists which I set out in my last letter, I would argue that it is highly unlikely indeed that News can be relied upon to fulfil the commitments it is giving under the UIL.

I believe it is your position that the Enterprise Act allows only one European intervention notice to be given to the OFT. However, under section 67(2) the power to give notice to the OFT arises if you believe that "it is or maybe the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned".

Section 58(2C) specifies, as well as the "plurality" consideration:

*"(c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003"*

At paragraph 7.2 of the DTI's Guidance Document "Enterprise Act 2002: Public Interest and Intervention in Media and Mergers" the following is stated:

*"...in considering how such a merger may impact on the range and quality, or the standards of UK broadcasting, the Secretary of State considers it is reasonable to have regard to any relevant information as to the track record both of the enterprise seeking to acquire a broadcaster and of those who control it in particular where a relevant merger or special merger situation involves a broadcast media enterprise and a newspaper enterprise she may look at any relevant information as to how either the broadcasting or newspaper enterprise have run their affairs".*

At paragraph 7.20 of the Guidance Document the following is stated:

*"In making this assessment, the Secretary of State may nevertheless also wish to take into account the media owner's past compliance with requirements on his other broadcasting enterprises to deliver a sufficient range and/or quality of broadcasting services in the UK";*

at clause 7.22:

*"In the Secretary of State's view, the intention behind this consideration is to assess whether persons controlling or carrying on media enterprises post-merger are likely to comply with the spirit as well as the letter of the broadcasting standards set down in the Communications Act 2003";*

and at paragraph 7.24:

*"Evidence of breaches of UK broadcasting standards may be taken into account. Another factor relevant to the acquiring media owner's commitment to standards objectives might be the compliance of any other broadcasting enterprises it controls with broadcasting standards in other geographic regions or jurisdictions.... Similarly, the record of any non-broadcasting media enterprise's compliance with standards applicable to those media enterprises might also be considered as adding to the overall assessment of an enterprise's commitment to standards in markets where it operates. This would include standards imposed under self-regulatory regimes."*

Clearly News's illegal activities render them unsuitable to own Sky and I believe you ought to specify this as a public interest consideration. If it is the position under the Enterprise Act that there may be only one intervention notice given to the OFT then the notice should be amended to add reference to the broadcasting standards commitments mentioned above particularly in the context of News's admission of guilt; and the matter should be referred once more to Ofcom to carry out further investigations in this regard. You should dismiss the UIL being offered by News since they patently cannot be relied upon and the matter should be referred to the Competition Commission for a detailed investigation.

I look forward to hearing from you as soon as possible.

Yours sincerely



**Tom Watson**  
**Member of Parliament for West Bromwich East**

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108A  
**AVAAZ.ORG**  
THE WORLD IN ACTION

Jeremy Hunt  
Secretary of State for Culture, Media and Sport  
DCMS  
2-4 Cockspur Street  
London SW1Y 5DH

20 April 2011

Dear Secretary of State,

Last Friday, several of your constituents and I met you in Godalming to discuss the BSkyB takeover decision and its relationship to the News of the World phone hacking cases. As promised, I am now writing to set out what Avaaz considers to be flaws in your Department's process and arguments, and our suggestions for next steps.

You said that for the BSkyB takeover you are only empowered to look at issues of media plurality, rather than the broader scope of media standards or whether the buyer constitutes a fit and proper person. Based on this interpretation of your mandate, you argue that News Corp's 8<sup>th</sup> April admission of liability on phone hacking is not relevant to the BSkyB deal. However, we contend -- based on legal advice obtained last week -- that when you issued the European intervention notice on the takeover, you were unaware of relevant matters that now give rise to additional public interest considerations. The bidder was concealing this relevant information, thus rendering your original notice defective and invalid. This obliges you to issue a fresh notice specifying all of the public interest considerations that now arise.

Your fallback line of argument was that you can only take account of information you received during your period of consultation on the proposed undertakings, a period which ended on 21 March, 2011. Following several years of denial, News International acknowledged corporate responsibility for phone hacking less than three weeks after the consultation period ended. The systematic phone hacking, and the long efforts to mislead the police, parliament, and public about this, are clearly pertinent in assessing the validity and effectiveness of the undertakings before you, but -- through no fault of your own -- there was no way that you could have received this concealed information during the initial consultation period.

The announcement on 8<sup>th</sup> April shows that News Corp is not a suitable guardian of our media standards, that its owners are not fit and proper people as set out in the 2003 Communications Act, and that they cannot be trusted to implement in good faith the letter or spirit of the undertakings they have proposed to you. Moreover, as we pointed out in the detailed legal analysis by DLA Piper that we submitted to your department as part of the consultation, the undertakings are unclear on financial penalties for News Corp in case of non-compliance.

As you will know, eminent commentators such as Professor Natalie Fenton and Professor Steven Barnett have also made these arguments in recent days.

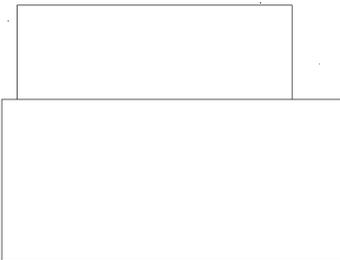
We therefore call on you to delay your imminent announcement on the merger, and to issue a new European intervention notice expanding the scope to look at media standards and fit and proper persons owning our media. Your actions in this matter are vital for the future of our media and will set legal precedent. We urge you not to take an inappropriately narrow interpretation of your powers, but rather to interpret them broadly and do all that you can to safeguard the public interest.

The level of public concern on this issue is demonstrated by the more than 53,000 people across the UK who have signed the petition launched by Avaaz and 38 Degrees on 12 April. The petition says

**“We call on your government to suspend consideration of the BSkyB takeover while a public inquiry assesses the full extent of the News of the World phone hacking scandal. News Corporation cannot be trusted, and you should not hand more media power to a company with a track record of illegal activity. You have a duty to uphold high media standards for the good of our democracy.”**

Thank you for your attention to this matter. We look forward to your early response, so that our communication with our members can be up to date. Please do not hesitate to contact me should you have any questions about our position.

Yours sincerely,



cc: David Cameron, Nick Clegg, Ed Milliband, John Whittingdale, Keith Vaz, Lord Fowler  
Ed Richards, Ofcom, John Fingleton, OFT  
Lawyers pursuing phone hacking cases  
Media Alliance members  
Avaaz members in South-West Surrey

*Avaaz.org is a global, multi-issue, advocacy network with over 8 million members worldwide, including more than 500,000 in the UK. Avaaz, meaning “voice” in many languages, works to close the gap between the world we have and the world most people everywhere want.*

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HOUSE OF COMMONS

The Rt Hon Jeremy Hunt MP LONDON SW1A 0AA  
Secretary of State  
Department for Culture, Media & Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

10 May 2011

**CONFIDENTIAL**

Dear Jeremy,

**RE: Proposed acquisition by News Corporation ("News") of British Sky Broadcasting Group Plc ("Sky")**

I note that I have still not received a response to my letter of 19th April regarding the proposed acquisition by News Corporation of B Sky B. I attach a copy for your reference.

Since writing my letter, other criminal trials have been launched that strengthen my original concerns. I would imagine that you would at least like to wait until the outcome of the trials before reaching a decisive view on the commitments made to you by News International.

The outcome of the case that may be relevant to your thinking is at Kingston Crown Court (ref number: T20107303).

I look forward to your reply.

Yours sincerely

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

**Tom Watson**  
**Member of Parliament for West Bromwich East**

The Rt Hon Jeremy Hunt MP  
Secretary of State  
Department for Culture, Media & Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

19 April 2011

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You subsequently asked the Office of Fair Trading ("OFT") to work with News and Sky to agree the UIL in order for you to be able to make a final decision as to whether or not to accept those undertakings, taking into account the OFT's further recommendations on whether they are practically and financially viable.

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I look forward to hearing from you as soon as possible.

Yours sincerely

**Tom Watson**  
**Member of Parliament for West Bromwich East**

RESTRICTED

110

To: Secretary of State

From: S [redacted]

Team: Media

Tel: [redacted]

Date: 13/05/2011

**NEWS CORP/BSKYB MERGER****Issue**

To update you on progress.

**Recommendation**

2. To note.

**Timing**

3. In the course of business.

**Advice**

4. We met Ofcom, OFT and Pinsent Masons (our external lawyers) on Wednesday to discuss progress to date and next steps on the proposed merger.

5. Both Ofcom and OFT report that there has been good progress in the discussion with News Corp who have now responded positively to virtually all the key issues and (eventually) provided all the documentation requested, including full forms of the brand licensing and carriage agreements and the Articles of Association. Ofcom's view is that they are now down to drafting points with News Corp and OFT also say that agreement has been reached on almost all the important issues, including changes to the UILs. The most significant change to the UILs is provision for the appointment of an independent "monitoring trustee" to ensure that News Corp complies with its undertakings in respect of all the operation agreements (i.e., not the carriage and brand licensing agreements which you have to approve, but the other agreements covering, for example, advertising sales and leasing of land and buildings which have to be agreed before spin-off).

6. Pinsent Masons have been looking at the Agreements from the commercial perspective of Newco (which, of course, does not exist yet) and have raised a number of good points which we have instructed them to raise with News Corp's lawyers.

7. Both OFT and Ofcom propose to provide final written advice after the UILs and key Agreements have been agreed. In terms of timing, OFT and Ofcom think this will take at least another 2-3 weeks.

**Next Steps**

8. When you receive the advice from the regulators and officials on the Agreements

**RESTRICTED**

and the UILs, you will need to decide whether to:

- refer the merger to the Competition Commission;
- accept the UILs as they currently stand and agree that the merger can proceed;  
or
- accept the regulators' advice that the UILs require amendment and have a further consultation period of (at least) 7 days.

9. All options will require a statement (though a written one should suffice if the merger is referred) and the publication of various documents. In the case of a referral:

- the OFT and Ofcom reports
- a summary of the representations made on the UILs.

10. If you are accepting the UILs (with or without amendment), in addition to the above you will also need to publish:

- the UILs
- a reasoned response to the points raised in the consultation
- the draft Articles of Association (probably: we will advise further on this)

11. We do not propose to publish the carriage and brand licensing agreements as they contain commercially sensitive information.

12. Any statement will also need to cover phone-hacking and its relationship to your decision.

**Possible Time Line**

13. For illustrative purposes, if we are in a position to put advice to you about 3 weeks from now, and you decided to consult on revised UILs, the timeline could look like this:

- advice w/c 6 June
- decision w/c 6 June
- oral statement w/c 6 June
- consultation ends c. 17 June
- advice on consultation w/c 20 June
- final statement (may not need to be oral) and decision w/c 20 June

**Handling**

14. We should continue to take the line that we will announce a decision as soon as possible once we have carefully considered all the representations on the UILs and Ofcom and OFT's advice on the UILs and brand licensing and carriage agreements.

**RESTRICTED**

cc:

Jonathan Stephens

Jon Zeff

Rita Patel

Carola Geist-Divver

Linda Martin



Adam Smith

Sue Beeby

111

[Redacted]

**From:** [Redacted]  
**Sent:** 16 May 2011 14:27  
**To:** [Redacted]  
**Cc:** STEPHENS JONATHAN; ZEFF JON; GEIST-DIVVER CAROLA; [Redacted] MARTIN LINDA; [Redacted] SMITH, Adam; BEEBY, Sue; PATEL RITA  
**Subject:** RE: NEWS CORP/BSKYB MERGER

[Redacted]

Many thanks for this update. The SoS has noted the timelines and next steps.

[Redacted]

---

**From:** [Redacted]  
**Sent:** 13 May 2011 11:03  
**Cc:** STEPHENS JONATHAN; ZEFF JON; GEIST-DIVVER CAROLA [Redacted] MARTIN LINDA; [Redacted] SMITH, Adam; BEEBY, Sue; PATEL RITA  
**Subject:** NEWS CORP/BSKYB MERGER

[Redacted]

Please find attached an update for the SoS.

[Redacted]

[Redacted]

**DCMS**  
 2-4 Cockspur Street  
 London SW1Y 5DH

[Redacted]

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

2-4 Cockspur Street  
London SW1Y 5DH  
www.culture.gov.uk

Tel 020 7211 6000  
Fax

112

Your Ref:  
Our Ref: 173444/JB/10

Tom Watson MP  
House of Commons  
London SW1A 0AA



17 May 2011

Dear Tom

Thank you for your letter of 19 April about News Corporation's proposed acquisition of BSkyB.

My previous letter of 8 February set out that Section 67(5) of the Enterprise Act 2002 provides that only one European Intervention Notice can be given in relation to the same relevant merger situation. The Notice can include more than one public interest consideration at the time it is issued, but once issued it cannot have additional public interest considerations added, so cannot be amended as you suggest. However as I said at the Press Gallery lunch, Ofcom is able to remove licences at any time from broadcasters it does not believe to be fit and proper.

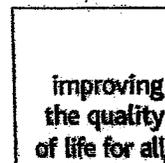
I should add that if I referred the case to the Competition Commission for consideration, it would also have to be on the basis of the effect the merger could have on media plurality, and not for any other public interest consideration.

I can assure you that I will only accept the undertakings in lieu if they are legally robust and enforceable.

With best wishes



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



HAUSFELD & CO LLP

12 Gough Square,  
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112A



Jeremy Hunt  
Secretary of State for Culture, Media and Sport  
DCMS  
2-4 Cockspur Street  
London SW1Y 5DH

Email [Redacted]  
Our ref: IG/LS/L0053.0001

23 May 2011

Dear Secretary of State,

**Proposed Merger of News Corporation ("News Corp") and British Sky Broadcasting plc ("BSKYB"): Notice of Possible Judicial Review Challenge.**

We are writing to advise you that we have been instructed by the globally renowned not for profit organisation Avaaz in this matter. Our client is currently undertaking a detailed analysis of the information, regulatory reports, and legal advice available to it to date, with a view to bringing a possible judicial review challenge of your decision under section 120 of the Enterprise Act 2002 ("the Act") should it permit the proposed acquisition by News Corp of BSKYB without a reference to the Competition Commission. Having notified you of this intention, we welcome the announcement in the press on May 20<sup>th</sup> that you may be minded to 'extend the consultation period in order to go into detail on the carriage and brand licensing agreement' and address concerns from 'many people' with respect to a reduction in media plurality as a result of the deal'.

In that regard, we refer to our client's letter of the 20<sup>th</sup> April 2011 in which they set out their grounds for concern to you. We note that there does not appear, as yet, to be any response to that letter from your office. Further, the submission drafted by DLA Piper UK LLP dated March 18<sup>th</sup>, on behalf of Avaaz, entitled 'Draft Undertakings in the NEWS CORP-BSKYB Merger', provided a comprehensive exposition of the risks to the media plurality considerations set out in Section 58 (2C) of the Act if the proposed Undertakings in Lieu ("UIL") were accepted as they stood. In that submission the point was made at para 1.4 that 'the [UIL] are significantly deficient and do not provide a comprehensive remedy to the public interest concerns identified by Ofcom and accepted by the Secretary.'

We would be grateful for a response to the detailed points made in that letter, and in particular, your views as to the various ways in which the UIL must be strengthened: in particular, if you have taken the view that the UIL should not be, or could not be, strengthened in the respects set out in that letter, it would plainly assist the public, and potentially the Competition Appeal Tribunal, to understand the basis on which you have reached that view.

Our client instructs us to inform you that it would be happy to have both the letter of 20<sup>th</sup> April and that of DLA Piper referred to above published, in accordance with your reported commitment to publish 'independent advice at every step of the way, even when not required to do so by law', to ensure complete transparency of the process and, 'reassure the public about the way this decision has been taken'. Moreover, our client believes the letters which are highly informative, may assist the Secretary to broaden awareness of the public interest issues, and stimulate a wider public debate.

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PARTNERS:

MICHAEL M. BELL

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Particularly since you have not had the benefit of an in-depth report by the Competition Commission, nor the benefit of its acknowledged experience and skill in negotiating remedies of this kind, we further suggest that:

- (a) if you are minded to reject any of the suggestions made in DLA Piper's letter of 18th March, then it would be appropriate for you to publish your reasons and invite comments on them before any final decision is taken (so that any error in that reasoning or in the factual assumptions on which it is based can be drawn to your attention by those with a detailed understanding of the media industry) and
- (b) if (as was suggested by both OFCOM and the OFT in their letters to you of 1 March 2011) further discussions on the detailed arrangements have been taking place between DCMS, OFT or OFCOM officials and News Corporation during the consultation period, then those detailed arrangements be put out to consultation before any final decision is reached. As both OFCOM and the OFT pointed out, the financial and practical viability of the UIL and their effectiveness in addressing plurality concerns depend on the detail of the arrangements (see page 4 of OFCOM's letter and paragraph 12 of the OFT's letter), so that it must be right to allow public interest bodies, interested commercial parties, and experts in the media industry to comment on those detailed arrangements before any UIL are accepted by you.

We look forward to your response.

Yours faithfully,



Cc -  consultant, Avaaz  
- Monckton Chambers



The office of the Rt Hon Lord Prescott  
House of Lords  
London  
SW1A 0PW

24 May 2011

Rt Hon Jeremy Hunt MP  
Secretary of State  
Department for Culture, Olympics, Media and Sport  
1-4 Cockspur Street  
London SW1Y 5DH

*Gen Secretary, State*

Last week I was contacted by Al Gore a man I have known for a number of years since the Kyoto negotiations. He is a man of considerable reputation and integrity and was concerned that the Murdoch press were exercising considerable influence over his television company. I enclose the article that was carried in The Guardian about this issue.

It causes me some concern, though I am not surprised at the exercise of such power by News International and it is relevant in view of the possible acquisition by Mr Murdoch of BSkyB. I hope you will then in your consideration of this acquisition take this issue into account.

Yours sincerely

Rt Hon Lord Prescott

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## Al Gore hits out at Rupert Murdoch's News Corp

Former US vice-president says media giant is forcing his liberal Current TV service off air in Italy for hiring Keith Olbermann

Dara Sabagh

guardian.co.uk, Thursday 19 May 2011 15:04 BST

A ~~Guardian~~ ~~author~~

Italian job. Al Gore has accused Rupert Murdoch's News Corp of an abuse of power for forcing Current TV off air in Italy. Photograph: Karim Jeloud/AP

Former US vice-president **Al Gore** has hit out at **Rupert Murdoch's News Corporation**, accusing it of "an abuse of power" by forcing his liberal TV station off air in **Italy** because it did not fit in with the media giant's "ideological agenda".

In an interview with the *Guardian*, Gore said the **Current TV** news and documentary channel was told unexpectedly three weeks ago that it could no longer be carried by Sky Italia because of its decision to hire a US left-leaning commentator often critical of Murdoch's company.

He added that the decision reflected how News Corporation operated worldwide. "News Corporation is an international conglomerate with an ideological agenda. It seeks political power in every nation they operate. They wield that power to shut down voices that disagree with the agenda of Rupert Murdoch," Gore said.

The decision, he added, was "a complete shock" but Current TV executives were told "off the record" that the decision was taken on News Corp instructions from New York. The primary reason, he said, was "because Current is launching Keith Olbermann next month".

Olbermann – who styles himself as a leftwing alternative to the rightwing shock jock journalism of Fox News – worked at rival cable news network MSNBC until he left abruptly in January. This came after he was briefly suspended by MSNBC in November for making donations to three Democratic candidates in the midterm elections without seeking prior approval, in breach of company rules. "Olbermann has often been critical of News Corporation," Gore added.

Current TV broadcasts around the world, including the UK, but the channel has been more successful in Italy, where it claims that "one in three" Sky Italia viewers watch at some point during the week. However, Gore said that decision to not renew the channel's existing distribution deal also had implications in the UK – where News Corp's takeover of BSkyB is under review on the grounds of "media plurality".

I know that News Corp is close to reaching an agreement to buy BSkyB. Now I may not be a party to that debate, but if anybody believes that [News Corp] will remain hands off if there are diverse opinions that do not agree with its ideological agenda then they are fools. This is proof positive of their abuse of power," Gore said.

However, Current TV's existing agreement with BSkyB does not expire until next year, so there is no immediate threat to its UK position on the satellite service in this country.

Gore also said he understood there has been "a rapprochement" in the struggle between News Corp and Silvio Berlusconi's media empire in Italy. Current TV has run several documentaries critical of the Italian premier and his government. "Sky Italia is in the midst of negotiations to enter the digital terrestrial television market and the need Berlusconi's support," he said.

Gore added that he had a "pleasant personal relationship" with Murdoch dating back to the former vice-president's time in the White House, and said that he wasn't sure exactly on whose authority the decision was made to order Current TV off the air in Italy. He said that he didn't want "to make this ad hominem" but added it was clear that Murdoch and News Corp had too much power.

Programming aired by Current TV in Italy has included Citizen Berlusconi, a documentary first produced by the US PBS network, and about the consequences of handing a media mogul formal political power.

"Anglo-American political theory highlights the problem. Too much power in the hands of one person is dangerous, no matter the ideology," Gore said. "The conversation of democracy, which used to happen in newspapers or in other public places now happens on the television screen. But this is a public space in which gatekeepers charge rents."

He cited the example of the 2003 Iraq war, in which News Corp had acted as "an aggressive cheerleader" for the US-led invasion, to the point where "three quarters of the American public got the impression that Saddam Hussein was responsible for the attacks of 2001". This journalism, Gore said, "has consequences" and he argued that "our democracy is much better when there are diverse viewpoints" to inform decision-making.

News Corp had not returned a request for comment at time of publication.

• To contact the MediaGuardian news desk email [editor@mediaguardian.co.uk](mailto:editor@mediaguardian.co.uk) or phone 020 3353 9857. For all other inquiries please call the main Guardian switchboard on 020 3353 2000. If you are writing a comment for publication, please mark clearly "for publication".

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[Redacted]

**From:** [Redacted]  
**Sent:** 09 June 2011 15:59  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** News Corp/BSkyB merger  
**Attachments:** SB 11 05 24 - analysis of consultation responses.docx  
**Importance:** High

[Redacted]

I attach a table which identifies the main issues raised during the consultation on the UILs to which we will/may have to respond. (This is similar to the paper I sent you in April and some of the responses need more work).

I think you will be addressing pretty well all these points in your reports but I have highlighted in yellow a few points where I would be grateful to know whether or not you will be addressing them. It may be that you feel they are more for us to consider, which is fine; we just need to know one way or another.

If you have any comments on the table more generally, and particularly the references to yourselves, please let me know.

[Redacted]  
[Redacted]

DCMS  
2-4 Cockspur Street  
London SW1Y 5DH

[Redacted]

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**MAIN POINTS RAISED BY OBJECTORS TO THE MERGER**

(There are also summaries of all the substantive responses attached to this document)

<b>Representation</b>	<b>response</b>	<b>recommendation</b>
<p><b>Proposed merger will remove Sky News' Independence.</b> Sky News will now be heavily dependent on an organisation 100% controlled by News Corp:</p> <ul style="list-style-type: none"> <li>• The contract with News Corp will account for 85% of its revenues;</li> <li>• It will be dependent on News Corp to distribute its TV news output;</li> <li>• Its future existence will depend on getting a further contract from News Corp.</li> </ul>	<p>The Ofcom report concluded that at present News Corp has "material influence" over Sky [and therefore Sky News] so it is arguable that the Slaughter &amp; May starting point is wrong and that the increase in influence they identify is therefore over-stated. Moreover, the proposals for independent directors, an independent chair and an editorial board are all specifically designed to address this concern.</p>	<p>No change to UILs</p>
<p><b>Independent directors will have a commercial incentive (and legal obligation) to promote the success of Sky News.</b> Taking a stand against News Corp would be contrary to other incentives and duties.</p> <p>Sky News could only be expected to provide an independent news voice if its directors and editorial staff are expected to act with complete disregard for their own job security and success of the company</p>	<p>The UILs operate at a number of levels and, taken together, should ensure the editorial independence of Sky News. In particular:</p> <ul style="list-style-type: none"> <li>• News Corp will remain a minority owner (unlike with the Times).</li> <li>• The new company will have a majority of independent directors and be independently chaired.</li> <li>• At least one independent regulator must have senior editorial and/or journalistic experience.</li> <li>• The company's articles of association explicitly embed the principle of editorial independence and integrity in news reporting.</li> <li>• There will be a corporate governance and editorial committee to ensure compliance with these requirements, which will also have a</li> </ul>	<p>No changes to the UILs</p>

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	<p>majority of independent directors and be independently chaired.</p> <p>These are explicit primary functions of the directors and they will be legally required to act in an independent fashion.</p>	
<p><b>Previous guarantees and assurances given by Rupert Murdoch have been disregarded.</b> On the two previous occasions when similar boards have been established to safeguard editorial "independence" within News Corporation – at Times Newspapers and the Wall Street Journal – the structure has failed. Influence is exerted through the appointment of senior editorial figures, through informal conversations with editorial staff, over a longer period of time, and in ways that are not easily discernible. One recent example is the remarkable absence in <i>The Times</i> newspapers of coverage of phone hacking allegations made against News Corp's <i>News of the World</i>. These are not issues on which an editorial board can intervene, however "independent" it may be.</p>	<p>We think the undertakings offered by News Corporation provide a stronger degree of independence for Sky News than the provisions for The Times. These are outlined above. It is important to recognise that these independent editors are working in a very different environment from independent directors on a newspaper. Unlike newspapers, broadcasters are bound by the Ofcom impartiality requirements so the starting point is different. Ofcom's report recognised that the impartiality requirements were not in themselves enough but, taken together with the arrangements for independent directors and the other requirements in the UILs, they concluded that their plurality concerns have been addressed.</p>	<p>No changes to the UILs.</p>
<p><b>The remedy is not long-term enough.</b> Ofcom's report shows is that possible changes in plurality over the next 10 years means it <u>may</u> not be necessary to have an independent Sky News in 10 years. This uncertainty should be borne by the merging parties, not the public who would be affected by a reduction in plurality. <del>Consequently, the remedy should be for</del></p>	<p>Ofcom said that "we consider that a carriage agreement of a 10-year term in the context of industry dynamics in this sector is long term. This is because we consider there is likely to be significant evolution of the market and consumers' use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time." Consequently they concluded that the revised undertakings "address the plurality concerns identified in</p>	<p>No changes to the UILs.</p>

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much longer than 10 years on the grounds that, if market conditions do change in a way which reduce concerns about plurality, the merged entity can apply to the OFT for the obligations to be released or modified.

our report of 31 December".

[No doubt a longer contract could offer greater protection of plurality but Ofcom's view was that 10 years was sufficient to allay their concerns about plurality. The proposal that the carriage and other agreements should be indefinite was not something which was offered by News Corp. Clearly as a result of the consultation, you can ask News Corp to modify their undertakings in lieu, but this represents such a departure from their proposal that, if you were to make a counter proposal as radical as this, it could lead to a protracted further round of negotiation. We have no evidence to suggest that News Corp would accept such an undertaking and there is at least the possibility that, faced with such an imposition, it would rather shut down Sky News which would result in a diminution of plurality. Even if acceptable, the Secretary of State [and/or regulators] could be in the position of having to consider regular requests for News Corp for the arrangements to be discontinued which could mean an on-going involvement in the deal over a large number of years.]

Any attempt by News Corp to acquire the remaining shares in Sky News at the end of 10 years could be referred by the Secretary of State to the Competition Commission on plurality grounds providing one of the parties to the merger supplies at least one quarter of all newspaper or broadcasting of a particular description in the UK or a substantial part of it. It is hard to predict at this stage whether these thresholds would be met at the time of any future merger.

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	<p>[It is also worth noting that the Communications Bill may introduce new provisions to deal with media plurality though this should not form part of your deliberations as nothing has yet been implemented.]</p>	
<p><b>10 years should be a minimum.</b> Should not be open to News Corp to be allowed to acquire additional shares in Sky News during the first 10 years.</p>	<p>This is merely a permissive power. If there is a major change in plurality before 10 years such that continued separation is no longer necessary, it would be perverse that no changes could be made to the arrangements in the UILs covering shareholdings.</p>	<p>No changes to the UILs.</p>
<p><b>News Corp can reacquire Newco after 10 years.</b> It is not certain that a take-over bid for Newco would trigger the merger control provisions of the Enterprise Act. News Corp would be well placed to bid for Newco after 10 years. The impending expiry of the carriage agreement between BSkyB and Sky News that underpins the viability of Newco will make Newco less attractive to competing bidders.</p>	<p>The merger control provisions may be triggered by a reacquisition. More generally, if you take the view that 10 years is a long as realistically can be required given the likely changes in plurality in the next ten years, then clearly the reacquisition of Sky News by News Corp need not necessarily be a concern from a plurality perspective, particularly if new provisions covering media plurality are introduced by the proposed Communications Bill.]</p>	<p>No changes to the UILs.</p>
<p>The UILs do not prevent the acquisition of shares in Sky News by Rupert Murdoch (or other members of his family) acting in a personal capacity.</p>	<p>The undertakings make it clear that the restriction on share ownership includes Interconnected Bodies Corporate so it would therefore be possible for an individual associated with News Corp to buy shares in a personal capacity. However, even if they did so, the articles of association would still remain in force, so all the requirements about independent directors, etc. would continue to apply. The articles of association can only be changed with the agreement of 75% of the shareholders and News Corp has to vote <u>against</u> any such change to the articles unless they own <u>more</u> than 50% of the shares. In other words, unless the Secretary of State allows News Corp to increase its current shareholding, the articles of association could only be</p>	<p>No changes to the UILs.</p>

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	<p>changed if News Corp first sold down its share to 25% or less. So while it is possible for an individual associated with News Corp to join forces with News Corp to change the articles of association, it is not straightforward. As Ofcom and OFT have said in meetings, there has to be a degree of trust with any undertakings as it is not possible to anticipate and prevent every loophole. There will also be a certain amount of moral/political pressure on News Corp to comply with the spirit as well as the letter of the agreement. [Neither Ofcom, OFT nor we think that this is a serious weakness in the undertakings.]</p>	
<p><b>News Corps share of Sky News is too great.</b> News Corp could retain the equivalent of the economic rights it currently has in Sky News (i.e. 39.1%) but its voting rights should be limited to 25% of Ordinary Shares (so that it cannot veto ordinary resolutions) and only have voting rights as are normally accepted to protect a minority shareholder's investment, but not such that News Corp can veto the commercial strategy, budget or appointment of senior management of Sky News.</p>	<p>[not necessary given all the other protections]</p>	<p>No changes to the UILs.</p>
<p><b>Key agreements between News Corp and Sky should be available for comment.</b> Concerns about whether Sky would continue to cross-promote Sky news as keenly as it does now.</p>	<p>These agreements have been reviewed by OFT, Ofcom and our external lawyers. They obviously contain confidential information and it would not therefore be right to share them with third parties. [We have considered publishing redacted versions but do not think that doing so would add anything of substance to what is known already as all the key information would, quite properly, be missing.]</p>	<p>The UILs have been changed to ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to your acceptance of the UILs.</p>
<p><b>Transfer of Agreements.</b></p>	<p>[It is not clear that this is a matter for the UILs and</p>	<p>No changes to the UILs.</p>

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concerned that they will have to pay more than the current going-rate for Sky News	appears to be using the consultation on the UILs to carry on their commercial negotiations by other means. In our view the issues raised by [redacted] are purely commercial matters and not issues which it would be appropriate include further undertakings in the UILs.]	
<b>UILs should ensure that Newco's borrowing powers are enshrined in the Articles.</b> Concerns that News Corp could block a share issue or vote to remove the power to borrow in Newco's articles, making them entirely dependent third party contracts.	OFT looked at this specific issue and reported Sky's view that "Sky News was well positioned in terms of technological status in terms of its competitors. However, to the extent that it did wish to fund new developments, it could do this either by way of borrowing and [sic] by seeking to renegotiate an enhanced carriage fee." This led OFT to conclude that it "does not believe that the changed shareholder base of Newco, as compared to Sky at present, provides any reason to believe the viability of Newco would be materially undermined for the foreseeable future." (11 Feb redacted report, para 7.26). The OFT's position assumes that borrowing would be possible [and we therefore agree that the UILs should be amended to ensure that Newco will be able to borrow.]	Any changes?
<b>Senior editorial/journalistic experience on the board.</b> Concerns that only one director has to have senior editorial/journalistic experience and there is no requirement that he/she should be present at meetings, nor provision to cover for any long-term absence.	We think these are valid concerns.	UILs have been amended so that board meetings and meetings of the editorial committee should not be considered quorate unless at least one independent director with senior editorial/journalistic experience is present.
<b>Carriage Agreement</b> Not satisfactory that the Carriage Agreement should end once Newco ceases the Brand Licensing Agreement as this prevents Newco from ending the Brand Licensing Agreement	There is no explanation of why this is undesirable.	No changes to the UILs.

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after the initial 7 year term, in readiness for the Carriage Agreement elapsing.		
<p><b>Premises and facilities sharing.</b> UILs should ensure that News Corp provides Newco with the financial means to be physically separate.</p>	Requiring Sky News to relocate would add to its costs and make it less able to support itself financially in the future and hence more, not less, dependent on Sky.	No changes to the UILs.
<p><b>Operational Agreements.</b> The UILs should require advertising to be handled by a third party, albeit funded by BSkyB. Advertising should be placed on terms that do not favour News Corp or BSkyB or deny access to any legitimate advertising buyer.</p>	[OFT/Ofcom views]	No changes to the UILs
<p><b>Audit</b> The Audit committee should ensure fairness in transactions between News Corp/ BSkyB and Sky News, but only protects "material transactions". Materiality is insufficiently defined and appears to refer only to financials thresholds. An agreement may be essential but have a low monetary value. The Audit committee's powers are too vague to be effective. A fairness opinion obtained by the Audit committee need not be followed.</p> <p>Newco should be able to appoint an independent auditor to review the pricing which Sky provides for various services to Newco, including full access to verify that Sky is in compliance with its obligations under the proposed undertakings. If any discrepancies are found, the cost of such an audit should be payable by Sky/News Corp.</p>		<p>The definition of "<b>Material Transaction</b>" in the UILs has been extended to cover the renewal or material amendment to the main operational agreements regardless of the value of the transactions</p> <p>The UILs have been amended so that News shall grant Newco reasonable audit rights in the event that Sky fails to provide any relevant information within a</p>

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		reasonable period of time. [DN Who pays?]
<b>The UILs fail to ensure a sufficiency of independent contracts.</b> They should ensure that Newco positively pursues independent revenue streams, without discriminating against competitors of News Corp or BskyB.	[OFT/Ofcom views]	
<b>Dispute resolution process</b> should be extended to Operational Agreements.	Agreed.	The UILs have been changed (5.4) to achieve this.
<b>Editorial committee.</b> The UILs should require breaches on compliance with the principle of editorial independence to be reported to the Editorial committee, and from there reported to the OFT or Ofcom, who should be given formal responsibility for supervision of the operation of the undertakings. In addition to a requirement for the editorial committee to include a statement in the company's annual report, there should be a requirement to produce an annual report to the Secretary of State and Ofcom.		
<b>No fairness requirement.</b> There should be a requirement in the UILs for News Corp and BskyB not to discriminate against Newco in their commercial deals, and to grant Newco no less favourable terms than to a third party.		UILs amended so that News shall ensure that Sky enters into the agreements with Newco under which Sky will provide facilities and support services to Newco, on arms'-length terms <u>which are fair and reasonable</u> , [words added].
<b>Controls fall away.</b> The corporate governance provisions rules may be voted	This is not completely correct. The articles of association can only be changed by 75% of the	No change

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out of the Articles by a majority of shareholders that are not related to News Corp.	shareholders. News Corp has to vote <u>against</u> any such change to the articles unless they own <u>more</u> than 50% of the shares. This could happen only if News Corp was to sell down its shareholding.	
<b>Ofcom Code.</b> In addition to any other consequences which would normally follow, News Corp will itself pay a financial penalty of a material amount (perhaps determined by Ofcom) each time Ofcom make a finding that Newco has breached the Code.	This feels like double jeopardy and a bit draconian as Ofcom can already fine in these situations. Furthermore it does not have to be shown that the breach of the Code by Newco was a result if anything done by News Corp who will be the one getting fined.	No change
<b>Monitoring Trustee.</b> There should be a Monitoring Trustee who would report to OFT and/or the Secretary of State on a regular basis so that steps might be taken if the spin-off is being unduly delayed. The Monitoring Trustee (who would be appointed and paid for by News Corp) could also advise on the key agreements.	Agreed.	The UILs have been amended accordingly. See new clauses 6-9.
<b>Interim safeguards.</b> In the interim period before spin-off the UILs should state that News Corp should not take any action which might prejudice or impede the spin-off of Sky News; the requirement to maintain and preserve the business should include a specific reference to "facilities and goodwill"; the non-solicitation provisions should also apply to the interim period.		UILs amended to accept the second and third points
<b>"Upfront Buyer"</b> . The majority of existing Sky shareholders should provide the Secretary of State with a 'commitment in principle to purchase Newco shares'.	This is unnecessary as the UILs provide that shareholders will automatically be given shares in the Newco in the same proportion as their shares in Sky.	No change
<b>Diversity.</b> BSkyB broadcasts too much American content which has cultural	This is not a matter of media plurality and therefore outwith the scope of your decision.	No change

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consequences.		
<b>Investment in local and European content.</b> You should ask for assurances that News Corporation comply with the Audio Visual Media Services Directive	Compliance with this directive is a legal requirement and does not need to be enshrined in the UILs.	No change
<b>Dynamic Effects of the merger.</b> The new company's "financial power, combined with huge influence in terms of merged marketing and programming strength, can only damage the sustainability of the other media groups which are an important factor in media plurality..."	Ofcom's dynamic analysis led them to conclude that "we do not consider that there is sufficient evidence for the view that these issues may be expected to result in additional plurality concerns to those identified by our static analysis [6.71]". Ofcom nevertheless went on to say that "while we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, if a reference is made then these issues merit further evaluation [6.73]."  Given that Ofcom has concluded that the revised UILs meet their plurality concerns, it is hard to see why the UILs should also seek to address the dynamic issues which Ofcom concluded did not of themselves justify a referral.	No change
<b>Inadequate Time to Consider the UILs</b> and for the Secretary of State to 'test further the viability and robustness' of the commitments made by News Corporation during the consultation process.	You have fully complied with the requirements of the legislation [and only a few organisations have argued that the timescale for comment was inadequate]. The OFT and Ofcom have spent considerable time after the end of the consultation period analysing the key agreements.	No change
<b>Lack of ex ante remedies</b> means that the merger should be referred.	The legislation expressly provides that you can accept undertakings in lieu if you are satisfied that the UILs meet plurality concerns.	No change
The UILs put <b>too much power in the hands of the Culture Secretary</b> rather than independent regulators.	The Secretary of State and OFT can require information from News Corp and the Secretary of State can direct News Corp to comply with the UILs. In practice, compliance will be a matter for the regulators and the	No change

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	Secretary of State is unlikely to get involved other than on the advice of the regulators.	
<b>Definition of Plurality.</b> Proper consideration of media plurality should not be limited to the news pages of newspapers and the news channels and news programmes on TV. Just as newspapers contain human interest stories, recipes, sports reports, crosswords, so television channels provide documentaries, cookery shows, sports coverage and quiz shows. Both media offer a range of content to their audiences – and so all such content provided by the merging parties should have been considered by Ofcom.	It is true that the legislation does not define what is meant by "media plurality" and Ofcom based its approach in part on representations from merging parties and third parties. This was also the approach used in Sky/ITV case in 2007. It is also clear from the debates in Parliament that the concern was about the risks associated with one person controlling too much of the media because of the scope for influencing opinions and setting the political agenda. It is hard to see why there should be concerns about the potential concentration of the supply of crosswords. We therefore conclude that Ofcom's approach was soundly based. It is worth noting that Slaughter & May have <u>not</u> made this argument.	No change
There is nothing to stop BSkyB from <b>setting up a rival news service</b> along the lines of Fox News. The UILs should therefore have a non-compete obligation.	News Corp could do this but, it would still have to pay and for and carry Sky News. It would also have to set up a new organisation from scratch, as there is a non-solicitation clause (para 4.2), [and without the use of the Sky brand.] The OFT report looked at this question and concluded that "While the carriage agreement remains in force, this may provide a significant disincentive to set up a competing news service, which would undermine Newco, diminishing the return from Sky's 39% share in Newco" (para 12.4 of OFT's 11 February report).  Provided that the UILs are robust enough to ensure the survival of Sky News, a competing company would add to rather than detract from plurality.	No change
<b>Sky News and Freeview DTT.</b> The carriage agreements with Sky News should factor in the increase in capacity charges	OFT and Ofcom advise that this has been taken into account in the carriage agreement.	No change

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<p>after the current contract with Arqiva expires in 2014.</p> <p>If Sky remains on the Board of Freeview it will give News Corp the ability to influence the development of the DTT platform which is a rival to Sky's pay TV offering.</p>	<p>Sky's interest in Freeview will remain unchanged. This is arguably more of a potential competition issue so falls outside the scope of this decision</p>	<p>No change</p>
<p><b>Definitions.</b> There needs to be greater clarity over definition of "material breach".</p>		<p>The UILs have been changed.</p>
<p><b>Right of redress.</b> Were News Corporation to attempt to influence the editorial independence of Sky News, there is no explicit right of redress provided for in the UILs. The Government should have greater monitoring powers and that the Secretary of State as well as OFT should be able to injunct News Corp.</p>	<p>In practice, monitoring and compliance on an on-going basis will be responsibility of the two regulators and there is no need to give more power to the Secretary of State, something that other respondees have argued strongly against.</p>	<p>No change to the UILs</p>

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

**UNDERTAKINGS GIVEN BY NEWS CORPORATION PURSUANT TO PARAGRAPH 3 OF  
SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003**

**WHEREAS:**

- (a) News Corporation proposes to acquire the shares in British Sky Broadcasting Group plc that it does not already own.
- (b) On 4 November 2010 the Secretary of State for Business, Innovation and Skills issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 31 December 2010, Ofcom provided its report to the Secretary of State on issues of media plurality (as provided for in Article 4A of the Order) and on 30 December 2010 the OFT provided its report to the Secretary of State on the creation of a European relevant merger situation pursuant to Article 4(4) of the Order.
- (d) The Secretary of State considers that the conditions for referring the Transaction to the CC under Article 5 of the Order are met and, absent any offer of undertakings from News, he would be minded to refer the Transaction to the CC.
- (e) The Secretary of State has a discretion to accept undertakings in lieu of reference from News under paragraph 3 of Schedule 2 of the Order:

*"The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as [he] considers appropriate undertakings to take such action as [he] considers appropriate."*

- (f) The Secretary of State considers that the undertakings given below by News are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** News hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

**1. EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by News, they are accepted by the Secretary of State.

**2. SPIN-OFF OF SKY NEWS BUSINESS**

- 2.1 News shall effect the spin-off of the Sky News business into an independent English public limited company, Newco, the shares of which will be publicly traded, using its best endeavours and acting in good faith, at the Closing Date or as soon as reasonably practicable following the Closing Date and in any event within 9 months of the Closing Date, subject to any extension of time agreed with the

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consent of the Secretary of State. In effecting the spin-off of the Sky News business in accordance with section 2.2 below, News shall not take any action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as Sky News did prior to the Transaction. Shares in Newco shall be distributed or otherwise issued or transferred to the shareholders of Sky in the same proportions as their shareholdings in Sky.

2.2 News shall take (or procure the taking of) the following steps to achieve the spin-off of Newco to the shareholders of Sky:

- (i) the formation of Newco as a new limited company incorporated under the laws of England and Wales as a Subsidiary of Sky;
- (ii) the establishment of the corporate governance arrangements set out in section 3 below;
- (iii) the transfer of the business of Sky News (as set out in section 4 below) into Newco in exchange for shares in Newco;
- (iv) the entering into of the agreements between Sky and Newco set out in sections 4.4, 4.6 and 5 below;
- (v) the spin-off of shares in Newco to shareholders of Sky in the same proportions as their shareholdings in Sky under arrangements that cause the resulting News shareholding in Newco on completion of the spin-off to be 39.1%, equal to its current shareholding in Sky; and
- (vi) the putting in place of arrangements for the public trading of Newco shares.

### 3. CORPORATE GOVERNANCE OF NEWCO

3.1 News shall ensure that the corporate governance structure of Newco shall be established to substantially replicate the effects of the existing corporate governance structure of Sky. In particular:

- (i) News shall be subject to a voting limitation of 37.19% of the total votes of Newco on substantially the same terms as currently apply in relation to Sky pursuant to the voting agreement dated 21 September 2005 (as amended by a memorandum dated 19 October 2005);
- (ii) The articles of association of Newco shall provide that Newco's Sky News TV, radio and any closely related services (irrespective of the platform on which such service is distributed) will abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code. The articles of association of Newco shall be in a form to be approved by the Secretary of State prior to the Effective Date;
- (iii) The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares:
  - (A) the majority of the board of Newco shall comprise Independent Directors;

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- (B) one of those Independent Directors shall be chairman of the board of Newco; and
- (C) meetings of the board of Newco shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.
- (iv) The definition of Independent Director contained in these undertakings shall be included in the articles of association of Newco;
- (v) Material Transactions between Newco and News or Sky shall require the approval of Newco's audit committee, which shall consist exclusively of Independent Directors. Material Transactions between Newco and News or Sky involving amounts of £12.5 million or more shall also require the approval of the board of Newco. In addition Newco's articles of association shall also provide that transactions between Newco and News or Sky may, depending on materiality, require an independent fairness opinion or Newco independent shareholder approval (by virtue of Newco applying controls that have equivalent effect to those imposed by Chapter 11 of the Listing Rules);
- (vi) The articles of association of Newco shall provide that the board of Newco and its committees shall have the appropriate balance of skills, experience, independence and knowledge of Newco to enable them to discharge their respective duties and responsibilities effectively and that at least one Independent Director must have senior editorial and/or journalistic experience;
- (vii) The articles of association of Newco shall provide that the appointment or removal (including any material changes in terms and conditions which could give rise to constructive dismissal) and any material changes to the authority or reporting relationship of the head of Sky News must be approved by the board of Newco;
- (viii) The articles of association of Newco shall provide that Newco shall adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in the UK Corporate Governance Code; and
- (ix) The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares, Newco shall establish a corporate governance and editorial committee which will:
- (A) comprise a majority of members who are Independent Directors (including an Independent Director with senior editorial and/or journalistic experience);
  - (B) be chaired by an Independent Director;
  - (C) be entrusted with oversight of Newco's compliance with the corporate governance provisions, the provisions relating to the principle of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above; and
  - (D) operate under terms of reference which will stipulate that the corporate governance and editorial committee will:

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- I. be adequately resourced and have powers to review and investigate all areas within the remit of the committee;
- II. meet at least four times a year;
- III. report on a regular basis to the board of Newco;
- IV. cause a statement to be included in the Newco annual report on its activities including its oversight functions specified in section 3.1(ix)(C) above;
- V. consider any representations made by the head of Sky News as to Newco's compliance with the provisions relating to editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above and report any such representations to the board of Newco; and
- VI. advise the Newco board on any issues within its remit including any approval specified at 3.1(vii) above.

(E) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.

3.2 For so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of the voting shares in Newco, News shall vote against any proposed change to Newco's articles of association which would remove the corporate governance provisions provided for in sections 3.1 (ii) to 3.1 (ix) above.

3.3 News shall not attempt to cause Newco to act in breach of its Articles of Association.

#### 4. **SKY NEWS BUSINESS TO BE HELD WITHIN NEWCO**

4.1 News shall cause the Sky News business to be transferred, as a going concern, to Newco. This will require the transferring or making available of those assets required to conduct the Sky News business, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

- (i) all or substantially all tangible assets currently used exclusively for the purposes of carrying on Sky News' business. 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;
- (ii) all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business, including news gathering staff (UK and international staff), production, online and multimedia staff; and
- (iii) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of the Sky News business (and, to the extent that such licences, permits, consents or authorisations are not capable of transfer, News will endeavour to assist Newco in applying for new licences, permits, consents or authorisations).

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- 4.2 News shall (subject to customary limitations) not solicit staff transferred to Newco for a period beginning on the Closing Date and ending 24 months after the date of spin-off.
- 4.3 Without prejudice to the generality of section 4.1 above, and subject to obtaining the necessary third party consents, News shall also use all reasonable endeavours to procure that there will be transferred or made available to Newco:
- (i) the benefit and burden of any carriage agreements between Sky and third parties (including with Virgin Media and UPC) for the distribution of the Sky News TV channel. News will use all reasonable efforts to ensure that these agreements are transferred directly to Newco;
  - (ii) Arqiva capacity for one standard definition channel until the expiry of Sky's existing capacity agreement with Arqiva in respect of the broadcast of Sky News on DTT;
  - (iii) the benefit and burden of wholesale contracts entered into by Sky for the supply of news content to Channel 5 and IRN; and
  - (iv) the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering.
- 4.4 In addition News shall ensure that Sky enters into a **Carriage Agreement** with Newco under which Sky News channels and services will be provided to Sky on a wholesale basis for distribution by Sky to viewers or subscribers in return for the payment of a carriage fee by Sky to Newco in a form to be approved by the Secretary of State prior to the Effective Date.
- 4.5 Any Carriage Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.4 above shall:
- (i) be for a term of 10 years;
  - (ii) not provide Sky (or News) with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of Newco;
  - (iii) subject to section 4.8 below be terminable by Sky only in the event of material breach that has not been cured or in the event that the Brand Licensing Agreement expires or terminates;
  - (iv) (subject to EPG regulation including Ofcom's Code of Practice on EPGs, and Sky's published "Method for allocating listings in Sky's EPG") oblige News to use its best endeavours to ensure that Newco is provided with an EPG slot which is no worse than Sky News' current EPG slot; and
  - (v) contain a dispute resolution mechanism.
- 4.6 News shall ensure that Sky will enter into a royalty-bearing **Brand Licensing Agreement** with Newco, under which Newco will receive a licence of the Sky News brand for a fourteen year term which may be extended at the option of Newco for a further 3 years, in a form to be approved by the Secretary of State prior to the Effective Date.
- 4.7 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.6 above shall:

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- (i) permit Newco to use the Sky News brand in connection with its news output;
- (ii) not provide Sky or News with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of Newco;
- (iii) subject to section 4.8 below be terminable by Sky only in the event of a material breach that has not been cured, in the event that Newco ceases to provide output which is branded "Sky News" and/or in the event of a change in Control of Newco; and
- (iv) contain a dispute resolution mechanism.

4.8 News shall also ensure that neither the Carriage Agreement nor the Brand Licensing Agreement can be terminated by Sky until any dispute between Newco and Sky as to the validity of that proposed termination has been finally resolved under the dispute resolution process specified in the relevant agreement. News will bear all reasonable costs (including Newco's reasonable costs) of any dispute resolution process originating from a proposed termination by Sky of the relevant agreement (irrespective of the outcome of that dispute resolution process).

4.9 News shall ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the Effective Date, for as long as Newco and Sky are party to the Carriage Agreement entered into pursuant to section 4.4 above, and only to the extent that such cross-promotion is not classified as "television advertising" under Ofcom's Code on the Scheduling of Television Advertising.

## 5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

5.1 News shall ensure that Sky will, prior to or at spin-off, enter into the agreements listed below with Newco under which Sky will provide facilities and support services to Newco, on arms'-length terms which are fair and reasonable:

- (i) an advertising sales agreement between Newco and Sky under which Sky will sell advertising and sponsorship on behalf of Newco for a term of up to 3 years;
- (ii) a lease of land and buildings under which Sky will agree to lease the existing Sky News land and buildings to Newco for a period of up to 15 years and which shall be in a form to be approved by the Secretary of State prior to spin-off;
- (iii) a site support services agreement under which Sky will agree to provide certain support services to Newco while Newco leases premises from Sky including IT support services for a term comparable with the term of the lease;
- (iv) one or more agreements in relation to broadcast and technical services under which Sky will offer to Newco:
  - (A) satellite capacity;
  - (B) playout;
  - (C) uplink;
  - (D) DTT transmission;

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- (E) online transmission; and
- (F) mobile distribution,

in each case for a term of up to 10 years (or such shorter time as required by Newco) except for the service set out at (D) which will be provided until [ ] (when Sky's contract with Arqiva relating to the broadcast of Sky News on DTT expires and it is expected that Newco will enter into its own contract directly with Arqiva) and, in the case of the agreement(s) relating to the services set out at (A), (B) and (C) in a form to be approved by the Secretary of State prior to spin-off; and

- (v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off- screen design services) agreements.

5.2 Each of the agreements set out at 5.1 (i) to (v) above will be terminable by Newco on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.

5.3 News shall ensure that the agreements listed at sections 5.1(iii), 5.1(iv) and 5.1(v) above will provide that charges to Newco are set for the first year at a fixed price (for each relevant agreement) equivalent to the cost of Sky providing the relevant services (including internal cost allocations) plus a 5% margin. Thereafter the charge to Newco for each agreement will be based upon the fixed price increased by CPI for each following year for the remainder of the agreement, with the following adjustments:

- (i) Sky will adjust pricing to reflect actual usage levels for services where Newco has variable demand (e.g. IT support services and broadcast operations and creative services); and
- (ii) Sky will adjust pricing to pass on savings or cost increases of services which Sky obtains from a third party (for example, the cost of web hosting or mobile transmission); and
- (iii) the percentage increase in the total amount charged to Newco on a like-for-like basis (i.e. assuming the same levels on consumption for those costs which are variable in nature based on usage levels) will be subject to an aggregate cap on the increase in the total amount charged to Newco of 6% plus 50% of the incremental increase in CPI between 6% and 10%, and to the extent that this is exceeded the CPI adjustment applied to the charge for each agreement will be reduced.

News shall grant Newco reasonable audit rights in relation to such actual usage levels, savings or cost increases in each case to the extent that Newco reasonably requires such an audit, in the event that Sky fails to provide any relevant information within a reasonable period of time following a written request for such information from Newco, such right not to be exercised more frequently than once per year. In the event that any audit identifies any discrepancy, appropriate adjustments to charges will be made.

5.4 News shall ensure that any agreements entered into under sections 5.1(i) to 5.1(v) above will contain a dispute resolution mechanism. In the case of the lease agreement described in section 5.1(ii) above and the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C)

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above, News will ensure that the dispute resolution mechanism contains similar provisions to those described at 4.8 above.

## 6. APPOINTMENT OF MONITORING TRUSTEE

- 6.1 Within 20 Working Days of the Effective Date, News shall nominate a Monitoring Trustee to be approved by the Secretary of State in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by News. The Monitoring Trustee so approved shall be appointed by News within 7 Working Days.
- 6.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.
- 6.3 The Monitoring Trustee shall be independent of News, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.
- 6.4 If the person nominated by News pursuant to section 6.1 above is not approved by the Secretary of State, News shall nominate an alternative person within 7 Working Days to be approved in accordance with the procedure set out in 6.1 above.
- 6.5 In the event that:
- (i) News fails to nominate any person or persons in accordance with the provisions of section 6.1 above or 6.4 above; or
  - (ii) none of the persons nominated by News pursuant to section 6.1 above or 6.4 above is approved by the Secretary of State; or
  - (iii) News is unable for any reason to conclude within the time limit stipulated in section 6.1 above the appointment of any such person following approval by the Secretary of State,

News shall appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. News shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State and in any event within 15 Working Days.

- 6.6 News shall secure that a Monitoring Trustee is appointed in accordance with sections 6.1 to 6.5 above prior to the Closing Date.
- 6.7 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), News shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, propose a replacement within 7 Working Days to be appointed in accordance with sections 6.1 to 6.4 above. If no replacement Monitoring Trustee is appointed within 30 Working Days of this section being triggered, News shall appoint a Monitoring Trustee in accordance with section 6.5 above. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

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6.8 The Monitoring Trustee shall remain in place until the spin-off of the Sky News business in accordance with section 2 or until all of the operational agreements detailed in section 5.1 above become effective, whichever is the later.

6.9 News shall not vary the terms upon which a Monitoring Trustee is appointed save with the consent of the Secretary of State.

## 7. FUNCTIONS OF MONITORING TRUSTEE

7.1 The Monitoring Trustee shall act on behalf of the Secretary of State and shall be under an obligation to the Secretary of State to carry out its functions to the best of its abilities.

7.2 The Monitoring Trustee shall monitor News' compliance with all and any part of these undertakings prior to the operational agreements detailed in section 5.1 above becoming effective and shall provide to the Secretary of State any advice that he may reasonably require in relation to his review of the key operational agreements in section 5.1 above which require his prior approval.

7.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require.

7.4 The Monitoring Trustee shall promptly report in writing to the Secretary of State and to the OFT if the Monitoring Trustee concludes on reasonable grounds that the undertakings have been breached, or if it considers that it is not in a position to effectively carry out its functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach any relevant supporting evidence available to it (unless doing so would infringe its obligations referred to in section 10.2 below). If the Monitoring Trustee sends a report to the Secretary of State or to the OFT under this section 7.4, the Monitoring Trustee shall, at the same time, inform News of such a report being sent.

7.5 The Monitoring Trustee shall ensure that:

- (i) no arrangements are put in place or completed that affect the ability of News to comply with its obligations under these undertakings; and
- (ii) News takes no action or makes no omission that might adversely affect News' compliance with its obligations under these undertakings.

7.6 The Monitoring Trustee shall:

- (i) facilitate the provision of information by News to the Secretary of State in accordance with section 9 of these undertakings; and
- (ii) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested (unless doing so would infringe its obligations referred to in section 10.2 below).

7.7 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of News, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions:

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7.8 In order to provide advice to the Secretary of State in relation to his review of the operational agreements as set out in section 7.2 above, the Monitoring Trustee shall be permitted to call on the advice of any third party that the Monitoring Trustee reasonably considers to be expert in this area and independent of News and Newco. News will bear all reasonable costs incurred by the Monitoring Trustee under this section 7.8.

## 8. REMUNERATION OF MONITORING TRUSTEE

8.1 News shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

## 9. OBLIGATIONS OF NEWS FOLLOWING APPOINTMENT OF MONITORING TRUSTEE

9.1 News shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.

9.2 News shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions and shall cooperate fully with the Monitoring Trustee, including but not limited to:

- (i) complying promptly and securing that its officers and staff comply promptly with such written directions as the Monitoring Trustee may from time to time give pursuant to section 7.7 above; and
- (ii) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions including the provision of full and complete access to all personnel, books, records, documents and facilities of News, Sky and Newco as the Monitoring Trustee may reasonably require access to.

9.3 If News has any reason to suspect that these undertakings might have been breached, it should notify the Monitoring Trustee and the OFT immediately.

## 10. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE

10.1 Starting four weeks after Closing Date the Monitoring Trustee shall provide every four weeks to the Secretary of State and the OFT a statement certifying whether or not, in his view, News has complied with these undertakings in the preceding four weeks.

10.2 When providing its reports to the Secretary of State and the OFT the Monitoring Trustee must ensure that it does not disclose any information or documents to the Secretary of State or the OFT which News would be entitled to withhold from the Secretary of State or the OFT (as applicable) on the grounds of legal privilege.

10.3 All communications between the Monitoring Trustee and the Secretary of State and the OFT shall be confidential and should not be disclosed to News, save with the express written permission of the Secretary of State and/or the OFT. For the avoidance of doubt, nothing in this section 10.3 shall restrict the Monitoring Trustee from informing News of any report sent to the Secretary of State or to the OFT under section 7.4 above. In relation to the possibility of disclosure of such communications to third parties, the Secretary of State shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The Monitoring Trustee shall not disclose such communications to third parties.

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**11. CONTINUED SEPARATION**

- 11.1 News shall not, for a period of 10 years from the Effective Date, except with the prior written consent of the Secretary of State, acquire shares in Newco that will result in News in combination with any member of the same Group of Interconnected Bodies Corporate as News holding more than 39.14% of the shares in Newco.

**12. COMPLIANCE**

- 12.1 News shall comply promptly with such written directions as the Secretary of State may from time to time give:

- (i) 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
- (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

- 12.2 News shall procure that any member of the same Group of Interconnected Bodies Corporate as News 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 News shall be attributed to News for the purposes of these undertakings.

- 12.3 Where any Affiliate of News is not a member of the same Group of Interconnected Bodies Corporate as News, News shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of News for the purposes of this paragraph.

**13. INTERIM ACTION**

- 13.1 Prior to the spin-off of the Sky News business, News shall ensure that, from the Closing Date (except with the prior written consent of the Secretary of State or for the purposes of preparing for the transfer of the Sky News business to Newco and/or effecting the spin-off):

- (i) without News accepting any duty to provide any substantial capital expenditure to the Sky News business in addition to the capital expenditure plans in place at the time of the Transaction, the Sky News business (as at the Closing Date) is maintained as a going concern and sufficient resources are made available by News for the continuation of the Sky News business on the basis of its pre-merger business plan;
- (ii) no material changes are made to the organisational structure of the Sky News business or the management responsibilities within the Sky News business, other than in the ordinary course of business;
- (iii) the Sky News business, including its facilities and goodwill, is maintained and preserved and is run in the ordinary course;
- (iv) News shall not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off;
- (v) the nature, description, range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;

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- (vi) the separate brand identity of the Sky News business is maintained;
- (vii) no assets of the Sky News business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (viii) there is no new integration of the information technology used by Sky with that used by the Sky News business and the software and hardware platforms of the Sky News business shall remain unchanged, except for changes and maintenance in the ordinary course of business; and
- (ix) all reasonable steps are taken to encourage all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business (as set out in section 4.1 above) to remain with the Sky News business.

13.2 News shall provide to the Secretary of State such information as the Secretary of State may from time to time reasonably require for the purposes of monitoring compliance by News with these undertakings.

#### 14. PROVISION OF INFORMATION

14.1 News shall furnish promptly to the Secretary of State or the OFT such information as the Secretary of State or 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.

#### 15. INTERPRETATION

15.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

15.2 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.

15.3 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.

15.4 For the purposes of these undertakings:

"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;

"Brand Licensing Agreement" has the meaning set out in section 4.6 above;

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

"Carriage Agreement" has the meaning set out in section 4.4 above;

"CC" means the Competition Commission;

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**"Closing Date"** means the date on which News acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

**"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 40 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 40 per cent or more of the total number of votes which may be cast at such meetings;

**"CPI"** means the consumer prices index, as published from time to time by the Office for National Statistics;

**"Effective Date"** means the date that, having been signed by News, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

**"EPG"** means Electronic Programme Guide;

**"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;

**"Independent Director"** means a member of the Newco board of directors who:

- has not been an employee of Newco, News or any member of the same Group of Interconnected Bodies Corporate as News within the last five years;
- does not have, and has not had within the last three years of the date of their first election to the Newco board, a material business relationship with Newco or News either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board);
- has not received and does not receive additional remuneration from Newco or News apart from a director's fee, does not participate in Newco's or News' share option or performance-related pay scheme, and is not a member of Newco's or News' pension scheme;
- does not have close family ties with any of Newco's or News' advisers, directors or senior employees;
- does not hold cross-directorships and does not have significant links with other directors through involvement in other companies or bodies;
- does not represent a significant Newco or News shareholder; and
- has not served on the board of Newco or News within nine years from the date of their first election;

**"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;

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**"Key Sky News Editorial Staff"** means the head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News;

**"Material Transaction"** means any transaction that involves or could reasonably involve the payment or receipt by Newco or its subsidiaries of amounts of £5 million or more or such other limits agreed by Newco from time to time. For the avoidance of doubt any renewal of or material amendment to the Carriage Agreement, the Brand Licensing Agreement, the lease agreement described in section 5.1(ii) above or the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) above would be deemed to be a material transaction for the purposes of this definition;

**"Monitoring Trustee"** means the person appointed pursuant to section 6 above to carry out the Monitoring Trustee Functions;

**"Monitoring Trustee Functions"** means the functions set out in section 7 above;

**"Newco"** means the public limited company (including, where relevant, any wholly-owned subsidiary of such public limited company) into which the business of Sky News will be transferred and which will continue to operate that business, as described in section 2.1 above;

**"News"** means News Corporation;

**"OFT"** means the Office of Fair Trading;

**"Order"** means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003;

**"Secretary of State"** means Secretary of State for Culture, Olympics, Media and Sport (except as context otherwise requires);

**"Sky"** means British Sky Broadcasting Group plc;

**"Sky News"** means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast news channels currently branded "Sky News" and "Sky News HD" and related services under the Sky News brand and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, "Sky Sports News" is a separate business which will remain under the sole control of Sky;

**"Subsidiary"** shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated;

**"Transaction"** means the proposed acquisition by News of some or all of those shares in Sky that it does not already own; and

**"Working Day"** means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

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

**UNDERTAKINGS GIVEN BY NEWS CORPORATION PURSUANT TO PARAGRAPH 3 OF  
SCHEDULE 2 OF ENTERPRISE ACT (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003**

**WHEREAS:**

- (a) News Corporation proposes to acquire the shares in British Sky Broadcasting Group plc that it does not already own.
- (b) On 4 November 2010 the Secretary of State for Business, Innovation and Skills issued a European Intervention Notice under section 67(2) of the Act and the Order in connection with the Transaction.
- (c) On 31 December 2010, Ofcom provided its report to the Secretary of State on issues of media plurality (as provided for in Article 4A of the Order) and on 30 December 2010 the OFT provided its report to the Secretary of State on the creation of a European relevant merger situation pursuant to Article 4(4) of the Order.
- (d) The Secretary of State considers that the conditions for referring the Transaction to the CC under Article 5 of the Order are met and, absent any offer of undertakings from News, he would be minded to refer the Transaction to the CC.
- (e) The Secretary of State has a discretion to accept undertakings in lieu of reference from News under paragraph 3 of Schedule 2 of the Order:

*"The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as [he] considers appropriate undertakings to take such action as [he] considers appropriate."*

- (f) The Secretary of State considers that the undertakings given below by News are appropriate to remedy, mitigate or prevent the effects adverse to the public interest which may be expected to result from the creation of the European relevant merger situation.

**NOW THEREFORE** News hereby gives to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing the effects adverse to the public interest which may be expected to result from the Transaction.

**1. EFFECTIVE DATE OF THE UNDERTAKINGS**

- 1.1 These undertakings shall take effect from the date that, having been signed by News, they are accepted by the Secretary of State.

**2. SPIN-OFF OF SKY NEWS BUSINESS**

- 2.1 News shall effect the spin-off of the Sky News business into an independent English public limited company, Newco, the shares of which will be publicly traded, using its best endeavours and acting in good faith, at the Closing Date or as soon as reasonably practicable following the Closing Date and in any event within 9 months of the Closing Date, subject to any extension of time agreed with the

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consent of the Secretary of State. In effecting the spin-off of the Sky News business in accordance with section 2.2 below, News shall not take any action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as Sky News did prior to the Transaction. Shares in Newco shall be distributed or otherwise issued or transferred to the shareholders of Sky in the same proportions as their shareholdings in Sky.

- 2.2 News shall take (or procure the taking of) the following steps to achieve the spin-off of Newco to the shareholders of Sky:
- (i) the formation of Newco as a new public-limited company incorporated under the laws of England and Wales as a Subsidiary of Sky;
  - (ii) the establishment of the corporate governance arrangements set out in section 3 below;
  - (iii) the transfer of the business of Sky News (as set out in section 4 below) into Newco in exchange for shares in Newco;
  - (iv) the entering into of the agreements between Sky and Newco set out in sections 4.4, 4.6 and section 5 below;
  - (v) the spin-off of shares in Newco to shareholders of Sky in the same proportions as their shareholdings in Sky under arrangements that cause the resulting News shareholding in Newco on completion of the spin-off to be 39.1%, equal to its current shareholding in Sky; and
  - (vi) the putting in place of arrangements for the public trading of Newco shares.

### 3. CORPORATE GOVERNANCE OF NEWCO

- 3.1 News shall ensure that the corporate governance structure of Newco shall be established to substantially replicate the effects of the existing corporate governance structure of Sky. In particular:
- (i) News shall be subject to a voting limitation of 37.19% of the total votes of Newco on substantially the same terms as currently apply in relation to Sky pursuant to the voting agreement dated 21 September 2005 (as amended by a memorandum dated 19 October 2005);
  - (ii) The articles of association of Newco shall provide that Newco's Sky News TV, radio and any closely related services (irrespective of the platform on which such service is distributed) will abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code. The articles of association of Newco shall be in a form to be approved by the Secretary of State prior to the Effective Date;
  - (iii) ~~The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares, the majority of the board of Newco shall comprise Independent Directors and one of those Independent Directors shall be chairman of the board of Newco. The definition of Independent Director contained in these undertakings shall be included in the articles of association of Newco;~~

- (A) the majority of the board of Newco shall comprise Independent Directors;
- (B) one of those Independent Directors shall be chairman of the board of Newco;  
and
- (C) meetings of the board of Newco shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.
- (iv) The definition of Independent Director contained in these undertakings shall be included in the articles of association of Newco;
- (v) ~~(iv)~~ Material Transactions between Newco and News or Sky shall require the approval of Newco's audit committee, which shall consist exclusively of Independent Directors. Material Transactions between Newco and News or Sky involving amounts of £12.5 million or more shall also require the approval of the board of Newco. In addition Newco's articles of association shall also provide that transactions between Newco and News or Sky may, depending on materiality, require an independent fairness opinion or Newco independent shareholder approval (by virtue of Newco applying controls that have equivalent effect to those imposed by Chapter 11 of the Listing Rules);
- (vi) ~~(v)~~ The articles of association of Newco shall provide that the board of Newco and its committees shall have the appropriate balance of skills, experience, independence and knowledge of Newco to enable them to discharge their respective duties and responsibilities effectively and that at least one Independent Director must have senior editorial and/or journalistic experience;
- (vii) ~~(vi)~~ The articles of association of Newco shall provide that the appointment or removal (including any material changes in terms and conditions which could give rise to constructive dismissal) and any material changes to the authority or reporting relationship of the head of Sky News must be approved by the board of Newco;
- (viii) ~~(vii)~~ The articles of association of Newco shall provide that Newco shall adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in the UK Corporate Governance Code; and
- (ix) ~~(viii)~~ The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares, Newco shall establish a corporate governance and editorial committee which will:
- (A) comprise a majority of members who are Independent Directors (including an Independent Director with senior editorial and/or journalistic experience);
- (B) be chaired by an Independent Director;
- (C) be entrusted with oversight of Newco's compliance with the corporate governance provisions, the provisions relating to the principle of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above; and
- (D) operate under terms of reference which will stipulate that the corporate governance and editorial committee will:

- I. be adequately resourced and have powers to review and investigate all areas within the remit of the committee;
- II. meet at least four times a year;
- III. report on a regular basis to the board of Newco;
- IV. cause a statement to be included in the Newco annual report on its activities including its oversight functions specified in section 3.1(viii)(C) above;
- V. consider any representations made by the head of Sky News as to Newco's compliance with the provisions relating to editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above and report any such representations to the board of Newco; and
- VI. advise the Newco board on any issues within its remit including any approval specified at 3.1(vii) above.

(E) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.

3.2 For so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of the voting shares in Newco, News shall vote against any proposed change to Newco's articles of association which would remove the corporate governance provisions provided for in sections 3.1 (ii) to 3.1 (viii) above.

3.3 News shall not attempt to cause Newco to act in breach of its Articles of Association.

#### 4. SKY NEWS BUSINESS TO BE HELD WITHIN NEWCO

4.1 News shall cause the Sky News business to be transferred, as a going concern, to Newco. This will require the transferring or making available of those assets required to conduct the Sky News business, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

- (i) all or substantially all tangible assets currently used exclusively for the purposes of carrying on Sky News' business. 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;
- (ii) all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business, including news gathering staff (UK and international staff), production, online and multimedia staff; and
- (iii) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of the Sky News business (and, to the extent that such licences, permits, consents or authorisations are not capable of transfer, News will endeavour to assist Newco in applying for new licences, permits, consents or authorisations).

- 4.2 News shall ~~agree~~ (subject to customary limitations) not ~~to~~ solicit staff transferred to Newco for a period of beginning on the Closing Date and ending 24 months after the date of spin-off.
- 4.3 Without prejudice to the generality of section 4.1 above, and subject to obtaining the necessary third party consents, News shall also use all reasonable endeavours to procure that there will be transferred or made available to Newco:
- (i) the benefit and burden of any carriage agreements between Sky and third parties (including with Virgin Media and UPC) for the distribution of the Sky News TV channel. News will use all reasonable efforts to ensure that these agreements are transferred directly to Newco;
  - (ii) Arqiva capacity for one standard definition channel until the expiry of Sky's existing capacity agreement with Arqiva in respect of the broadcast of Sky News on DTT;
  - (iii) the benefit and burden of wholesale contracts entered into by Sky for the supply of news content to Channel 5 and IRN; and
  - (iv) the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering.
- 4.4 In addition News shall ensure that Sky enters into a **Carriage Agreement** with Newco under which Sky News channels and services will be provided to Sky on a wholesale basis for distribution by Sky to viewers or subscribers in return for the payment of a carriage fee by Sky to Newco in a form to be approved by the Secretary of State prior to the Effective Date.
- 4.5 Any Carriage Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.4 above shall:
- (i) be for a term of 10 years;
  - (ii) not provide Sky (or News) with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of Newco;
  - (iii) subject to section 4.8 below be terminable by Sky only in the event of material breach that has not been cured or in the event that Newco ceases to provide output which is branded "Sky News" the Brand Licensing Agreement expires or terminates;
  - (iv) (subject to EPG regulation including Ofcom's Code of Practice on EPGs, and Sky's published "Method for allocating listings in Sky's EPG") oblige News to use its best endeavours to ensure that Newco is provided with an EPG slot which is no worse than Sky News' current EPG slot; and
  - (v) contain a dispute resolution mechanism.
- 4.6 News shall ensure that Sky will enter into a royalty-bearing **Brand Licensing Agreement** with Newco, under which Newco will receive a licence of the Sky News brand for an ~~initial 7~~ fourteen year term, ~~with an automatic renewal for a further 7 years, and~~ which may then be extended at the option of Newco for a further 3 years, in a form to be approved by the Secretary of State prior to the Effective Date.
- 4.7 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.6 above shall:

- (i) permit Newco to use the Sky News brand in connection with its news output;
- (ii) not provide Sky or News with any ability to determine or influence the editorial content of Sky News output or the appointment or termination of editors or other staff of Newco;
- (iii) subject to section 4.8 below be terminable by Sky only in the event of a material breach that has not been cured, in the event that Newco ceases to provide output which is branded "Sky News" and/or in the event of a change in Control of Newco; and
- (iv) contain a dispute resolution mechanism.

4.8 News shall also ensure that neither the Carriage Agreement nor the Brand Licensing Agreement can be terminated by Sky until any dispute between NewsNewco and Sky as to the validity of that proposed termination has been finally resolved under the dispute resolution process specified in the relevant agreement. News will bear all reasonable costs (including Newco's reasonable costs) of any dispute resolution process originating from a proposed termination by Sky of the relevant agreement (irrespective of the outcome of that dispute resolution process).

4.9 News shall ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the Effective Date, for as long as Newco and Sky are party to the Carriage Agreement entered into pursuant to section 4.4 above, and only to the extent that such cross-promotion is not classified as "television advertising" under Ofcom's Code on the Scheduling of Television Advertising.

## 5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

5.1 News shall ensure that Sky will, prior to or at spin-off, enter into the agreements listed below with Newco under which Sky will provide facilities and support services to Newco, on arms'-length terms which are fair and reasonable:

- (i) an advertising sales agreement between Newco and Sky under which Sky will sell advertising and sponsorship on behalf of Newco for a term of up to 3 years;
- (ii) a lease of land and buildings under which Sky will agree to lease the existing Sky News land and buildings to Newco for a period of up to 15 years and which shall be in a form to be approved by the Secretary of State prior to spin-off;
- (iii) a site support services agreement under which Sky will agree to provide certain support services to Newco while Newco leases premises from Sky including IT support services for a term comparable with the term of the lease;
- (iv) one or more agreements in relation to broadcast and technical services under which Sky will offer to Newco:
  - (A) satellite capacity;
  - (B) playout;
  - (C) uplink;
  - (D) DTT transmission;

- (E) online transmission; and
- (F) mobile distribution,

in each case for a term of up to 10 years (or such shorter time as required by Newco) except for the service set out at (D) which will be provided until [ ~~] (when Sky's contract with Arqiva relating to the broadcast of Sky News on DTT expires and it is expected that Newco will enter into its own contract directly with Arqiva) and, in the case of the agreement(s) relating to the services set out at (A), (B) and (C) in a form to be approved by the Secretary of State prior to spin-off; and~~

- (v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off- screen design services) agreements.

5.2 Each of the agreements set out at 5.1 (i) to (v) above will be terminable by Newco on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.

5.3 News shall ensure that the agreements listed at sections 5.1(iii), 5.1(iv) and 5.1(v) above will provide that charges to Newco are set for the first year at a fixed price (for each relevant agreement) equivalent to the cost of Sky providing the relevant services (including internal cost allocations) plus a 5% margin. Thereafter the charge to Newco for each agreement will be based upon the fixed price increased by CPI for each following year for the remainder of the agreement, with the following adjustments:

- (i) Sky will adjust pricing to reflect actual usage levels for services where Newco has variable demand (e.g. IT support services and broadcast operations and creative services); and
- (ii) Sky will adjust pricing to pass on savings or cost increases of services which Sky obtains from a third party (for example, the cost of web hosting or mobile transmission);

\_\_\_\_\_ ; and

- (iii) the percentage increase in the total amount charged to Newco on a like-for-like basis (i.e. assuming the same levels on consumption for those costs which are variable in nature based on usage levels) will be subject to an aggregate cap on the increase in the total amount charged to Newco of 6% plus 50% of the incremental increase in CPI between 6% and 10%, and to the extent that this is exceeded the CPI adjustment applied to the charge for each agreement will be reduced.

News shall grant Newco reasonable audit rights in relation to such actual usage levels, savings or cost increases in each case to the extent that Newco reasonably requires such an audit, in the event that Sky fails to provide any relevant information within a reasonable period of time following a written request for such information from Newco, such right not to be exercised more frequently than once per year. In the event that any audit identifies any discrepancy, appropriate adjustments to charges will be made.

5.4 News shall ensure that any agreements entered into under sections 5.1(i) to 5.1(v) above will contain a dispute resolution mechanism. In the case of the lease agreement described in section 5.1(ii) above and the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C)

above, News will ensure that the dispute resolution mechanism contains similar provisions to those described at 4.8 above.

## 6. APPOINTMENT OF MONITORING TRUSTEE

- 6.1 Within 20 Working Days of the Effective Date, News shall nominate a Monitoring Trustee to be approved by the Secretary of State in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by News. The Monitoring Trustee so approved shall be appointed by News within 7 Working Days.
- 6.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.
- 6.3 The Monitoring Trustee shall be independent of News, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.
- 6.4 If the person nominated by News pursuant to section 6.1 above is not approved by the Secretary of State, News shall nominate an alternative person within 7 Working Days to be approved in accordance with the procedure set out in 6.1 above.
- 6.5 In the event that:
- (i) News fails to nominate any person or persons in accordance with the provisions of section 6.1 above or 6.4 above; or
  - (ii) none of the persons nominated by News pursuant to section 6.1 above or 6.4 above is approved by the Secretary of State; or
  - (iii) News is unable for any reason to conclude within the time limit stipulated in section 6.1 above the appointment of any such person following approval by the Secretary of State,

News shall appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. News shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State and in any event within 15 Working Days.

- 6.6 News shall secure that a Monitoring Trustee is appointed in accordance with sections 6.1 to 6.5 above prior to the Closing Date.
- 6.7 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), News shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, propose a replacement within 7 Working Days to be appointed in accordance with sections 6.1 to 6.4 above. If no replacement Monitoring Trustee is appointed within 30 Working Days of this section being triggered, News shall appoint a Monitoring Trustee in accordance with section 6.5 above. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

6.8 The Monitoring Trustee shall remain in place until the spin-off of the Sky News business in accordance with section 2 or until all of the operational agreements detailed in section 5.1 above become effective, whichever is the later.

6.9 News shall not vary the terms upon which a Monitoring Trustee is appointed save with the consent of the Secretary of State.

## 7. FUNCTIONS OF MONITORING TRUSTEE

7.1 The Monitoring Trustee shall act on behalf of the Secretary of State and shall be under an obligation to the Secretary of State to carry out its functions to the best of its abilities.

7.2 The Monitoring Trustee shall monitor News' compliance with all and any part of these undertakings prior to the operational agreements detailed in section 5.1 above becoming effective and shall provide to the Secretary of State any advice that he may reasonably require in relation to his review of the key operational agreements in section 5.1 above which require his prior approval.

7.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require.

7.4 The Monitoring Trustee shall promptly report in writing to the Secretary of State and to the OFT if the Monitoring Trustee concludes on reasonable grounds that the undertakings have been breached, or if it considers that it is not in a position to effectively carry out its functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach any relevant supporting evidence available to it (unless doing so would infringe its obligations referred to in section 10.2 below). If the Monitoring Trustee sends a report to the Secretary of State or to the OFT under this section 7.4, the Monitoring Trustee shall, at the same time, inform News of such a report being sent.

7.5 The Monitoring Trustee shall ensure that:

- (i) no arrangements are put in place or completed that affect the ability of News to comply with its obligations under these undertakings; and
- (ii) News takes no action or makes no omission that might adversely affect News' compliance with its obligations under these undertakings.

7.6 The Monitoring Trustee shall:

- (i) facilitate the provision of information by News to the Secretary of State in accordance with section 9 of these undertakings; and
- (ii) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested (unless doing so would infringe its obligations referred to in section 10.2 below).

7.7 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of News, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions.

7.8 In order to provide advice to the Secretary of State in relation to his review of the operational agreements as set out in section 7.2 above, the Monitoring Trustee shall be permitted to call on the advice of any third party that the Monitoring Trustee reasonably considers to be expert in this area and independent of News and Newco. News will bear all reasonable costs incurred by the Monitoring Trustee under this section 7.8.

## 8. REMUNERATION OF MONITORING TRUSTEE

8.1 News shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

## 9. OBLIGATIONS OF NEWS FOLLOWING APPOINTMENT OF MONITORING TRUSTEE

9.1 News shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.

9.2 News shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions and shall cooperate fully with the Monitoring Trustee, including but not limited to:

- (i) complying promptly and securing that its officers and staff comply promptly with such written directions as the Monitoring Trustee may from time to time give pursuant to section 7.7 above; and
- (ii) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions including the provision of full and complete access to all personnel, books, records, documents and facilities of News, Sky and Newco as the Monitoring Trustee may reasonably require access to.

9.3 If News has any reason to suspect that these undertakings might have been breached, it should notify the Monitoring Trustee and the OFT immediately.

## 10. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE

10.1 Starting four weeks after Closing Date the Monitoring Trustee shall provide every four weeks to the Secretary of State and the OFT a statement certifying whether or not, in his view, News has complied with these undertakings in the preceding four weeks.

10.2 When providing its reports to the Secretary of State and the OFT the Monitoring Trustee must ensure that it does not disclose any information or documents to the Secretary of State or the OFT which News would be entitled to withhold from the Secretary of State or the OFT (as applicable) on the grounds of legal privilege.

10.3 All communications between the Monitoring Trustee and the Secretary of State and the OFT shall be confidential and should not be disclosed to News, save with the express written permission of the Secretary of State and/or the OFT. For the avoidance of doubt, nothing in this section 10.3 shall restrict the Monitoring Trustee from informing News of any report sent to the Secretary of State or to the OFT under section 7.4 above. In relation to the possibility of disclosure of such communications to third parties, the Secretary of State shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The Monitoring Trustee shall not disclose such communications to third parties.

**11. 6-CONTINUED SEPARATION**

11.1 ~~6.1~~ News shall not, for a period of 10 years from the Effective Date, except with the prior written consent of the Secretary of State, acquire shares in Newco that will result in News in combination with any member of the same Group of Interconnected Bodies Corporate as News holding more than 39.14% of the shares in Newco.

**12. 7-COMPLIANCE**

12.1 ~~7.1~~ News shall comply promptly with such written directions as the Secretary of State may from time to time give:

- (i) 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
- (ii) to do or refrain from doing anything so specified or described which it might be required by these undertakings to do or to refrain from doing.

12.2 ~~7.2~~ News shall procure that any member of the same Group of Interconnected Bodies Corporate as News 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 News shall be attributed to News for the purposes of these undertakings.

12.3 ~~7.3~~ Where any Affiliate of News is not a member of the same Group of Interconnected Bodies Corporate as News, News shall use its best endeavours to procure that any such Affiliate will comply with these undertakings as if it had given them. Until the Closing Date, Sky shall not be treated as an Affiliate of News for the purposes of this paragraph.

**13. 8-INTERIM ACTION**

13.1 ~~8.1~~ Prior to the spin-off of the Sky News business, News shall ensure that, from the Closing Date (except with the prior written consent of the Secretary of State or for the purposes of preparing for the transfer of the Sky News business to Newco and/or effecting the spin-off):

- (i) without News accepting any duty to provide any substantial capital expenditure to the Sky News business in addition to the capital expenditure plans in place at the time of the Transaction, the Sky News business (as at the Closing Date) is maintained as a going concern and sufficient resources are made available by News for the continuation of the Sky News business on the basis of its pre-merger business plan;
- (ii) no material changes are made to the organisational structure of the Sky News business or the management responsibilities within the Sky News business, other than in the ordinary course of business;
- (iii) the Sky News business, including its facilities and goodwill, is maintained and preserved and is run in the ordinary course;
- (iv) News shall not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off;
- (v) ~~(iv)~~ the nature, description, range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;
- (vi) ~~(v)~~ the separate brand identity of the Sky News business is maintained;

- (vii) ~~(vi)~~ no assets of the Sky News business are disposed of, and no interest in such assets is created or disposed of, other than in the ordinary course of business;
- (viii) ~~(vii)~~ there is no new integration of the information technology used by Sky with that used by the Sky News business and the software and hardware platforms of the Sky News business shall remain unchanged, except for changes and maintenance in the ordinary course of business; and
- (ix) ~~(viii)~~ all reasonable steps are taken to encourage all Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business (as set out in section 4.1 above) to remain with the Sky News business.

13.2 News shall provide to the Secretary of State such information as the Secretary of State may from time to time reasonably require for the purposes of monitoring compliance by News with these undertakings.

14. **9-PROVISION OF INFORMATION**

14.1 ~~9.1~~ News shall furnish promptly to the Secretary of State or the OFT such information as the Secretary of State or 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.

15. **10-INTERPRETATION**

15.1 ~~10.1~~ The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

15.2 ~~10.2~~ 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.

15.3 ~~10.3~~ 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.

15.4 ~~10.4~~ For the purposes of these undertakings:

"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;

"Brand Licensing Agreement" has the meaning set out in section 4.6 above;

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

"Carriage Agreement" has the meaning set out in section 4.4 above;

"CC" means the Competition Commission;

"Closing Date" means the date on which News acquires all or a majority of the share capital of Sky or, if the Transaction is effected by a scheme of arrangement, the date on which the scheme of arrangement becomes effective;

~~"CPI" means the consumer prices index, as published from time to time by the Office for National Statistics;~~

"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 40 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 40 per cent or more of the total number of votes which may be cast at such meetings;

"CPI" means the consumer prices index, as published from time to time by the Office for National Statistics;

"Effective Date" means the date that, having been signed by News, these undertakings are accepted by the Secretary of State, as described at 1.1 above;

"EPG" means Electronic Programme Guide;

"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;

"Independent Director" means a member of the Newco board of directors who:

- has not been an employee of Newco, News or any member of the same Group of Interconnected Bodies Corporate as News within the last five years;
- does not have, and has not had within the last three years of the date of their first election to the Newco board, a material business relationship with Newco or News either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board);
- has not received and does not receive additional remuneration from Newco or News apart from a director's fee, does not participate in Newco's or News' share option or performance-related pay scheme, and is not a member of Newco's or News' pension scheme;
- does not have close family ties with any of Newco's or News' advisers, directors or senior employees;
- does not hold cross-directorships and does not have significant links with other directors through involvement in other companies or bodies;
- does not represent a significant Newco or News shareholder; and
- has not served on the board of Newco or News within nine years from the date of their first election;

"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 Sky News Editorial Staff**" means the head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News;

"**Material Transaction**" means any transaction that involves or could reasonably involve the payment or receipt by Newco or its subsidiaries of amounts of £5 million or more or such other limits agreed by Newco from time to time. For the avoidance of doubt any renewal of or material amendment to the Carriage Agreement ~~and~~ the Brand Licensing Agreement, the lease agreement described in section 5.1(ii) above or the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) above would be deemed to be a material transaction for the purposes of this definition;

"**Monitoring Trustee**" means the person appointed pursuant to section 6 above to carry out the Monitoring Trustee Functions;

"**Monitoring Trustee Functions**" means the functions set out in section 7 above;

"**Newco**" means the public limited company (including, where relevant, any wholly-owned subsidiary of such public limited company) into which the business of Sky News will be transferred and which will continue to operate that business, as described in section 2.1 above;

"**News**" means News Corporation;

"**OFT**" means the Office of Fair Trading;

"**Order**" means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003;

"**Secretary of State**" means Secretary of State for Culture, Olympics, Media and Sport (except as context otherwise requires);

"**Sky**" means British Sky Broadcasting Group plc;

"**Sky News**" means the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast news channels currently branded "Sky News" and "Sky News HD" and related services under the Sky News brand and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises. For the avoidance of doubt, "Sky Sports News" is a separate business which will remain under the sole control of Sky;

"**Subsidiary**" shall be construed in accordance with section 1159 of the Companies Act 2006 (as amended), unless otherwise stated; ~~and~~

"**Transaction**" means the proposed acquisition by News of some or all of those shares in Sky that it does not already own; and

"**Working Day**" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

Legend:
<u>Insertion</u>
<u>Deletion</u>
<u>Moved from</u>
<u>Moved to</u>

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HOUSE OF COMMONS

The Rt Hon Jeremy Hunt MP · LONDON SW1A 0AA  
Secretary of State  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

21 June 2011

Dear Jeremy,

As you know, NewsCorp is the ultimate owner of the News of the World, The Sun, The Times and the Sunday Times. It also owns 39% of BSkyB. It is registered in Delaware, USA under whose laws the list of shareholders is not available to the public.

No doubt you share my view that it is ironic, to say the least, that an organisation whose newspapers are so keen to reveal the private lives of individuals, should wish to conceal the names of its shareholders. However, this secrecy raises a more serious issue.

NewsCorp own some 37% of the British press. It is asking you to allow it to add to this the total ownership of one of Britain's largest television stations. Before considering this request, you presumably obtained NewsCorp's share register in order to ascertain the identities of the individuals who, should you grant NewsCorp's request, will be the ultimate owners of such a large proportion of the UK media.

The purpose of this letter is to ask you to release to the British public the full list of NewsCorp shareholders, or require NewsCorp itself to do so.

The ownership of so large a proportion of the British media, a proportion which you may be about to increase, is a matter of great public interest as well as of great interest to the public. It should be made known without delay.

I look forward to a speedy and positive response.

Yours sincerely

**Tom Watson**  
**Member of Parliament for West Bromwich East**

**RESTRICTED – COMMERCIAL AND  
 MARKET SENSITIVE**

The Rt. Hon Jeremy Hunt, MP  
 Secretary of State for Culture, Olympics,  
 Media and Sport  
 2-4 Cockspur Street  
 London  
 SW1Y 5DH

Your ref CMS 164661/DC  
 Our ref COMP/5932  
 Date 22 June 2011

Direct line  
 Fax  
 Email

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Dear Secretary of State

**Advice from the Office of Fair Trading on undertakings in lieu offered by News Corporation relating to the anticipated acquisition by News Corporation of British Sky Broadcasting Group plc**

1. I refer to your letter of 18 March 2011 following our report to you of 11 February 2011 (the February Report) and our advice to you of 1 March 2011 (the March Advice).
2. In your letter, you asked us to review our advice on the practical and financial viability of the undertakings in lieu (UIL) offered by News Corporation (News) in light of the representations that you had received from certain respondents<sup>1</sup> to the consultation on the UIL proposed by News on 1 March 2011 and published for consultation on 3 March 2011 (the 1 March UIL). You asked us to let you know whether, having considered these representations, it would be appropriate for the 1 March UIL to be amended in any respect.
3. You also asked us to engage with News in relation to drafts of the carriage agreement and brand licensing agreement<sup>2</sup> contemplated by the 1 March UIL.

<sup>1</sup> [redacted]

<sup>2</sup> Your letter in fact refers also to 'certain operational agreements which are referred to in the proposed UILs'. However, none of the operational agreements detailed in paragraph 5 of the UIL are required to be approved prior to the Effective Date and hence have not been submitted by News for approval of



INVESTOR IN PEOPLE

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 Fleetbank House  
 2-6 Salisbury Square  
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with a view to advising you whether these agreements, once finalised, are consistent with the 1 March UIL (as subsequently amended in the light of the consultation) and the OFT's previous advice with regard to their practical and financial viability.

4. Your letter asked that we continue to work closely with Ofcom in respect of the above.
5. Since receiving your letter of 18 March, the OFT – alongside Ofcom – has engaged with News extensively in relation to both the proposed UIL of 1 March and the draft carriage agreement and brand licensing agreement. This process has led to a revised set of UIL submitted by News on 14 June 2011 (the Revised UIL), and revised forms of the carriage agreement submitted by News on 15 June 2011 (the Revised Carriage Agreement) and brand licensing agreement submitted by News on 16 June 2011 (the Revised Brand Licensing Agreement), copies of which are attached as Annexes 3, 4 and 5 respectively to this letter.
6. I note that your assessment of the Revised UIL will be in the context of their ability to resolve media plurality concerns. The advice and recommendations that I provide in this letter are based on the remit to the OFT originally set out in your letter of 27 January 2011. The OFT is advising on whether the Revised UIL are practically and financially viable and has considered if there are any practical issues which could undermine the operation of the Revised UIL and whether they would be effective over the medium and long term. To the extent that the OFT has been concerned with 'effectiveness' of the Revised UIL, this relates to their mechanical and operational effectiveness.
7. I set out first below advice in relation to the key changes that have been made from the 1 March UIL to the Revised UIL in light of the Reviewed Responses. I then discuss the Revised Carriage Agreement and Revised Brand Licensing Agreement.

#### **Advice in relation to the Revised UIL as a result of the Reviewed Responses**

8. The OFT advised in its March Advice that *'the [1 March] UIL are likely to be practically and financially viable in the short and medium term (that is, no more than 10 years).'* It also advised that *'... it would be appropriate for you to test*

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for review by the OFT at this point. (Note: certain operational agreements do require the approval of the Secretary of State prior to the Spin-off of Newco.)

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*further the viability and robustness of the commitments offered during the statutory public consultation process.'*

9. The OFT has carefully assessed the Reviewed Responses with a view to determining whether they cast doubt on the fundamental practical and financial viability of the proposed UIL or whether they provide suggestions that would improve the practical and financial viability of the proposed UIL.
10. The Reviewed Responses do not, individually or collectively, provide reasons for the OFT to change the fundamental tenor of its March Advice.
11. However, the Reviewed Responses do provide suggestions as to how the 1 March UIL could be improved so as to improve the practical and financial viability of the proposed UIL. The OFT has discussed these improvements with News, and News has been willing – ultimately – to accept all of the amendments which the OFT regards as material and desirable. The most significant of these amendments in terms of practical and financial viability are that the Revised UIL provide that:
  - the Articles of Association of Newco now be subject to approval by the Secretary of State prior to the Effective Date; this change reflects the importance of the Articles of Association of Newco in ensuring the effectiveness of the proposed UIL and provides the Secretary of State with a greater degree of comfort in this regard; the OFT has reviewed draft Articles of Association of Newco provided by News on 10 May 2011 (attached as Annex 6 to this letter) and confirms that these are consistent with the Revised UIL and the OFT's previous advice with regard to their practical and financial viability;
  - in effecting the spin-off of the Sky News business in accordance with its obligations in paragraph 2.2 of the UIL, News shall not *'take any action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as Sky News did prior to the Transaction'*; this principle, amongst other things, provides guidance for the Monitoring Trustee in relation to his / her monitoring of the spin-off and his / her review of the operational agreements; and
  - a Monitoring Trustee be appointed prior to the Closing Date to review News' compliance with the Revised UIL; this provides a greater degree of comfort that the provisions of the Revised UIL will be adhered to, and

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is designed to ensure that the main cost of monitoring of the Revised UIL is borne by News.

12. A full list of the amendments made to the 1 March UIL so as to result in the Revised UIL are detailed in Annex 1 to this letter, complete with reasons for their inclusion.<sup>3</sup>
13. There were a number of other suggestions or comments in the Reviewed Responses potentially related to the practical and financial viability of the 1 March UIL that the OFT has not elected to take forward with News. The reasons for not taking forward those suggestions are variously that:
  - the issue raised has already been covered in the OFT's February Report or March Advice; or
  - the OFT does not believe that the concern that a suggestion seeks to remedy is in fact present or justified on the basis of its review; or
  - the concern that a particular suggestion seeks to remedy has been remedied by an alternative mechanism in the Revised UIL.
14. The OFT advises the Secretary of State that the Revised UIL are likely to be practically and financially viable in the short and medium term (that is, no more than 10 years).
15. The OFT also advises the Secretary of State that none of the amendments made to the Revised UIL in light of the Reviewed Responses addresses the essential structural limitation identified in the Report, that the UIL offered are unlikely to be practically and financially viable over the long term.

#### **Advice in relation to the Revised Carriage Agreement and Revised Brand Licensing Agreement**

16. News provided first drafts of the carriage agreement and brand licensing agreement to you on 21 March 2011, which were passed to the OFT for review. The OFT understands that you have also taken advice from external legal advisers on the draft carriage agreement and brand licensing agreement.

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<sup>3</sup> A limited number of drafting changes relate to requests by News to amend the 1 March UIL. These changes are not considered material and do not impact on the OFT's advice. In addition, a limited number of changes relate to requests by DCMS and its external advisers to amend the 1 March UIL.

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17. The OFT has reviewed and discussed the draft carriage agreement and brand licensing agreement with News with a view to ensuring that the provisions of the agreements are compliant with the letter and spirit of the Revised UIL, in particular – from OFT's perspective – that the terms of the carriage agreement and brand licensing agreement are such that Newco will be practically and financially viable for the lifetime of the carriage agreement.
18. The discussions with News have resulted in a number of changes to the initial drafts of the carriage agreement and brand licensing agreement of 21 March 2011 such as to result in the Revised Carriage Agreement and Revised Brand Licensing Agreement. The most significant of these amendments in terms of practical and financial viability are that:
- the Revised Carriage Agreement will be a full-form agreement, and not merely a 'heads of terms'; this should provide a greater degree of comfort and is arguably required by paragraph 4.4 of the 1 March UIL (and the Revised UIL); and
  - the Revised Carriage Agreement provides for both Newco's revenue (in relation to SD and HD subscriptions) and its costs (that are attributable to News / Sky) to be CPI index-linked, subject to a stepped, symmetric upper cap in both cases;<sup>4</sup> this provides an enhanced degree of financial security for Newco than the drafts of 21 March 2011, as set out in more detail in Annex 2.
19. In light of the changes made, the OFT advises that the Revised Carriage Agreement and Revised Brand Licensing Agreement are consistent with the Revised UIL and the OFT's previous advice with regard to their practical and financial viability.

Yours sincerely,



Clive Maxwell  
Executive Director, OFT

cc

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<sup>4</sup> The upper cap is reflected in the revision to paragraph 5.3(iii) of the Revised UIL.

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Colette Bowe, Chairman, Ofcom  
Ed Richards, Chief Executive, Ofcom

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## Annex 1 – Changes made from the 1 March UIL to the Revised UIL

Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
2.1	Amendment to require that in effecting the spin-off of the Sky News business in accordance with paragraph 2.2 of the UIL, News shall not take any action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as Sky News did prior to the Transaction	To provide context for the Monitoring Trustee's assessment of News' fulfilment of its obligations in relation to the spin-off of Newco
2.1	Amendment that shares in Newco shall be distributed or otherwise issued or transferred to the shareholders of Sky	News' amendment to provide News with the flexibility to ensure that the spin-off of Newco is conducted in a tax efficient manner for the benefit of both News / Sky and Newco
2.2(i)	Amendment to delete the word 'public' from the requirement for the formation of Newco	To allow News, for practical reasons, initially to form Newco as a private company to be registered as a public company prior to spin-off
3.1(ii)	Requirement that the Articles of Association be in a form to be approved by the Secretary of State prior to the Effective Date	Importance of the Articles of Association to Newco justifies upfront approval, prior to acceptance of UIL, by the Secretary of State
3.1(iii)	New requirement that the meetings of the board of Newco shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present	See Ofcom advice of 22 June 2011

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
3.1(ix)(E)	New requirement that the meetings of the corporate governance and editorial committee shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present	See Ofcom advice of 22 June 2011
3.3	New requirement that News shall not attempt to cause Newco to act in breach of its Articles of Association	Inserted to provide additional comfort that News will not seek, or attempt to seek, to cause Newco to act in breach of its Articles of Association (which includes a commitment to abide by the principles of editorial independence and with the Ofcom Broadcasting Code) See also Ofcom advice of 22 June 2011
4.2	Extension of the non-solicitation period to begin on the Closing Date and end 24 months after the date of spin-off	Extension on non-solicitation provision to cover the period between Closing Date and spin-off
4.5(iii)	Amendment that the Carriage Agreement shall be terminable (apart from in the event of material breach that has not been cured) in the event that the Brand Licensing Agreement expires or terminates (rather than if Newco ceases to provide output which is branded "Sky News")	Clarification sought by DCMS
4.6	Change from 'an initial seven year term, with an automatic renewal for a further seven years' to 'a fourteen year term'	To simplify the drafting and avoid any ambiguity about the initial term of the Brand Licensing Agreement

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
4.7(iii)	Insertion that the Brand Licensing Agreement shall be terminable (apart from in the event of a material breach that has not been cured and/or in the event of a change in Control of Newco) in the event that Newco ceases to provide output which is branded "Sky News"	Clarification sought by DCMS
4.8	Replacement of 'News' with 'Newco'	Correction of a typographical error in 1 March UIL
4.9	New obligation on News to continue, through Sky, to cross promote Sky News for the duration of the Carriage Agreement	See Ofcom advice of 22 June 2011
5.1	Insertion of requirement that the operational agreements referred to in paragraph 5.1 be on terms that are fair and reasonable	To provide context for the Monitoring Trustee's assessment of News' fulfilment of its obligations in relation to the terms of the operational agreements
5.3(iii)	Insertion of a cap (of six per cent plus 50 per cent of the incremental increase in CPI between 6 per cent and 10 per cent) on the rate at which charges to Newco in relation to the agreements at 5.1(iii), 5.1(iv) and 5.1(v) may be annually increased by CPI	Capping of the CPI-related charges payable by Newco to News provides an enhanced degree of financial security for Newco than having costs uncapped
5.3	Insertion of audit rights for Newco in relation to usage levels, savings or cost increases	The provision of audit rights for Newco with respect to the operational agreements

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
5.4	Extension of the dispute resolution mechanism in paragraph 4.8 to cover the lease agreement in paragraph 5.1(ii) and the agreements in relation to services described at paragraphs 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C)	Insertion of dispute resolution principles in relation to the key operational agreements (that is, those requiring prior approval by the Secretary of State) analogous to those already provided for in the Carriage Agreement and Brand Licensing Agreement
6-10	Insertion of clauses regarding the appointment, functioning, remuneration and reporting of a Monitoring Trustee	Monitoring Trustee will help ensure that News is complying with its obligations under the UIL and will provide advice to the Secretary of State in relation to his review of the key operational agreements requiring his prior approval
13.1(i)	Clarification that the Sky News business refers to the business as at the Closing Date	Clarification that the Sky News Business means the business assessed at the Closing Date
13.1(iii)	Extension of the interim obligation regarding maintenance and preservation of the Sky News business to cover its facilities and goodwill	Clarification provides additional comfort in relation to the maintenance and preservation of the Sky News business.
13.1(iv)	Insertion of an interim obligation requiring that News shall not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off	New interim obligation to ensure that News will not attempt to influence Sky News in editorial matters whilst News is preparing to spin-off Sky News  See also Ofcom advice of 22 June 2011
13.2	Insertion of information obligation on News in relation to monitoring of compliance with the UIL	Information obligation provision on News

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
Definition of Material Transaction	Clarification that any renewal of or material amendment to the lease agreement described in paragraph 5.1(ii) or the agreement(s) in relation to services described at paragraph 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) would be deemed to be a material transaction	Extension of the definition of Material Transaction to cover the key operational agreements (that is, those requiring prior approval by the Secretary of State)
Definition of Monitoring Trustee and Monitoring Trustee Functions	Insertion of new definitions relating to the Monitoring Trustee (see above)	Required for the operation of the provisions relating to the Monitoring Trustee
Definition of Working Day	Insertion of a definition of Working Day	Required for time periods in relation to the appointment of a Monitoring Trustee

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**Annex 2 – Financial analysis of Newco in the light of  
the Revised Carriage Agreement and Revised Brand Licensing Agreement**

1. Following receipt of the draft carriage agreement and brand licensing agreement from News, the OFT has been able to review the financial position of Newco in greater detail than it was able to do in the February Report and the March Advice. The OFT has been able to address some concerns that it initially identified on receipt of the draft carriage agreement and brand licensing agreement from News, notably:
  - the effect of higher inflation on Newco's financial viability; and
  - indexing of costs relating to services provided by Sky to Newco.
2. The OFT summarises below the changes that have been made since the February Report, which should be considered alongside that analysis (and in particular the 'Analysis of Revenue and Cost Projections' set out in the Annexe).

**Carriage agreement payments**

3. The original proposal made by News, as commented upon in the February Report, envisaged payments to Newco per subscriber per month (pspm) related to total Sky subscribers (index linked); plus an additional payment for HD subscribers (increasing at two per cent fixed per annum) and a fixed HD exclusivity premium.
4. Those original proposals have since been slightly modified, such that the pspm payments have been uplifted to meet in full some additional costs that were identified. Indexation of the payments is now based on full indexation for each element up to six per cent growth in CPI and 50 per cent compensation for inflation between six per cent and 10 per cent (the ceiling).

**Costs and indexation of costs**

5. Following review of the draft carriage agreement and brand licensing agreement from News, a limited number of additional technical costs were identified that relate to Newco and a more accurate estimate of equipment and fixed assets to be transferred was carried out, impacting on depreciation charges. The relevant tax rate was also reassessed. These effects are

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included in the latest projections and the pspm payments were adjusted, as commented above.

6. To provide some symmetry between Newco's costs and revenue payments under the carriage agreement, the same formula for price indexation has been applied to Sky-related costs in the Revised Carriage Agreement. This would ensure that such core costs would be covered by the revenue stream. This has been reflected in paragraph 5.3(iii) of the Revised UIL relating to the permitted cost increases for the agreements listed at paragraphs 5.1(iii), 5.1(iv) and 5.1(v) of the Revised UIL.
7. ~~[X]~~To provide a similar symmetry to the indexation for revenue, an index-related element of the calculation also uses the same formula for price indexation as for subscription payments.
8. Overall, by way of summary, the changes to the additional technical costs and reassessed tax costs referred to above have been fully compensated for in the Revised Carriage Agreement by an increase in the subscription payments. A similar basis for inflation has now been used for Sky-related costs, for ~~[X]~~ and for subscription payments.

**Sensitivity of the latest projections**

9. A comparison has been made for profit and cash flow under different inflation assumptions, comparing the projection used for the February Report with the proposal under the Revised Carriage Agreement. Under the base case assumptions, with annual CPI at three per cent, six per cent, eight per cent and 10 per cent, both profit and cash flow are higher under the Revised Carriage Agreement than under the proposals modelled for the February Report. The improvement in these scenarios relative to the projection used for the February Report is more marked for the higher inflation situations than for the lower inflation situations.
10. To check Newco's sensitivity to risk of unfavourable events, ~~[X]~~.
11. This scenario was also explored under higher inflation assumptions, while making an adjustment for advertising revenues. ~~[X]~~.
12. The latest proposals in the Revised Carriage Agreement appear to be more resilient to the effects of inflation, up to CPI inflation of 10 per cent, than the original proposals.

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**Assessment**

13. As the OFT previously assessed, while it is possible to imagine a combination of unfavourable events that could cause the financial viability of Newco to be threatened, this is not considered to be very likely. The assumptions made in the projections for Newco continue to appear to be reasonable and there is some flexibility to handle unforeseen problems. The benefit of the assured income from the Revised Carriage Agreement strengthens the financial position of Newco and while this agreement operates, and based on the evidence seen, the OFT continues to have no reason to expect that Newco would not be financially viable.

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**Annex 3 – The Revised UIL submitted by News on 14 June 2011**

RESTRICTED

**Annex 4 –  
The Revised Carriage Agreement submitted by News on 15 June 2011**

RESTRICTED

**Annex 5 –**

**The Revised Brand Licensing Agreement submitted by News on 16 June 2011**

RESTRICTED

**Annex 6 –  
Articles of Association of Newco submitted by News on 10 May 2011**

**CONFIDENTIAL**

**Ofcom** 119

22 June 2011

The Rt. Hon Jeremy Hunt, MP  
Secretary of State for Culture, Olympics, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

Colette Bowe  
Chairman

Ed Richards  
Chief Executive

Dear Jeremy,

**News Corporation / BSkyB proposed merger: further advice on proposed undertakings in lieu**

We are writing in response to your letter of 18 March 2011 following on from our report of 31 December 2010 and our previous letters of advice to you of 11 February and 1 March 2011.

You requested Ofcom to advise you on the extent to which proposed undertakings in lieu of a reference to the Competition Commission ("UILs") address the potential impact on plurality identified in our 31 December report<sup>1</sup> as arising from the proposed acquisition by News Corporation of the shares in Sky it does not already own.

**Background**

In the light of our 31 December 2010 report, you announced that you intended to refer the merger to the Competition Commission, subject to considering UILs offered by News Corporation.

We advised on an initial draft of the proposed UILs on 11 February 2011 and then on a revised version on 1 March 2011. We advised that the revised version would, with reference to the points set out in our letter, address the plurality concerns identified in our report of 31 December 2010.

You held a public consultation seeking views on those revised UILs. In your letter of 18 March 2011, you asked us to review our earlier advice in the light of some of the representations you had received in response to the consultation. In view of those representations, we have agreed with News Corporation a number of changes to the proposed UILs dated 14 June 2011, attached.

<sup>1</sup> A non-confidential version of this is publicly available at:  
[http://www.culture.gov.uk/images/publications/OfcomPITReport\\_NewsCorp-BSkyB\\_31DEC2010.pdf](http://www.culture.gov.uk/images/publications/OfcomPITReport_NewsCorp-BSkyB_31DEC2010.pdf).

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You also asked us to engage with News Corporation as necessary in relation to the drafts of the carriage and brand licence agreements contemplated by the proposed UILs of 1 March, with a view to advising you whether these agreements, once finalised, were consistent with the UILs as they have now been amended and Ofcom's previous advice with regard to media plurality

In parallel, the OFT has similarly been reviewing its advice to you on the practicality and financial viability of the UILs including the carriage and brand licence agreements and we have seen a copy of its advice to you. We are aware that you have taken independent legal advice on the terms of the draft carriage and brand licence agreements.

For the reasons set out below and in our previous letters, our advice is that the revised proposed undertakings would address the plurality concerns identified in our report of 31 December 2010.

### **Consultation responses**

1. We have reviewed all of the submissions received from your officials<sup>2</sup>. Overall, we do not consider that the points raised in the submissions require us to change our previous advice. The consultation responses provided a number of comments on the proposed UILs. We address these below.

### *Changes in the UILs*

2. In the light of the consultation responses, we have agreed with News Corporation a number of amendments to the UILs.
3. The proposed UILs require News Corporation to establish Newco with Articles of Association which provide that Newco's Sky News, TV and any closely related services will abide by the principle of editorial independence and integrity in news reporting. News Corporation now offers an additional undertaking not to attempt to cause Newco to act in breach of its Articles of Association (UIL 3.3).
4. The proposed UILs require News Corporation to establish Newco with Articles of Association which require it to have an independent director with senior editorial and/or journalistic experience. News Corporation now offers an additional undertaking that the Articles will provide that when considering editorial or journalistic matters, meetings of each of the Board and the corporate governance and editorial committee are only

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<sup>2</sup> BECTU, BT, [X], Virgin Media, Slaughter and May (representing an alliance of media groups), DLA Piper (representing Avaaz), DMOL, Jewish Funds for Justice, Media Matters for America, National Union of Journalists, [X], Patricia Holland, [X], TUC, UK Coalition for Cultural Diversity and the Campaign for Press and Broadcasting Freedom.

considered quorate if an independent Board member with senior editorial and/or journalistic experience is present (UIL 3.1 (iii)(C) and (ix)(E)).

5. Consultation responses expressed concerns about the level of protection for Sky News from editorial influence by News Corporation in the interim period between News Corporation's acquisition of shares in Sky and the spin off of Newco. A number of additions to the UILs have been included in the light of these comments:
  - The UILs now provide for a monitoring trustee to be appointed, to monitor News Corporation's compliance with the undertakings during this interim period (UIL sections 6 to 10).
  - An additional undertaking requires that in effecting the spin off of Newco, News Corporation will take no action that would prevent Newco being placed in an overall position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as Sky News did before the transaction (UIL 2.1).
  - An additional undertaking requires that the arm's length terms of the operational agreements to be entered into between News Corporation and Newco be fair and reasonable (UIL 5.1).
  - An additional undertaking requires News Corporation not to attempt to influence the editorial decisions of the Sky News business prior to spin off (UIL 13.1(iv)).
6. Today, Sky News benefits from cross promotion and marketing of its services on other Sky channels. News Corporation has agreed to include a commitment in the UILs to provide continued cross promotion of the Sky News service for as long as Newco and Sky are party to the carriage agreement to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the date of your acceptance of the UILs (UIL 4.9).
7. Consultation responses identified a risk that News Corporation might establish Newco with Articles of Association which limited its ability to operate (e.g. to borrow) such that it would not be sufficiently independent to contribute to plurality. The proposed UILs now provide for the Secretary of State to approve the Articles prior to acceptance (UIL 3.1(ii)).
8. We can also confirm that we are satisfied that the draft Articles of Association provided to us on 10 May 2011 (attached) are consistent with the UILs and our previous advice.

#### *Duration*

9. Some consultation respondents considered that the UILs were insufficient in that both the duration of the carriage agreement and the prohibition on acquisition by News Corporation of further shares in Newco last for 10 years. In particular, the argument was made that plurality may decline over the next 10 years and that as a matter of principle

UILs relating to a proposed merger should not be accepted in circumstances where they do not remove permanently the risk the merger poses to plurality.

10. As we have previously advised, we agree that the proposed UILs are not a permanent solution and that their effectiveness may start to diminish in the run up to the end of the 10 year period. We consider that a carriage agreement of a 10-year term in the context of industry dynamics in this sector is long term. This is because we consider there is likely to be significant evolution of the market and consumers' use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time.
11. As set out above, at the end of the 10 year period, the prohibition on acquisition and the carriage agreement come to an end. If News Corporation wished to acquire the remainder of the shares in Newco after the end of the 10 year period, a media public interest test may be triggered if the threshold criteria in the Enterprise Act 2002 are met.
12. In order for the Secretary of State to have sufficient flexibility for dealing with plurality issues we would, however, refer to our previous advice that the Government should consider undertaking a wider review of the statutory framework to ensure plurality in the public interest in the longer term. We believe that the current system is deficient in failing to provide for intervention to be considered where plurality concerns arise in the absence of a relevant corporate transaction involving media enterprises, for example as a result of organic growth.

#### *Governance arrangements*

13. There were a number of further comments in the consultation responses, in the light of which we did not consider it necessary to make further amendments to the UILs. In particular, while we have made the changes set out above in relation to monitoring of the UILs, we did not reflect every comment made in this area.
14. In addition, a number of consultation respondents raised concerns about the ongoing relationship between News Corporation and Newco under the proposed UILs. They noted Newco would be dependent on News Corporation for a substantial proportion of its revenues. It was argued that Newco's independent shareholders and directors may perceive it to be in Newco's best interests to fall in with News Corporation's wishes and that individuals may consider their own job security to be dependent on their conduct as regards News Corporation. Some consultation respondents suggested changes to the UILs, for example, to reduce News Corporation's voting rights.
15. We consider that the UILs must be assessed against the fact that the plurality concerns we identified arose out of a change in the degree of control News Corporation has over Sky. We do not consider it necessary to establish Sky News in a position where News Corporation has no relationship with it at all, because today News Corporation controls 37.19% of Sky.

16. We consider that the proposed UILs and associated contracts provide for Newco to be able to take independent decisions for the long term. Key to this is the carriage agreement, which in our view provides for sufficient certainty over Newco revenues and overall profitability for 10 years.
17. The UILs provide for structural separation of Newco from News Corporation and for the formation of an independent Board. The Directors will have to abide by the principle of editorial independence and integrity in news reporting required in the Articles of Association. The Chairman of the Newco Board will be an independent director. The UILs provide for a corporate governance and editorial committee comprising a majority of independent directors to oversee Newco's compliance with the provisions relating to the principle of editorial independence and integrity in news reporting. The committee will consider any representations made by the Sky News Editor relating to compliance with these provisions. Newco's annual report will include a statement on the committee's activities and oversight functions.

*Perceptions of the credibility of past undertakings*

18. A number of consultation respondents expressed the view, by reference to commitments previously given by News Corporation or related persons in relation to The Times and the Wall Street Journal, that the UILs may be ineffective or that News Corporation may breach them.
19. For the reasons set out in our advice, we consider that the terms of the UILs address the potential impact on media plurality we have identified. In this context we note in particular that Newco will be a separate company, in which News Corporation controls only 37.19% of the total votes. The Chairman of the Newco Board will be an independent director. Newco will have a majority of independent shareholders and directors. We are not in a position to take a view on the reasons for the effectiveness or otherwise of commitments given in other circumstances.

*Obligation to distribute required*

20. Consultation responses expressed a concern that the UILs do not specifically require News Corporation to distribute Sky News. We do not believe it is necessary to place this obligation on News Corporation.
21. Under the operational agreements identified in section 5.1(iv) of the UILs, (play-out, uplink, satellite capacity, Digital Terrestrial Television ("DTT") capacity, online distribution, mobile distribution), Newco will be able to secure the transmission of its service via DTT, satellite, mobile and internet. News Corporation has committed to providing Newco with an Electronic Programme Guide listing on its satellite platform no worse than Sky News' today (UILs section 4.5(iv)). In addition, in the carriage agreement, Sky is under an obligation to distribute any encrypted high definition version of the service (carriage agreement section H.1), and unencrypted (standard or high definition) services will

necessarily be available to all customers of the Sky platform as a free to air service. In addition, we believe News Corporation will have a significant incentive to continue to distribute the Sky News service in order to realise value from its carriage agreement with Newco.

22. News Corporation has also committed within the UILs to use all reasonable endeavours to procure that the carriage agreement between Sky and third parties (including Virgin Media) for the distribution of Sky News on cable will be transferred to Newco (UIL 4.3 (i)). How this commitment may be realised is a matter of commercial negotiation between the relevant parties. In any event, we do not believe that such distribution is of critical importance to the ongoing viability of Newco, or that the loss of distribution on cable would have a significant effect on plurality given the availability of Sky News on satellite, DTT, mobile and the internet.

#### *Competition issues*

23. Within the consultation, a number of wider concerns were raised by respondents relating to News Corporation or Sky. These wider concerns generally related to potential competition issues, either current or as a result of the transaction. The UILs, and associated agreements, are concerned only with addressing the potential impact on media plurality identified in Ofcom's report of 31 December 2010. We have not considered any competition-related concerns within our engagement with News Corporation, refinement of the UILs or review of the carriage agreement or brand licence.

#### ***Review of the carriage agreement and brand licence in respect of our potential plurality concerns***

24. We have reviewed and discussed the draft carriage agreement and brand licence with News Corporation in relation to plurality. As set out above, the OFT in parallel considered the draft agreements in relation to their advice on the practical and financial viability of the UILs. We understand that you have taken independent legal advice on the draft agreements.
25. The versions of the draft carriage agreement and brand licence provided to us on 21 March 2011 were incomplete and did not reflect the UILs in all respects. We believe the revised drafts of the carriage agreement (dated 15 June 2011) and the brand licence (dated 16 June 2011) are consistent with the proposed UILs as amended, and our previous advice with regard to media plurality.

#### *Opportunities for diversification by Newco*

26. It is important to note that diversification, while desirable, is not in our view necessary to ensure Newco continues to contribute to plurality as it did prior to the transaction. We believe it is unlikely that any of the diversification opportunities below are likely to replace the carriage agreement as Newco's main revenue source.

27. However, we note that the carriage agreement and brand licence include provisions which limit Newco's ability to diversify in some respects. In particular:

- they create a right for Sky to take any new Sky News branded services made available by Newco, without additional payment. We believe this to be a reasonable position in the light of the terms and value of the carriage agreement being offered; and
- they create a right for Sky to take any new service offered by Newco in future, on terms which are no less favourable to Sky than those offered to any third party. We understand News Corporation's position to be that Newco's ability to invest in new products and services results from the carriage agreement. We believe this is a reasonable position, but that News Corporation should be required to pay for such access on terms no less favourable than those offered to third parties.

28. In this context we note News Corporation has identified the diversification opportunities for Newco as including:

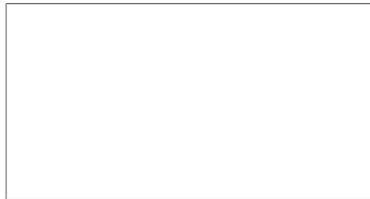
- non-Sky News branded news channels, programming blocks, apps or websites, including national and local news services, using substantially new content;
- syndicated content on a non-packaged basis of raw content broadcast or distributed by Sky News;
- a service similar to the Channel 5 service to other third parties (e.g. ITV, Channel 4); and
- syndication of Sky News branded content to other websites within agreed fair use limitations.

29. Internationally, Newco would also have opportunities for diversification, including [X]

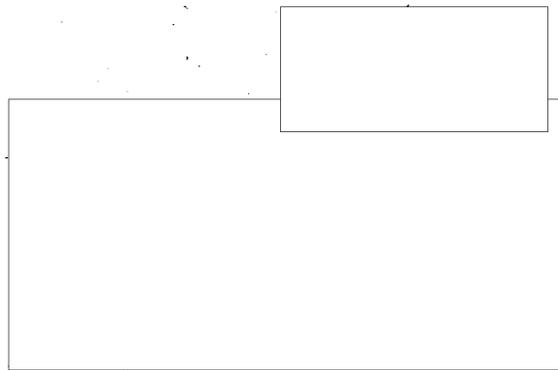
#### **Advice**

For all the reasons set out above and in our previous letters of advice, we consider that the revised proposed undertakings offered by News Corporation would address the plurality concerns identified in our report of 31 December 2010.

Yours ever,



Colette Bowe



Ed Richards

cc. Clive Maxwell, Executive Director, OFT

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[Redacted]

**From:** OLDFIELD PAUL  
**Sent:** 24 June 2011 14:53  
**To:** PATEL RITA; ZEFF JON  
**Cc:** [Redacted] BEEBY, Sue; SMITH, Adam; [Redacted]  
**Subject:** RESTRICTED - BskyB

Sorry for keeping you hanging on earlier. SoS has read the covering letters and advice from OFT and OFCOM, but not the amended docs in full yet – which he is keen to do Monday so I've scheduled him some time for that.

SoS talked to Jon and I briefly on his way out of the building. In principle SoS would like to aim for an announcement on Thursday next week – subject to giving further thought to OFCOM and OFT's advice and studying the docs in more detail on Mon. He understands the challenges with that – specifically in agreeing redacted docs – but thinks we should push News Corp to have redactions done for Tue night. He's also not minded to give more than the statutory 7 days for further consultation.

- I think you were going to take up with colleague and News the viability of this. If there are any show stoppers here it might be good to discuss at/ in the margins of the Monday morning Comms meeting.

Thanks

Paul.

Paul Oldfield  
Principal Private Secretary to the Secretary of State  
Department for Culture, Media and Sport

[Redacted]

120A

[REDACTED]

**From:** OLDFIELD PAUL  
**Sent:** 27 June 2011 10:25  
**To:** SMITH, Adam; BEEBY, Sue; MARTIN LINDA  
**Cc:** Permanent Secretary; ZEFF JON; SMITH, Godric; PATEL RITA; [REDACTED]  
**Subject:** [REDACTED] RESTRICTED - Comms Meeting

Quick update from SoS' Comms meeting this morning.

- SoS is meeting with Mark Thompson and the Media Trust tomorrow. SoS would like the media trust meeting shortened and then to discuss local radio, b-band, school games and NAO access with MT. **ACTION:** [REDACTED] **to amend timings. Adam to talk to Rita about progress on NAO access and let BBC know proposed agenda.**
- SoS wanted some clarification on the Cultural Olympiad budget (**ACTION: Paul**) and for Linda and Sue to meet with Ruth McKenzie before SoS next meeting with them (scheduled on 13 July) to discuss a media strategy (**ACTION Linda and Sue**). To note that SoS asked them at their last meeting to come back with plans for major events in each of the DAs to accompany the regional spectaculars so they should already be thinking on those lines...
- Adam agreed to talk to John Whittingdale about the Privacy/ Super-injunction Committee enquiry. **ACTION Adam**
- SoS said he would like to press ahead with statement on BskyB on Thursday. SoS said he would like to publish all docs (inc brand licensing and carriage agreements – even if redacted) and would like to press News Corp for those docs this week. We discussed having a quick handling meeting this afternoon to discuss draft statement etc. **ACTION: Rita**
- SoS reported on his meeting with the Chancellor. He is clear that he wants approval sorted this week so we don't lose momentum. He described the biggest stumbling block as the accounting implications of using Switchover underspend. **ACTION: Oscar – SoS would like Jonathan to help resolve this issue this week with the Broadband Team.**
- SoS would like to issue the all MP letter about L2012, as commissioned at last week's meeting, before recess. He's said he's like to personally top and tail each letter and would like drafts by 10<sup>th</sup> July. **ACTION: Godric**

Paul.

Paul Oldfield  
 Principal Private Secretary to the Secretary of State  
 Department for Culture, Media and Sport

[REDACTED]

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

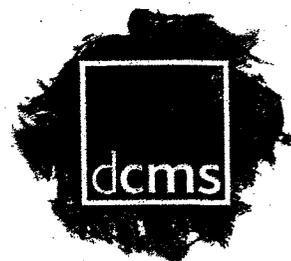
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Your Ref:  
Our Ref: 175910/JB/27

Rt Hon Lord Prescott  
House of Lords  
London SW1A 0PW



department for  
culture, media  
and sport

27 June 2011

Dear Lord Prescott

Thank you for your letter of 24 May, raising your concerns about News Corporation and Current TV.

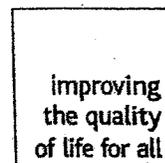
I have to make a quasi-judicial decision about the impact of the proposed merger on media plurality issues alone. I will take into account all relevant concerns when making my decision and will only allow this transaction to proceed, and accept the undertakings in lieu, if they are legally robust and enforceable and address media plurality concerns.

As you are aware, a consultation on the undertakings offered by News Corporation in lieu of a referral to the Competition Commission ran from 3 March to 21 March 2011. I am now considering the responses made to the consultation, and will make a statement in due course.

With best wishes



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



121A

[Redacted]

**From:** OLDFIELD PAUL  
**Sent:** 28 June 2011 17:27  
**To:** [Redacted]  
**Cc:** [Redacted] PATEL RITA  
**Subject:** RE: Newscorp - disclosure of documents

[Redacted]

Thanks for this note. SoS has considered your advice and agrees that we should go ahead with publishing the Articles of Association but not the Brand Licensing and Carriage Agreements.

Thanks

Paul.

---

**From:** [Redacted]  
**Sent:** 28 June 2011 16:03  
**To:** OLDFIELD PAUL  
**Cc:** [Redacted] PATEL RITA  
**Subject:** FW: Newscorp - disclosure of documents  
**Importance:** High

Paul,

Please see the attached note for the Secretary of State asking him to decide which documents he wants to publish. The recommendation is that he publishes the Articles of Association but not the carriage or brand licensing agreements, but he will want to understand the reasoning.

[Redacted]

[Redacted]

DCMS  
4 Cockspur Street  
London, SW1Y 5DH

[Redacted]



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Broadcasting and Regulated Industries

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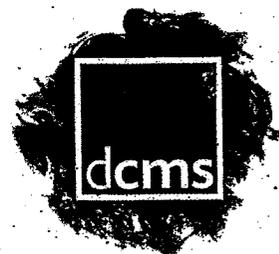


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Hausfeld & Co LLP  
12 Gough Square  
London  
EC4A 3DW

Your Ref. IG/LS/L0053.0001

29 June 2011



department for  
culture, media  
and sport

BY EMAIL ONLY

Dear Sirs,

**Proposed Merger of News Corporation and British Sky Broadcasting plc**

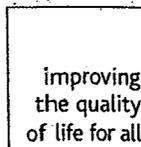
Thank you for your letter to the Secretary of State of 23 May to which I have been asked to respond.

I refer to your first paragraph where you refer to an announcement to the press having been made on May 20<sup>th</sup>. Firstly, I should make clear that no formal press announcement has been made on this matter following the Secretary of State's announcement that he was minded to accept undertakings in lieu of a reference to the Competition Commission and his consultation on those undertakings on 3<sup>rd</sup> March 2011. Secondly, there was discussion of this merger at the Broadcasting Press Guild meeting on 20<sup>th</sup> May, however the Secretary of State stated that the consultation was taking longer than he had expected because of the complexity of the documents, and the consideration being given to them by the OFT, Ofcom and internally. No extension of the consultation period was requested or granted.

Your clients did make a submission in the consultation, via DLA Piper. The Secretary of State does not propose to respond individually to all of those individuals and organisations who made representations in relation to this matter. The Secretary of State is currently considering your client's representations and the others made in relation to the consultation and will make an announcement in due course as to his intentions.

The Secretary of State does not intend to publish any representations received in response to his announcement of 3<sup>rd</sup> March. However, he is proposing to publish summaries of all the main representations. I enclose the relevant summaries of the representations made on behalf of your client. You are, of course, free to publish the full texts of those representations as widely as you would like.

Yours faithfully



ARTICLES OF ASSOCIATION

of

[NEWCO]

PUBLIC LIMITED COMPANY

(effective as from [●])

PRELIMINARY

1. (1) In these articles the following words bear the following meanings:

“the Acts” the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company;

“Audit Committee” the audit committee of the Company referred to in Article 141;

“these articles” the articles of association for the time being of the Company;

“Broadcasting Act 1990” the Broadcasting Act 1990 (as amended by the Communications Act) including any supplementary legislation, Orders or Statutory Instruments enacted pursuant thereto;

“Broadcasting Act 1996” the Broadcasting Act 1996 (as amended by the Communications Act) including any supplementary legislation, Orders or Statutory Instruments enacted pursuant thereto;

“Broadcasting Acts” the Broadcasting Act 1990 and the Broadcasting Act 1996;

“Chapter 11” Chapter 11 of the Listing Rules (*Related party transactions: Premium listing*) (as varied or amended from time to time) or any such other rules contained in the Listing Rules which relate to related party transactions from time to time;

“clear days” in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

“the Code” the UK Corporate Governance Code published by the Financial Reporting Council (or any relevant successor body) (as amended from time to time);

“Communications Act” the Communications Act 2003 including any supplementary legislation, Orders or Statutory Instruments enacted pursuant thereto;

“the Company” [Newco] plc;

“connected person” (i) in relation to a person, his spouse, civil partner, child or remoter issue or the trustee of a family trust acting in that capacity and (ii) in relation to a body corporate, any holding company of which it is a wholly

owned subsidiary and any other wholly owned subsidiaries of that holding company (including any wholly owned subsidiary of the body corporate);

**“Daily Official List”** the daily official list of the London Stock Exchange;

**“director”** a director of the Company, from time to time, including an Independent Director;

**“electronic address”** any number or address used for the purposes of sending or receiving notices, documents or information by electronic means;

**“electronic form”** has the same meaning as in the Companies Act 2006;

**“electronic means”** has the same meaning as in the Companies Act 2006;

**“Excess Shares”** the Specified Shares (or any interest therein) which are required to be disposed of under a Mandated Disposal;

**“executed”** any mode of execution;

**“financial institution”** a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange who is designated within the meaning of section 778(2) of the Companies Act 2006;

**“FSA”** the Financial Services Authority;

**“FSMA”** the Financial Services and Markets Act 2000 (as amended from time to time);

**“Governance and Editorial Committee”** the corporate governance and editorial committee referred to in articles 137 to 140;

**“Governance and Editorial Committee Matters”** shall mean oversight of the Company's compliance with articles 89 to 91;

**“Group of Interconnected Bodies Corporate”** has the same meaning ascribed to it in section 129(2) of the Enterprise Act 2002; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

**“Head of Sky News”** the chief editor of Sky News from time to time;

**“holder”** in relation to shares, the member whose name is entered in the register of members as the holder of the shares;

**“Independent Director”** a member of the Company's board of directors who:

- (i) has not been an employee of the Company, News Corporation or any member of the same Group of Interconnected Bodies Corporate as News Corporation within the last five years;
- (ii) does not have, and has not had within the three years preceding the date of their first election to the Company's board of directors, a material business relationship with the Company or News Corporation either directly, or as a partner, shareholder, director or senior employee

of a body that has such a relationship, other than to the extent that such person has previously served as a director of Sky;

- (iii) has not received and does not receive additional remuneration from the Company or News Corporation apart from a director's fee, does not participate in the Company's or News Corporation's share option or performance-related pay scheme, and is not a member of the Company's or News Corporation's pension scheme;
- (iv) does not have close family ties with any of the Company's or News Corporation's advisers, directors or senior employees;
- (v) does not hold cross-directorships and does not have significant links with other directors of the Company through involvement in other companies or bodies;
- (vi) does not represent a significant shareholder of the Company or News Corporation; and
- (vii) has not served on the Company's board of directors or the board of directors of News Corporation within the nine years preceding the date of their first election to the Company's board of directors;

**"Independent IB"** the investment bank appointed by the Company and approved by a majority of the Independent Directors to advise the Company in respect of its compliance with Chapter 11 to the extent applicable to the Company;

**"Licence"** a licence to provide a television licensable content service, a digital television programme service or any other service under the Broadcasting Acts;

**"Licence Holder"** a person who has been:-

- (i) granted a Licence by Ofcom which Licence (including any renewal or extension thereof) has not been terminated or revoked; or
- (ii) awarded, but not yet granted a Licence by Ofcom and such award has not been revoked;

**"Listing Rules"** the Listing Rules of the FSA made under Part VI of FSMA (as amended from time to time);

**"London Stock Exchange"** the London Stock Exchange plc;

**"Main Principles"** the Main Principles of the Code;

**"Mandated Disposal"** the sale or other transfer of Specified Shares (or any interest therein) pursuant to article 43;

**"Nominated Advisor"** the Company's nominated advisor as required by the AIM Rules for Companies published by the London Stock Exchange (as amended from time to time);

**"Ofcom"** the Office of Communications established pursuant to section 1 of the Office of Communications Act 2002 or such other successor body as may be appointed from time to time to exercise all or any of the powers of such body under the Broadcasting Acts and/or Communications Act;

**"the Ofcom Broadcasting Code"** the broadcasting code published by Ofcom (as amended from time to time);

**"Office"** the registered office of the Company from time to time;

**"Official List"** the Official List maintained by the FSA;

**"Operational Agreements"** the carriage agreement, the brand licensing agreement, the site support service agreement, the lease agreement and the broadcast and technical services agreements, each dated ● 2011 and entered into between the Company and Sky;

**"Premium Listing"** a listing where the issuer is required to comply with those requirements in Listing Rule 6 (*Additional requirements for premium listing (commercial company)*) (as amended from time to time) and the other requirements in the Listing Rules that are expressed to apply to securities admitted to the Official List with a premium listing;

**"Relevant Interest"** any interest (which either alone or when taken with any other interest or interests) in shares in the Company (including any interest attributed by the directors pursuant to the definition of "Relevant Investor" below) as a result of which (a) the Company or any subsidiary would become a disqualified person in relation to any Licence held by it (or awarded, but not yet granted, to it) by virtue of Part II of Schedule 2 to the Broadcasting Act 1990, (b) there would be a breach of, or failure to comply with, any requirements or conditions imposed by or under section 5 of the Broadcasting Act 1990 and/or Schedule 14 of the Communications Act, in relation to any Licence of the Company or any subsidiary to which those requirements apply, by the Company or any subsidiary or any other person, (c) Ofcom may refuse to grant or may revoke a Licence to the Company or any subsidiary under the Broadcasting Acts or (d) the Company or any subsidiary would otherwise be materially affected in relation to any Licence held by (or awarded, but not yet granted, to) it;

**"Relevant Investor"** any person who, as a result of the transfer to him of any shares, (a) has a Relevant Interest unless, in any such case, Ofcom has given its consent in writing to the Company or any subsidiary to the existence or continuance of the circumstance or circumstances which cause (or would have caused if such consent had not been given) the person to be or to become a Relevant Investor and (i) such consent has not been withdrawn and (ii) there has not been any change in any circumstance which would be relevant to Ofcom in considering whether to withdraw its consent or (b) is determined by the directors, following consultation with Ofcom, to have an interest in shares in the Company which may cause Ofcom to vary, revoke, determine or refuse to award, grant, renew or extend a Licence to or of the Company or any subsidiary. Without prejudice to the generality of the foregoing, for the purpose of determining whether any person is a Relevant Investor as a result

of the transfer to him of any shares, the directors may attribute to such person and aggregate with the interests in issued shares of such person (a) any interest which the Company may require a person to disclose pursuant to section 793 of the Companies Act 2006 (b) any shares which are, in the opinion of the directors, the subject of an agreement or arrangement (whether legally enforceable or not) whereby such shares are to be voted in accordance with that person's instructions (whether given by him directly or through any other person) and (c) any interest of any associate of such person or any person controlled by or connected with such person;

**"seal"** the common seal (if any) of the Company and an official seal (if any) kept by the Company by virtue of section 50 of the Companies Act 2006 or either of them as the case may require;

**"secretary"** the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;

**"Sky"** British Sky Broadcasting Group plc;

**"Sky News"** the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast news channels branded "Sky News" and "Sky News HD" and related services under the Sky News brand and/or news services provided to third parties, including the wholesale provision of news input to third party media enterprises;

**"Specified Shares"** shares in the issued capital of the Company which have been transferred to a member and which are comprised in the interest of a Relevant Investor;

**"Uncertificated Securities Regulations"** the Uncertificated Securities Regulations 2001; and

**"undertaking"** includes a body corporate or partnership or an unincorporated association carrying on a trade or business with or without a view to profit (and, in relation to an undertaking which is not a company, expressions in these articles appropriate to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to undertakings of that description).

- (2) In these articles references to a share being in uncertificated form are references to that share being an uncertificated unit of a security, and references to a share being in certificated form are references to that share being a certificated unit of a security, provided that any reference to a share in uncertificated form applies only to a share of a class which is, for the time being, a participating security, and only for so long as it remains a participating security.
- (3) Save as aforesaid and unless the context otherwise requires, words or expressions contained in these articles bear the same meanings as in the Companies Act 2006 or the Uncertificated Securities Regulations (as the case may be).

- (4) Except where otherwise expressly stated, a reference in these articles to any primary or delegated legislation or legislative provision includes a reference to any modification or re-enactment of it for the time being in force.
  - (5) In these articles, unless the context otherwise requires:
    - (a) words in the singular include the plural, and vice versa;
    - (b) words importing any gender include all genders; and
    - (c) a reference to a person includes a reference to a body corporate (wherever resident or domiciled) and to an unincorporated body of persons.
  - (6) In these articles:
    - (a) references to writing include references to typewriting, printing, lithography, photography and any other modes of representing or reproducing words in a legible and non-transitory form, whether sent or supplied in electronic form or made available on a website or otherwise;
    - (b) references to "other" and "otherwise" shall not be construed ejusdem generis where a wider construction is possible;
    - (c) references to a power are to a power of any kind, whether administrative, discretionary or otherwise; and
    - (d) references to a committee of the directors are to a committee established in accordance with these articles, whether or not comprised wholly of directors.
  - (7) The headings are inserted for convenience only and do not affect the construction of these articles.
2. Neither the regulations contained in Table A in the Companies (Tables A to F) Regulations 1985 nor the regulations contained in the Companies (Model Articles) Regulations 2008 apply to the Company.

#### **LIABILITY OF MEMBERS**

3. The liability of the members of the Company is limited to the amount, if any, unpaid on the shares held by them.

#### **SHARE CAPITAL**

4. Subject to the provisions of the Acts, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine (or, if the Company has not so determined, as the directors may determine).
5. Subject to the provisions of the Acts, any share may be issued which is or is to be liable to be redeemed at the option of the Company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such share.

6. The Company may exercise the powers of paying commissions or brokerage conferred or permitted by the Acts. Subject to the provisions of the Acts, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other and may be in respect of a conditional or an absolute subscription.
7. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust. Except as otherwise provided by these articles or by law, the Company shall not be bound by or recognise (even if having notice of it) any equitable, contingent, future, partial or other claim or any interest in any share other than the holder's absolute ownership of it and all the rights attaching to it.
8. Without prejudice to any powers which the Company or the directors may have to issue, allot, dispose of, convert, or otherwise deal with or make arrangements in relation to, shares and other securities in any form:
  - (a) the holding of shares in uncertificated form and the transfer of title to such shares by means of a relevant system shall be permitted; and
  - (b) the Company may issue shares in uncertificated form and may convert shares from certificated form to uncertificated form and vice versa.

If and to the extent that any provision of these articles is inconsistent with such holding or transfer as is referred to in paragraph (a) of this article above or with any provision of the Uncertificated Securities Regulations, it shall not apply to any share in uncertificated form.

9. Notwithstanding anything else contained in these articles, where any class of shares is, for the time being, a participating security, unless the directors otherwise determine, shares of any such class held by the same holder or joint holder in certificated form and uncertificated form shall be treated as separate holdings.

#### VARIATION OF RIGHTS

10. Subject to the provisions of the Acts, if at any time the capital of the Company is divided into different classes of shares, the rights attached to any class may be varied, either while the Company is a going concern or during or in contemplation of a winding up:
  - (a) in such manner (if any) as may be provided by those rights; or
  - (b) in the absence of any such provision, with the consent of the holders of three-quarters in nominal value of the issued shares of that class, (which consent shall be given in writing) or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class,

but not otherwise. To every such separate meeting the provisions of these articles relating to general meetings shall apply, except that a poll may be demanded by any one holder of shares of the class whether present in person or by proxy and the necessary quorum at any such meeting other than an adjourned meeting shall be at least two persons together holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting shall be one person holding shares of the class in question or his proxy.

11. Unless otherwise expressly provided by the rights attached to any class of shares, those rights:
- (a) shall be deemed to be varied by the reduction of the capital paid up on those shares and by the issue of a further class of shares ranking in priority for payment of a dividend or in respect of capital;
  - (b) shall otherwise be deemed not to be varied by the issue of further shares ranking pari passu with or subsequent to the first-mentioned shares; and
  - (c) shall be deemed not to be varied by the purchase or redemption by the Company of any of its own shares.

### SHARE CERTIFICATES

12. (1) On becoming the holder of any share other than a share in uncertificated form, every person (other than a financial institution in respect of whom the Company is not required by law to complete and have ready a certificate) shall be entitled, without payment, to have issued to him within two months after allotment or lodgement of a transfer (unless the terms of issue of the shares provide otherwise) one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of that holding) or, upon payment for every certificate after the first of such reasonable sum as the directors may determine, to several certificates each for one or more of his shares.
- (2) Every certificate shall be issued under the seal, or under such other form of authentication as the directors may determine (which may include manual or facsimile signatures by one or more directors), and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up on them.
- (3) The Company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be sufficient delivery to all of them, and seniority shall be determined in the manner described in article 77.
- (4) If a share certificate is damaged or defaced or said to be lost, stolen or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of any exceptional expenses incurred by the Company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of damage or defacement) on delivery up of the old certificate.

### LIEN

13. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may declare any share to be wholly or in part exempt from the provisions of this article. The Company's lien on a share shall extend to all amounts (including dividends) payable in respect of it.

14. The Company may sell, in such manner as the directors determine, any share on which the Company has a lien if an amount in respect of which the lien exists is presently payable and is not paid within 14 clear days after notice has been given to the holder of the share, or the person entitled to it in consequence of the death or bankruptcy of the holder or otherwise by operation of law, demanding payment and stating that if the notice is not complied with the shares may be sold.
15. To give effect to the sale the directors may, in the case of a share in certificated form, authorise some person to execute an instrument of transfer of the share sold to, or in accordance with the directions of, the purchaser; and in the case of a share in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form and after such conversion may authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer. The title of the transferee to the share shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale and the transferee shall not be bound to see to the application of the purchase money.
16. The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the amount for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the share sold, in the case of a share in certificated form, and subject to a like lien for any amount not presently payable as existed upon the share before the sale) be paid to the person entitled to the share at the date of the sale.

#### **CALLS ON SHARES, FORFEITURE AND SURRENDER**

17. Subject to the terms of allotment, the directors may make calls upon the members in respect of any amounts unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least 14 clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of an amount due under it, be revoked in whole or in part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.
18. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.
19. The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.
20. If a call or an instalment of a call remains unpaid in whole or in part after it has become due and payable the person from whom it is due shall pay interest on the amount unpaid, from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the shares in question or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Acts) but the directors may waive payment of the interest wholly or in part.

21. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call and if it is not paid these articles shall apply as if that sum had become due and payable by virtue of a call duly made and notified.
22. Subject to the terms of allotment, the directors may differentiate between the holders in the amounts and times of payment of calls on their shares.
23. The directors may receive from any member willing to advance it all or any part of the amount unpaid on the shares held by him (beyond the sums actually called up) as a payment in advance of calls, and such payment shall, to the extent of it, extinguish the liability on the shares in respect of which it is advanced. The Company may pay interest on the amount so received, or so much of it as exceeds the sums called up on the shares in respect of which it has been received, at such rate (if any) as the member and the directors agree.
24. If a call or an instalment of a call remains unpaid, in whole or in part, after it has become due and payable, the directors may give to the person from whom it is due not less than 14 clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and any costs, charges and expenses incurred by the Company by reason of such non-payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited. If the notice is not complied with, any shares in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends and other amounts payable in respect of the forfeited shares and not paid before the forfeiture.
25. Subject to the provisions of the Acts, a forfeited share shall be deemed to belong to the Company and may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person and, at any time before the disposition, the forfeiture may be cancelled on such terms as the directors determine. Where for the purposes of its disposal a forfeited share is to be transferred to any person, the directors may, in the case of a share in certificated form, authorise someone to execute an instrument of transfer and, in the case of a share in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form and after such conversion may authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer of the share to that person. The Company may receive the consideration given for the share on its disposal and register the transferee as the holder of the share.
26. A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the shares forfeited but shall remain liable to the Company for all amounts which at the date of forfeiture were presently payable by him to the Company in respect of those shares with interest at the rate at which interest was payable on those amounts before the forfeiture or, if no interest was so payable, at the appropriate rate (as

defined in the Acts) from the date of forfeiture until payment, but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

27. The board may accept the surrender of any share which it is in a position to forfeit upon such terms and conditions as may be agreed and, subject to any such terms and conditions, a surrendered share shall be treated as if it had been forfeited.
28. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the person whose share is forfeited and the Company, except only such of those rights and liabilities as are by these articles expressly saved, or are by the Acts given or imposed in the case of past members.
29. A statutory declaration by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary, in the case of a share in certificated form) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings relating to the forfeiture or disposal of the share.

#### TRANSFER OF SHARES

30. The instrument of transfer of a share in certificated form may be in any usual form or in any other form which the directors approve and shall be executed by or on behalf of the transferor and, where the share is not fully paid, by or on behalf of the transferee.
31. Where any class of shares is, for the time being, a participating security, title to shares of that class which are recorded on an Operator register of members as being held in uncertificated form may be transferred by means of the relevant system concerned. The transfer may not be in favour of more than four transferees.
32.
  - (1) The directors may refuse to register any transfer of a share in certificated form if it is their opinion that such transfer would or might (a) prejudice the right of the Company or any subsidiary to hold, be awarded or granted or have renewed or extended, any Licence or (b) give rise to or cause, directly or indirectly, a variation to be made to any such Licence (being a variation which would, in the opinion of the directors, have a material adverse effect on the ability of the Company or the relevant subsidiary to operate its broadcasting business as operated by it at the relevant time) or a revocation or determination of any such Licence by Ofcom provided that the provisions of articles 42 to 48 will apply in relation to the shares which are the subject of any such transfer.
  - (2) The directors may, in their absolute discretion, refuse to register the transfer of a share in certificated form which is not fully paid. They may also refuse to register a transfer of a share in certificated form (whether fully paid or not) unless the instrument of transfer:

- (a) is lodged, duly stamped, at the Office or at such other place as the directors may appoint and (except in the case of a transfer by a financial institution where a certificate has not been issued in respect of the share) is accompanied by the certificate for the share to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
  - (b) is in respect of only one class of share; and
  - (c) is in favour of not more than four transferees jointly.
- (3) The directors may refuse to register a transfer of a share in uncertificated form to a person who is to hold it thereafter in certificated form in any case where the Company is entitled to refuse (or is excepted from the requirement) under the Uncertificated Securities Regulations to register the transfer.
33. If the directors refuse to register a transfer of a share, they shall as soon as practicable and in any event within two months after the date on which the transfer was lodged with the Company (in the case of a transfer of a share in certificated form) or the date on which the Operator-instruction was received by the Company (in the case of a transfer of a share in uncertificated form to a person who is to hold it thereafter in certificated form) send to the transferee notice of the refusal together with reasons for the refusal. The directors shall send to the transferee such further information about the reasons for the refusal as the transferee may reasonably request.
34. No fee shall be charged for the registration of any instrument of transfer or other document or instruction relating to or affecting the title to any share.
35. The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall (except in the case of fraud) be returned to the person lodging it when notice of the refusal is given.
36. Nothing in these articles shall preclude the directors from recognising a renunciation of the allotment of any share by the allottee in favour of some other person.

#### TRANSMISSION OF SHARES

37. If a member dies the survivor or survivors where he was a joint holder, or his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest; but nothing in this article shall release the estate of a deceased member from any liability in respect of any share which had been solely or jointly held by him.
38. A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the Company to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All the provisions of these articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer signed by the member and the death or bankruptcy of the member had not occurred.

39. A person becoming entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law shall, upon such evidence being produced as the directors may reasonably require as to his entitlement, have the rights to which he would be entitled if he were the holder of the share, and may give discharge for all dividends and other moneys payable in respect of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any general meeting or at any separate meeting of the holders of any class of shares.

#### SHARE WARRANTS

40. (1) The Company with respect to fully paid shares may issue share warrants stating that the bearer is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of future dividends or other moneys on or in respect of the shares included in such share warrants.
- (2) A share warrant shall entitle the bearer thereof to the shares included in it, and the shares may be transferred by the delivery of the share warrant, and the provisions of these articles with respect to share certificates, liens, calls on shares and forfeiture and surrender, disclosure of interest, transfer of shares and transmission of shares shall not apply in relation to share warrants or the holders thereof. Each share warrant shall be issued under the seal.
- (3) The directors shall be at liberty to accept a certificate (in such form and from such person as the directors may approve) to the effect that a specified person is shown in the records of the person issuing such certificate as being entitled to the shares comprised in a specified share warrant as sufficient evidence of the facts stated in such certificate, and may treat the deposit of such certificate at the Office (or any other place specified from time to time by the directors) as equivalent to the deposit there of the share warrant, and may (inter alia) allot to the person named in such certificate any shares to which the bearer of the share warrant referred to in such certificate may be entitled and the rights of the allottee to the allotment shall not, after allotment, be questioned by any person.
- (4) The directors may determine and from time to time vary the conditions upon which share warrants shall be issued, and in particular (but without limitation) upon which a new share warrant or coupon will be issued in the place of one worn out, defaced, lost or destroyed (provided that no new share warrant may be issued to replace one that has been lost unless the directors are satisfied beyond reasonable doubt that the original share warrant has been destroyed), upon which (subject as hereinafter provided) the bearer of a share warrant shall be entitled to attend and vote at general meetings, and upon which a share warrant may be surrendered and the name of the holder entered in the register of members in respect of the shares therein specified. Subject to such conditions and to these articles, the bearer of a share warrant shall be subject to the conditions for the time being in force relating to share warrants, whether made before or after the issue of such share warrant.
- (5) Subject to any conditions for the time being in force relating to share warrants and as otherwise expressly provided in these articles, the bearer of a share warrant may at any time deposit the share warrant at the Office (or at such

other place as the directors may from time to time appoint) and, so long as the share warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the Company, of giving notice of intention to submit a resolution to a meeting and of attending and voting, giving a proxy and exercising the other privileges of a member at any meeting held after the expiration of 48 hours from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited share warrant. Not more than one person shall be recognised as a depositor of any share warrant. Every share warrant which shall have been so deposited as aforesaid shall remain so deposited until after the closing of the meeting at which the depositor desires to attend or to be represented.

- (6) Subject as otherwise expressly provided in these articles or in any conditions for the time being in force relating to share warrants, no person shall, as bearer of a share warrant, be entitled to sign a requisition for calling a meeting of the Company or give notice of intention to submit a resolution to a meeting or attend or vote or give a proxy or exercise any other privilege of a member at a meeting of the Company, or be entitled to receive any notices or any documents pursuant to these articles from the Company, but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the share warrant, and he shall be deemed to be a member of the Company.
- (7) Without prejudice to any powers which the Company or the directors may have to issue, dispose of, convert, or otherwise deal with or make arrangements in relation to, share warrants and other securities in any form:
- (a) the holding of share warrants in uncertificated form and the transfer of title to such share warrants by means of a relevant system shall be permitted; and
  - (b) the Company may issue share warrants in uncertificated form and may convert share warrants from certificated form to uncertificated form and vice versa.

If and to the extent that any provision of these articles is inconsistent with such holding or transfer as is referred to in sub-paragraph (7)(a) of this article above or with any provision of the Uncertificated Securities Regulations, it shall not apply to any share warrant in uncertificated form.

#### DISCLOSURE OF INTERESTS

41. (F) If a member, or any other person appearing to be interested in shares held by that member, has been given a notice under section 793 of the Companies Act 2006 and has failed in relation to any shares (the "default shares") to give the Company the information thereby required within 14 days from the date of giving the notice, the following sanctions shall apply, unless the directors otherwise determine:

- (a) the member shall not be entitled in respect of the default shares to be present or to vote (either in person or by representative or proxy) at

any general meeting or at any separate meeting of the holders of any class of shares or on any poll; and

- (b) where the default shares represent at least 0.25 per cent of their class:
  - (i) any dividend payable in respect of the shares shall be withheld by the Company, which shall not have any obligation to pay interest on it, and the member shall not be entitled to elect, pursuant to these articles, to receive shares instead of that dividend; and
  - (ii) no transfer, other than an excepted transfer, of any shares held by the member in certificated form shall be registered unless:
    - (A) the member is not himself in default as regards supplying the information required; and
    - (B) the member proves to the satisfaction of the directors that no person in default as regards supplying such information is interested in any of the shares the subject of the transfer.
  - (iii) for the purposes of sub-paragraph (1)(b)(ii) of this article, in the case of shares held by the member in uncertificated form, the directors may, to enable the Company to deal with the shares in accordance with the provisions of this article, require the Operator of a relevant system to convert the shares into certificated form.
- (2) Where the sanctions under paragraph (1) of this article apply in relation to any shares, they shall cease to have effect at the end of the period of seven days (or such shorter period as the directors may determine) following the earlier of:
  - (a) receipt by the Company of the information required by the notice mentioned in that paragraph; and
  - (b) receipt by the Company of notice that the shares have been transferred by means of an excepted transfer,

and the directors may suspend or cancel any of the sanctions at any time in relation to any shares.

- (3) Any new shares in the Company issued in right of default shares shall be subject to the same sanctions as apply to the default shares, and the directors may make any right to an allotment of the new shares subject to sanctions corresponding to those which will apply to those shares on issue: provided that any sanctions applying to, or to a right to, new shares by virtue of this paragraph shall cease to have effect when the sanctions applying to the related default shares cease to have effect (and shall be suspended or cancelled if and to the extent that the sanctions applying to the related default shares are suspended or cancelled); and provided further that paragraph (1) of this article shall apply to the exclusion of this paragraph if the Company gives a separate

notice under section 793 of the Companies Act 2006 in relation to the new shares.

- (4) Where, on the basis of information obtained from a member in respect of any share held by him, the Company gives a notice under section 793 of the Companies Act 2006 to any other person, it shall at the same time send a copy of the notice to the member, but the accidental omission to do so, or the non-receipt by the member of the copy, shall not invalidate or otherwise affect the application of paragraph (1) of this article.
- (5) For the purposes of this article:
  - (a) a person, other than the member holding a share, shall be treated as appearing to be interested in that share if the member has informed the Company that the person is, or may be, so interested, or if the Company (after taking account of any information obtained from the member or, pursuant to a notice under section 793 of the Companies Act 2006, from anyone else) knows or has reasonable cause to believe that the person is, or may be, so interested;
  - (b) "interested" shall be construed as it is for the purpose of section 793 of the Companies Act 2006;
  - (c) reference to a person having failed to give the Company the information required by a notice, or being in default as regards supplying such information, includes (i) reference to his having failed or refused to give all or any part of it and (ii) reference to his having given information which he knows to be false in a material respect or having recklessly given information which is false in a material respect;
  - (d) an "excepted transfer" means, in relation to any shares held by a member:
    - (i) a transfer pursuant to acceptance of a takeover offer (within the meaning in section 974 of the Companies Act 2006) in respect of shares in the Company; or
    - (ii) a transfer in consequence of a sale made through a recognised investment exchange (as defined in the Financial Services and Markets Act 2000) or any other stock exchange outside the United Kingdom on which the Company's shares are normally traded; or
    - (iii) a transfer which is shown to the satisfaction of the directors to be made in consequence of a sale of the whole of the beneficial interest in the shares to a person who is unconnected with the member and with any other person appearing to be interested in the shares.
- (6) Nothing in this article shall limit the powers of the Company under section 794 of the Companies Act 2006 or any other powers of the Company whatsoever.

### RELEVANT INVESTORS

42. The directors may at any time serve a notice upon any member, who has had shares transferred to him pursuant to a share transfer, requiring him to furnish the directors with information (in the case of (2) below, to the extent that such paragraph applies to any person other than the member, so far as such information lies within the knowledge of or can be obtained by such member), supported by a declaration and by such other evidence (if any) in support thereof as the directors may require, for the purpose of determining:

- (1) whether such member is or is likely to be a party to an agreement or arrangement (whether legally enforceable or not) whereby any of the shares held by him are to be voted in accordance with some other person's instructions (whether given by that other person directly or through any other person); or
- (2) whether such member and/or any other person who has an interest in any shares held by such member is a Relevant Investor.

If such information and evidence is not furnished within a reasonable period (not being less than 14 days) from the date of service of such notice or the information and evidence provided is, in the opinion of the directors, unsatisfactory for the purposes of so determining, the directors may serve upon such member a further notice calling upon him, within 14 days after the service of such further notice, to furnish the directors with such information and evidence or further information or evidence as shall (in their opinion) enable them so to determine.

43. (1) If any person (to the knowledge of the directors) becomes or is deemed in accordance with article 44 to be a Relevant Investor by reason of the transfer of any shares to him, the directors may serve a written notice (a "Disposal Notice") on all those who (to the knowledge of the directors) have an interest in, and, if different, on the holder or holders of, the Specified Shares. The Disposal Notice shall refer to the voting restrictions as set out in article 46 and shall call for a Mandated Disposal to be made and shall state the number of Excess Shares in respect of which the Mandated Disposal is to be made and shall call for reasonable evidence that such Mandated Disposal has been effected to be supplied to the Company within 21 days from the date of such Notice or such other period as the directors may consider reasonable and which they may extend. The directors may withdraw a Disposal Notice (whether before or after the expiration of the period referred to) if it appears to them that there is no Relevant Investor in relation to such Excess Shares.
- (2) If a Disposal Notice served under this article is not complied with to the satisfaction of the directors and has not been withdrawn, the holder or holders on whom such notice shall have been served shall be deemed to have constituted the directors their agents and the directors may, so far as they are able, make a Mandated Disposal of the number of Excess Shares stated in the relevant Disposal Notice, at the best price reasonably obtainable and shall give written notice of such disposal to those persons on whom the Disposal Notice was served. Except as hereinafter provided, such a Mandated Disposal shall be completed as soon as reasonably practicable after expiry of the Disposal Notice as may in the opinion of the directors be consistent with obtaining the

best price reasonably obtainable and in any event within 30 days of expiry of such Disposal Notice provided that a Mandated Disposal may be suspended during the period when dealings by the directors in the shares are not permitted either by law or by regulations of the competent authority (designated as such for the purposes of Part VI of the Financial Services and Markets Act 2000), but any Mandated Disposal suspended as aforesaid shall be completed within 30 days after expiry of the period of such suspension and provided further that neither the Company nor the directors shall be liable to any holder for failing to obtain the best price so long as the directors act in good faith within the period specified above. If on a Mandated Disposal being made by the directors, Excess Shares are held by more than one holder (treating joint holders of any relevant shares as a single holder) the directors shall cause the same proportion of each holding as is known to them to be sold.

- (3) For the purpose of effecting any Mandated Disposal, the directors may authorise in writing any officer or employee of the Company to execute, complete and deliver any necessary transfer in the name and on behalf of any holder and may issue a new certificate to the purchaser. The net proceeds of such disposal shall be received by the Company, whose receipt shall be a good discharge for the purchase money, and shall be paid (without any interest being payable thereon) to the former holder upon surrender by him of the certificate in respect of the shares sold and formerly held by him. After the name of the purchaser (or his nominee) has been entered in the register of members, the validity of the proceedings shall not be questioned by any person.
44. (1) The directors may assume without enquiry that a person is not a Relevant Investor. The directors may determine that any person is a Relevant Investor if there are reasonable grounds for believing that that person is a Relevant Investor (notwithstanding that the Company has not been supplied with a declaration or other evidence establishing to its satisfaction that such person is or may become a Relevant Investor) until such time as they are satisfied that such is not the case.
- (2) If in accordance with this article the directors shall have assumed that any person is not a Relevant Investor, the exercise by that person of any right attaching to any share in which he is interested shall not be challenged or invalidated by any subsequent determination by the directors that such person is a Relevant Investor.
45. The directors shall not be obliged to serve any Disposal Notice under article 43(1) upon any person if they do not know his identity or his address and the absence of service of such a notice in such circumstances as aforesaid and any accidental error in giving, or failure to give, any notice to any person upon whom notice is served under the foregoing articles shall not prevent the implementation of or invalidate any procedure thereunder. Any notice to be served under article 43(1) upon a person who is not a holder shall be deemed validly served if sent through the post to that person at the address, if any, at which the directors believe him to be resident or carrying on business. Any such notice shall be deemed served on the day following any day on which it was put in the post and, in proving service, it shall be sufficient to prove that

the notice was properly addressed, stamped and put in the post. Any determination of the directors under the provisions of articles 42 to 44 shall be final and conclusive, but without prejudice to the power of the directors subsequently to vary or revoke such determination.

46. The holder or holders of the Excess Shares who has pursuant to article 43(1) been served with a Disposal Notice by the directors shall not, with effect from the expiration of such period as the directors shall specify in such notice (not being longer than 30 days from the date of service of the notice), be entitled to receive notice of, or to attend or vote at, any general meeting of the Company or any meeting of the holders of shares of the relevant class in respect of the shares referred to in that article as Excess Shares.
47. Any member who has pursuant to article 42 been served with a further notice by the directors requiring him to furnish the directors with information and evidence or further information or evidence within 14 days after the service of such further notice shall not, with effect from the expiration of such period and until information or evidence is furnished to the satisfaction of the directors, be entitled to receive notice of, or to attend or vote at, any general meeting of the Company or meeting of the holders of shares of any class other than in respect of such of the shares held by such member as are shares in respect of which it shall have been established to the satisfaction of the directors that they are not Excess Shares.
48. (1) The provisions of articles 43 to 47 shall not apply to the Company during any Non-Licence Period.
- (2) A Non-Licence Period shall be any period during which none of the following conditions are fulfilled:
- (a) the Company or any of its subsidiaries shall be or shall have at any time during the three months previously been a Licence Holder;
  - (b) Ofcom shall have notified the Company or any of its subsidiaries of its intention to award or grant the Company or any of its subsidiaries a Licence (and shall not have yet awarded or granted a licence or given notice of withdrawal of such intention);
  - (c) the Company or any of its subsidiaries shall have made (and not withdrawn) an application to Ofcom for the award or grant or extension or renewal of a Licence and Ofcom shall not have notified the Company or such subsidiary that such application has been unsuccessful or rejected or refused; and
  - (d) the directors shall have passed a resolution that it is the intention of the Company or any of its subsidiaries to apply to Ofcom for the award or grant or extension or renewal of a Licence within one year of the date of such resolution provided that if such resolution has been passed more than six months prior to the relevant date the provisions of this paragraph (d) shall not apply unless a further resolution has been passed in terms mutatis mutandis nor if such an application has been made and has been unsuccessful or withdrawn or rejected or refused.

- (3) For the purposes of articles 42 to 47 the directors may, to enable the Company to deal with shares in uncertificated form in accordance with the provisions of such articles, require the Operator of a relevant system to convert the shares into certificated form.

#### UNTRACED MEMBERS

49. (1) The Company shall be entitled to sell at the best price reasonably obtainable any share held by a member, or any share to which a person is entitled by transmission, if:
- (a) for a period of 12 years no cheque or warrant or other method of payment for amounts payable in respect of the share sent and payable in a manner authorised by these articles has been cashed or been successful and no communication has been received by the Company from the member or person concerned;
  - (b) during that period at least three dividends in respect of the share have become payable;
  - (c) the Company has, after the expiration of that period, by advertisement in a leading national daily newspaper published in the United Kingdom and in a newspaper circulating in the area of the registered address or last known address of the member or person concerned, given notice of its intention to sell such share; and
  - (d) the Company has not during the further period of three months after the date of the advertisement and prior to the sale of the share received any communication from the member or person concerned.
- (2) The Company shall also be entitled to sell at the best price reasonably obtainable any additional share issued during the said period of 12 years in right of any share to which paragraph (1) of this article applies (or in right of any share so issued), if the criteria in sub-paragraphs (a), (c) and (d) of that paragraph are satisfied in relation to the additional share (but as if the words "for a period of 12 years" were omitted from sub-paragraph (a) and the words ", after the expiration of that period," were omitted from sub-paragraph (c)).
- (3) To give effect to the sale of any share pursuant to this article the Company may, in the case of a share in certificated form, appoint any person to execute an instrument of transfer of the share, and the instrument shall be as effective as if it had been executed by the registered holder of, or person entitled by transmission to, the share; and in the case of a share in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form and after such conversion may authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as it thinks fit to effect the transfer. The purchaser shall not be bound to see to the application of the proceeds of sale, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings relating to the sale. The Company shall be indebted to the

member or other person entitled to the share for an amount equal to the net proceeds of the sale, but no trust or duty to account shall arise and no interest shall be payable in respect of the proceeds of sale, which may be employed in the business of the Company or invested in such investments as the directors may think fit.

### STOCK

50. The Company may by ordinary resolution convert any paid up shares into stock and re-convert any stock into paid up shares of any denomination.
51. A holder of stock may transfer it or any part of it in the same manner, and subject to the same provisions of these articles as would have applied to the shares from which the stock arose if they had not been converted, or as near thereto as circumstances admit, but the directors may fix the minimum amount of stock transferable at an amount not exceeding the nominal amount of any of the shares from which the stock arose.
52. A holder of stock shall, according to the amount of the stock held by him, have the same rights as if he held the shares from which the stock arose provided that no such right (except participation in dividends and in the assets of the Company) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that right.
53. All the provisions of these articles applicable to paid up shares shall apply to stock, and the words "share" and "member" shall include "stock" and "stockholder" respectively.

### ALTERATION OF CAPITAL

54. The Company may by ordinary resolution:
  - (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
  - (b) sub-divide its shares, or any of them, into shares of smaller amount than its existing shares; and
  - (c) determine that, as between the shares resulting from such a sub-division, any of them may have any preference or advantage as compared with the others,and where any difficulty arises in regard to any consolidation or division, the directors may settle such difficulty as they see fit. In particular, without limitation, whenever any members would become entitled to fractions of a share, the directors may sell to any person (including the Company) the shares representing the fractions for the best price reasonably obtainable and distribute the net proceeds of sale in due proportion among those members or retain such net proceeds for the benefit of the Company and:
  - (i) in the case of shares in certificated form, authorise some person to execute an instrument of transfer of the shares to or in accordance with the directions of the purchaser; and
  - (ii) in the case of shares in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this

article, require the Operator of a relevant system to convert the share into certificated form; and after such conversion, authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

#### NOTICE OF GENERAL MEETINGS

55. The directors may call general meetings whenever and at such time and places as they shall determine. If there are not sufficient directors to form a quorum in order to call a general meeting, any director or, if there is no director within the United Kingdom, any member of the Company may call a general meeting.
56. Subject to the provisions of the Acts, an annual general meeting and all other general meetings of the Company shall be called by at least such minimum period of notice as is prescribed or permitted under the Acts. The notice shall specify the place, the date and the time of meeting and the general nature of the business to be transacted, and in the case of an annual general meeting shall specify the meeting as such. Where the Company has given an electronic address in any notice of meeting, any document or information relating to proceedings at the meeting may be sent by electronic means to that address, subject to any conditions or limitations specified in the relevant notice of meeting. Subject to the provisions of these articles and to any rights or restrictions attached to any shares, notices shall be given to all members, to all persons entitled to a share in consequence of the death or bankruptcy of a member or operation of law and to the directors and auditors of the Company.
57. The accidental omission to give notice of a meeting to, or the failure to give notice due to circumstances beyond the Company's control to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

#### PROCEEDINGS AT GENERAL MEETINGS

58. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation which is a member (including for this purpose two persons who are proxies or corporate representatives of the same member), shall be a quorum.
59. If a quorum is not present within half an hour after the time appointed for holding the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to such date, time and place as the directors may, subject to the provisions of the Acts, determine. If at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for holding the meeting, the meeting shall be dissolved.
60. The chairman (if any) of the board of directors, or in his absence the vice-chairman, or in the absence of both of them some other director nominated prior to the meeting by the directors, shall preside as chairman of the meeting, but if neither the chairman nor the vice-chairman nor such other director (if any) is present within 15 minutes

after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number present and willing to act to be chairman of the meeting, and if there is only one director present, he shall be chairman of the meeting.

61. If no director is present within 15 minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman of the meeting.
62. The directors or the chairman of the meeting may direct that any person wishing to attend any general meeting should submit to such searches or other security arrangements (including without limitation, requiring evidence of identity to be produced before entering the meeting and placing restrictions on the items of personal property which may be taken into the meeting) as they or he consider appropriate in the circumstances. The directors or the chairman of the meeting may in their or his absolute discretion refuse entry to, or eject from, any general meeting any person who refuses to submit to a search or otherwise comply with such security arrangements.
63. The directors or the chairman of the meeting may take such action, give such direction or put in place such arrangements as they or he consider appropriate to secure the safety of the people attending the meeting and to promote the orderly conduct of the business of the meeting. Any decision of the chairman of the meeting on matters of procedure or matters arising incidentally from the business of the meeting, and any determination by the chairman of the meeting as to whether a matter is of such a nature, shall be final.
64. Directors may attend and speak at general meetings and at any separate meeting of the holders of any class of shares, whether or not they are members. The chairman of the meeting may permit other persons who are not members of the Company or otherwise entitled to exercise the rights of members in relation to general meetings to attend and, at the chairman of the meeting's discretion, speak at a general meeting or at any separate class meeting.
65. In the case of any general meeting, the directors may, notwithstanding the specification in the notice convening the general meeting of the place at which the chairman of the meeting shall preside (the "Principal Place"), make arrangements for simultaneous attendance and participation at satellite meeting places, or by way of any other electronic means, allowing persons not present together at the same place to attend, speak and vote at the meeting. The arrangements for simultaneous attendance and participation at satellite meeting places, or other places at which persons are participating via electronic means, may include arrangements for controlling or regulating the level of attendance at any particular venue provided that such arrangements shall operate so that all members and proxies wishing to attend the meeting are able to attend at one or other of the venues. The members or proxies at the satellite meeting places, or other places at which persons are participating via electronic means, shall be counted in the quorum for, and be entitled to vote at, the general meeting in question, and that meeting shall be duly constituted and its proceedings valid if the chairman of the meeting is satisfied that adequate facilities are available throughout the meeting to ensure that the members or proxies attending at the satellite meeting places, or other places at which persons are participating via electronic means, are able to:-
  - (a) participate in the business for which the meeting has been convened; and

- (b) see and hear all persons who speak (whether through the use of microphones, loud speakers, audiovisual communication equipment or otherwise) in the Principal Place and any other such place.

For the purposes of all other provisions of these articles (unless the context requires otherwise), the members shall be treated as meeting at the Principal Place. If it appears to the chairman of the meeting that the facilities at the Principal Place or any satellite meeting place, or other places at which persons are participating via electronic means, have become inadequate for the purposes set out in sub-paragraphs (a) and (b) above, the chairman of the meeting may, without the consent of the meeting, interrupt or adjourn the general meeting. All business conducted at the general meeting up to the point of the adjournment shall be valid. The provisions of article 66(2) shall apply to that adjournment.

66. (1) Without prejudice to any other power of adjournment he may have under these articles or at common law:-
- (a) the chairman of the meeting may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place; and
  - (b) the chairman of the meeting may, without the consent of the meeting, adjourn the meeting before or after it has commenced, to another date, time or place which the chairman of the meeting may decide, if the chairman of the meeting considers that:-
    - (i) there is not enough room for the number of members and proxies who wish to attend the meeting;
    - (ii) the behaviour of anyone present prevents, or is likely to prevent, the orderly conduct of the business of the meeting;
    - (iii) an adjournment is necessary to protect the safety of any person attending the meeting; or
    - (iv) an adjournment is otherwise necessary in order for the business of the meeting to be properly carried out.
- (2) Subject to the provisions of the Acts, it shall not be necessary to give notice of an adjourned meeting, except that when a meeting is adjourned for 14 days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

#### AMENDMENTS TO RESOLUTIONS

67. (1) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if: -
- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

- (b) the amendment does not go beyond what is necessary to correct a clear error in the resolution.
- (2) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if: -
- (a) written notice of the terms of the proposed amendment and of the intention to move the amendment have been delivered to the Company at the Office at least 48 hours before the time for holding the meeting or the adjourned meeting at which the ordinary resolution in question is proposed and the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the substance of the resolution; or
  - (b) the chairman of the meeting, in his absolute discretion, decides that the proposed amendment may be considered or voted on.
68. With the consent of the chairman of the meeting, an amendment may be withdrawn by its proposer before it is voted on. If an amendment proposed to any resolution under consideration is ruled out of order by the chairman of the meeting, the proceedings on the resolution shall not be invalidated by any error in the ruling.

#### POLLS

69. A poll on a resolution may be demanded at a general meeting either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared. A poll on a resolution may be demanded by:-
- (a) the chairman of the meeting; or
  - (b) a majority of the directors present at the meeting; or
  - (c) not less than five members having the right to vote at the meeting; or
  - (d) a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting (excluding any voting rights attached to any shares in the Company held as treasury shares); or
  - (e) a member or members holding shares conferring a right to vote at the meeting on the resolution on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right (excluding any shares in the Company conferring a right to vote at the meeting which are held as treasury shares).
70. Unless a poll is duly demanded and the demand is not subsequently withdrawn, a declaration by the chairman of the meeting that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry in respect of such declaration in the minutes of the meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
71. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman of the meeting, and a demand so withdrawn shall not be taken

to have invalidated the result of a show of hands declared before the demand was made. If the demand for a poll is withdrawn, the chairman or any other member entitled may demand a poll.

### PROCEDURE ON A POLL

72. Polls at general meetings shall, subject to articles 73 and 74 below, be taken as and when the chairman of the meeting directs. The chairman of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll is to be declared. The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

73. A poll on:-

- (a) the election of the chairman of the meeting; or
- (b) a question of adjournment,

must be taken immediately.

Other polls must be taken either immediately or within 30 days of their being demanded. A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

74. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case, at least seven clear days' notice must be given specifying the time and place at which the poll is to be taken.

### VOTES OF MEMBERS

75. Subject to any rights or restrictions attached to any shares:-

(a) on a show of hands:

(i) every member who is present in person has one vote;

(ii) every proxy present who has been duly appointed by one or more members entitled to vote on the resolution has one vote, except that if the proxy has been duly appointed by more than one member entitled to vote on the resolution and is instructed by one or more of those members to vote for the resolution and by one or more others to vote against it, or is instructed by one or more of those members to vote in one way and is given discretion as to how to vote by one or more others (and wishes to use that discretion to vote in the other way) he has one vote for and one vote against the resolution; and

(iii) every corporate representative present who has been duly authorised by a corporation has the same voting rights as the corporation would be entitled to; and

- (b) on a poll every member present in person or by duly appointed proxy or corporate representative has one vote for every share of which he is the holder or in respect of which his appointment of proxy or corporate representative has been made.

A member, proxy or corporate representative entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses the same way.

76. For the purposes of determining which persons are entitled to attend or vote at a general meeting and how many votes such person may cast, the Company may specify in the notice convening the meeting a time, being not more than 48 hours before the time fixed for the meeting (and for this purpose no account shall be taken of any part of a day that is not a working day), by which a person must be entered on the register in order to have the right to attend or vote at the meeting.
77. In the case of joint holders the vote of the senior who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the register of members.
78. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, on a show of hands or on a poll, by any person authorised in that behalf by that court. Evidence to the satisfaction of the directors of the authority of the person claiming the right to vote shall be delivered to the Office, or such other place as is specified in accordance with these articles for the delivery or receipt of appointments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised, and in default the right to vote shall not be exercisable.
79. No member shall have the right to vote at any general meeting or at any separate meeting of the holders of any class of shares, either in person or by representative or proxy, in respect of any share held by him unless all amounts presently payable by him in respect of that share have been paid.
80. (1) Any objection to the qualification of any person voting at a general meeting or on a poll or to the counting of, or failure to count, any vote, must be made at the meeting or adjourned meeting or at the time the poll is taken (if not taken at the meeting or adjourned meeting) at which the vote objected to is tendered. Any objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive. If a vote is not disallowed by the chairman of the meeting it is valid for all purposes.
- (2) The Company shall not be bound to enquire whether any proxy or corporate representative votes in accordance with the instructions given to him by the member he represents and if a proxy or corporate representative does not vote in accordance with the instructions of the member he represents the vote or votes cast shall nevertheless be valid for all purposes.

#### **PROXIES AND CORPORATE REPRESENTATIVES**

81. A member is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the Company. The

appointment of a proxy shall be deemed also to confer authority (in accordance with section 329 of the Companies Act 2006) to demand or join in demanding a poll. Delivery of an appointment of proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it. A proxy need not be a member. A member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him. References in these articles to an appointment of proxy include references to an appointment of multiple proxies.

82. Where two or more valid appointments of proxy are received in respect of the same share in relation to the same meeting, the one which is last sent shall, unless otherwise specified in the notice convening the meeting, be treated as replacing and revoking the other or others. If the Company is unable to determine which is last sent, the one which is last received shall be so treated. If the Company is unable to determine either which is last sent or which is last received, none of such appointments shall be treated as valid in respect of that share.
83. (1) Subject to article 84 below, an appointment of a proxy shall be in writing in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the appointor which in the case of a corporation may be either under its common seal or under the hand of a duly authorised officer or other person duly authorised for that purpose.
- (2) Where the appointment of a proxy is expressed to have been or purports to have been executed by a duly authorised person on behalf of a member:
- (i) the Company may treat the appointment as sufficient evidence of that person's authority to execute the appointment of proxy on behalf of that member; and
- (ii) the member shall, if requested by or on behalf of the Company, send or procure the sending of any authority under which the appointment of proxy has been executed, or a certified copy of any such authority, to such address and by such time as is required for the submission of appointments of proxy under article 85 and, if the request is not complied with in any respect, the appointment of proxy may be treated as invalid.
84. The directors may (and shall if and to the extent that the Company is required to do so by the Acts) allow an appointment of proxy to be sent or supplied in electronic form subject to any conditions or limitations as the directors may specify, and where the Company has given an electronic address in any instrument of proxy or invitation to appoint a proxy, any document or information relating to proxies for the meeting (including any document necessary to show the validity of, or otherwise relating to, an appointment of proxy, or notice of the termination of the authority of a proxy) may be sent by electronic means to that address, subject to any conditions or limitations specified in the relevant notice of meeting.
85. An appointment of proxy may:-
- (a) in the case of an appointment of proxy in hard copy form, be received at the Office or such other place in the United Kingdom as is specified in the notice

convening the meeting, or in any appointment of proxy or any invitation to appoint a proxy sent out or made available by the Company in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment of proxy proposes to vote; or

- (b) in the case of an appointment of proxy in electronic form, be received at the electronic address specified in the notice convening the meeting, or in any appointment of proxy or any invitation to appoint a proxy sent out or made available by the Company in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment of proxy proposes to vote; or
- (c) in the case of a poll taken subsequently to the date of the meeting or adjourned meeting, be received as aforesaid not less than 24 hours (or such shorter time as the directors may determine) before the time appointed for the taking of the poll.

An appointment of proxy which is not received or delivered in a manner so permitted shall be invalid. The directors may specify in the notice convening the meeting that, in determining the time for delivery of proxies pursuant to this article, no account shall be taken of any part of a day that is not a working day.

- 86. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous termination of the authority of the person voting or demanding a poll, unless notice of the termination was delivered in writing to the Company at the Office, or at such other place or address at which an appointment of proxy may be duly received or delivered under article 85, not later than the last time at which an appointment of proxy should have been received under article 85 in order for it to be valid for use at the meeting at which the vote was given or the poll demanded or for use on the holding of the poll at which the vote was given.
- 87. The directors may at the expense of the Company send or make available appointments of proxy or invitations to appoint a proxy to the members by post or by electronic means or otherwise (with or without provision for their return prepaid) for use at any general meeting or at any separate meeting of the holders of any class of shares, either in blank or nominating in the alternative any one or more of the directors or any other person. If for the purpose of any meeting appointments of proxy or invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company's expense, they shall be issued to all (and not to some only) of the members entitled to be sent a notice of the meeting and to vote at it. The accidental omission or the failure due to circumstances beyond the Company's control, to send or make available such an appointment of proxy or give such an invitation to, or the non-receipt thereof by, any member entitled to attend and vote, at a meeting shall not invalidate the proceedings at that meeting.
- 88. Subject to the provisions of the Acts, any corporation (other than the Company itself) which is a member of the Company may, by resolution of its directors or other governing body, authorise a person or persons to act as its representative or representatives at any meeting of the Company, or at any separate meeting of the holders of any class of shares, and the corporation shall for the purposes of these articles be deemed to be present in person at any such meeting if a person or persons

so authorised is or are present at it. The Company may require such person or persons to produce a certified copy of the resolution before permitting such person or persons to exercise his or their powers.

#### **UK CORPORATE GOVERNANCE CODE**

89. The Company shall comply with the provisions of Listing Rules 9.8.6(5) and (6) (or such other provisions of the Listing Rules as may from time to time be applicable) in relation to the principles and provisions of the Code as if it is a company with a Premium Listing.

#### **EDITORIAL INDEPENDENCE AND INTEGRITY IN NEWS REPORTING**

90. The Company shall abide by the principle of editorial independence and integrity of news reporting by Sky News in respect of television, radio and any other closely related services (irrespective of the platform on which such news is distributed) and shall, where appropriate, comply with the Ofcom Broadcasting Code.
91. In relation to the Head of Sky News, the following matters must be approved by resolution of the directors of the Company:
- (1) his appointment and removal from office;
  - (2) any material changes to the terms and conditions of his employment which could give rise to a claim by him or her for constructive dismissal; and
  - (3) any material changes to his authority or reporting relationship.

#### **MATERIAL TRANSACTIONS WITH NEWS CORPORATION**

92. Transactions between the Company and News Corporation or Sky and/or any of their respective subsidiaries which involve or could reasonably involve the payment or receipt by the Company or its subsidiaries of amounts of £5,000,000 or more shall require the prior approval of the Audit Committee.
93. The following transactions will require the prior approval of the Audit Committee and the Company's board of directors:
- (1) transactions between the Company and News Corporation or Sky and/or any of their respective subsidiaries which involve the payment or receipt by the Company or its subsidiaries of amounts of £12,500,000 or more; and
  - (2) any renewal of or material amendment to any of the Operational Agreements.

#### **RELATED PARTY TRANSACTIONS**

94. Subject to articles 95 to 97 below, the Company will comply with the provisions of Chapter 11 as if it is a company which has a Premium Listing.
95. For the purposes of interpreting article 94 above:
- (1) if the Company is proposing to enter into a transaction that could be a related party transaction (as defined in Chapter 11) it is required to obtain the guidance of the Nominated Advisor and not a sponsor to assess the potential application of Listing Rule 11; and

- (2) a related party circular must include a statement by the board that the transaction or arrangement is fair and reasonable as far as the shareholders of the company are concerned and that the directors have been so advised by the Nominated Advisor and not a sponsor.
96. To the extent that there is any question of interpretation of the Company's compliance with or the application of the Listing Rules, including Chapter 11, the Independent IB shall act as independent arbiter as to whether any relevant Listing Rule has been complied with by the Company. Any decision of the Independent IB as to the Company's compliance with the Chapter 11 shall be final and binding on the Company.
97. All references to the FSA in Chapter 11 and annexes to Chapter 11 shall be deemed to be references to the Independent IB and the FSA shall not have jurisdiction to decide whether the Company has complied with, or approve any documentation required by, the Listing Rules for the purposes of Chapter 11.

### DIRECTORS

98. Unless otherwise determined by the Company by ordinary resolution the number of directors (other than alternate directors) shall not be subject to any maximum but shall not be less than three.
99. For so long as News Corporation in combination with any member(s) of the same Group of Interconnected Bodies Corporate as News Corporation does not control more than 50% of the votes capable of being cast at a general meeting of the Company, the majority of the Company's board of directors shall comprise Independent Directors.
100. The Company's board of directors and its committees shall have the appropriate balance of skills, experience, independence and knowledge of the Company and its business to enable the directors to discharge their respective duties and responsibilities effectively. At least one of the Independent Directors shall have senior editorial and/or journalistic experience.
101. (1) Until otherwise determined by the Company by ordinary resolution, there shall be paid to the directors (other than alternate directors and directors employed by the Company in an executive capacity) such fees for their services in the office of director as the directors may from time to time determine (not exceeding in the aggregate an annual sum of £[●] or such larger amount as the Company may by ordinary resolution decide) divided between the directors as they agree, or, failing agreement, equally except that any director who shall hold office for part only of the period in respect of which such fees are payable shall be entitled only to rank in such division for a proportion of such fees related to the period during which he has held office. The fees shall be deemed to accrue from day to day and shall be distinct from and additional to any remuneration or other benefits which may be paid or provided to any director pursuant to any other provision of these articles.
- (2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of the directors or of committees of the directors or general meetings or separate

meetings of the holders of any class of shares or otherwise in connection with the discharge of their duties as directors.

- (3) Any director who holds any executive office or who serves on any committee of the directors or who performs services which the directors consider go beyond the ordinary duties of a director may be paid such special remuneration (whether by way of bonus, commission, participation in profits or otherwise) as the directors may determine.

#### ALTERNATE DIRECTORS

102. (1) Subject to article 102(2), any director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the directors and willing to act and permitted by law to do so, to be an alternate director and may remove an alternate director appointed by him from his appointment as alternate director. Subject to the foregoing, a director may appoint more than one alternate and a person may act as alternate for more than one director.
  - (2) An Independent Director may only appoint another director or other person to be his alternate director if the proposed alternate director would also qualify as an Independent Director if that person had been a director of the Company.
103. An alternate director shall be entitled to receive notices of meetings of the directors and of committees of the directors of which his appointor is a member, to attend and vote at any such meeting at which the director appointing him is not present but at which meeting such director would be entitled to vote, and generally to perform all the functions of his appointor as a director in his absence, but shall not (unless the Company by ordinary resolution otherwise determines) be entitled to any fees for his services as an alternate director.
104. An alternate director shall cease to be an alternate director if his appointor ceases to be a director; but, if a director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his reappointment.
105. An alternate director shall cease to be an alternate director on the occurrence in relation to the alternate director of any event which, if it occurred in relation to his appointor, would result in the termination of the appointor's appointment as director.
106. An appointment or removal of an alternate director shall be by notice in writing to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors.
107. Save as otherwise provided in these articles, an alternate director
  - (i) shall be deemed for all purposes to be a director;
  - (ii) shall alone be responsible for his own acts and omissions;
  - (iii) shall, in addition to any restrictions which may apply to him personally, be subject to the same restrictions as his appointor; and

- (iv) shall not be deemed to be the agent of the director appointing him.

**POWERS OF DIRECTORS**

108. Save as otherwise provided in these articles, the business of the Company shall be managed by the directors who, subject to the provisions of the Acts these articles and to any directions given by special resolution to take or refrain from taking, specified action, may exercise all the powers of the Company. No alteration of these articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the directors by these articles and a meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.
109. (1) The directors shall restrict the borrowings of the Company and exercise all powers of control exercisable by the Company in relation to its subsidiary undertakings so as to secure (as regards subsidiary undertakings so far as by such exercise they can secure) that, unless authorised by the Company in general meeting, no money shall be borrowed if the aggregate principal amount (including any premium payable on final repayment) outstanding of all money borrowed by the Group (excluding amounts borrowed by any member of the Group from any other member of the Group, other than amounts to be taken into account under paragraph (3)(c) and (d) of this article) then exceeds or would, as a result of such borrowing exceed an amount equal to the higher of, from time to time (i) £150,000,000; and (ii) an amount equal to four times the aggregate turnover of the Group as shown in the then latest audited consolidated profit and loss account of the Group.
- (2) In this article:
- (a) "the Group" means the Company and its subsidiary undertakings (if any); and
- (b) "subsidiary undertaking" has the same meaning as in the Acts.
- (3) For the purposes of this article, but without prejudice to the generality of the terms "borrowing" and "borrowed"
- (a) amounts borrowed for the purpose of repaying the whole or any part of any amounts previously borrowed and then outstanding (including any premium payable on final repayment) and to be applied for that purpose within six months of the borrowing shall not, pending such application, be taken into account as money borrowed;
- (b) the principal amount (including any premium payable on final repayment) of any debentures issued in whole or in part for a consideration other than cash shall be taken into account as money borrowed by the member of the Group issuing them;
- (c) money borrowed by a partly-owned subsidiary undertaking and not owing to another member of the Group shall (notwithstanding sub-paragraph (b) of this paragraph) be taken into account subject to the exclusion of a proportion of it equal to the minority proportion, and

money borrowed and owing to a partly-owned subsidiary undertaking by another member of the Group shall (subject to sub-paragraph (d) of this paragraph) be taken into account to the extent of a proportion of it equal to the minority proportion (and for the purpose of this sub-paragraph "minority proportion" means the proportion of the issued equity share capital of the partly-owned subsidiary undertaking which is not attributable, directly or indirectly, to the Company); and

- (d) in the case of money borrowed and owing to a partly-owned subsidiary undertaking by another partly-owned subsidiary undertaking the proportion which would otherwise be taken into account under sub-paragraph (c) of this paragraph shall be reduced by excluding such part of it as is equal to the proportion of the issued equity share capital of the borrowing subsidiary undertaking which is not attributable, directly or indirectly, to the Company.
- (4) In calculating the aggregate amount of borrowings for the purpose of this article, money borrowed by any member of the Group which is denominated or repayable in a currency other than sterling shall be treated as converted into sterling:
- (a) at the rate of exchange used for the conversion of that currency in the latest audited balance sheet of that member; or
  - (b) if no rate was so used, at the middle market rate of exchange prevailing in London at the close of business on the date of that balance sheet,
- but if the amount in sterling resulting from conversion at that rate would be greater than that resulting from conversion at the middle market rate prevailing in London at the close of business on the business day immediately preceding the day on which the calculation falls to be made, the latter rate shall apply instead.
- (5) No debt incurred or security given in respect of money borrowed or to be taken into account as money borrowed in excess of the above limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded, but no lender or other person dealing with the Company shall be concerned to see or enquire whether such limit is observed.
- (6) In this article references to a consolidated profit and loss account of the Group is to be taken:
- (a) in a case where the Company had no subsidiary undertakings at the relevant time, as references to the profit and loss account of the Company;
  - (b) in a case where the Company had subsidiary undertakings at the relevant time but there are no consolidated accounts of the Group, as references to the respective profit and loss accounts of the companies comprising the Group; and

- (c) in a case where the Company had subsidiary undertakings at the relevant time, one or more of which has, in accordance with the Acts, been excluded from consolidation as references to the consolidated profit and loss account of the Company and those of its subsidiary undertakings included in the consolidation.
110. The directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.

#### DELEGATION OF DIRECTORS' POWERS

111. (1) Subject to the provisions of these articles (including article 100), the directors may delegate any of the powers which are conferred on them under these articles:
- (a) to a committee consisting of one or more directors and (if thought fit) one or more other persons, provided that a majority of the members of the committee shall be directors and no resolution of the committee shall be effective unless a majority of those present when it is passed are directors; or
  - (b) to such person;
  - (c) by such means (including by power of attorney);
  - (d) to such an extent; and
  - (e) on such terms and conditions,
- as they think fit.
- (2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.
  - (3) Subject to the provisions of these articles, the directors may revoke any delegation in whole or part, or alter its terms and conditions, save that the delegation to the Audit Committee set out in articles 92 and 93 and/or the delegation to the Governance and Editorial Committee set out in article 139 may not be revoked.
  - (4) The power to delegate under this article includes power to delegate the determination of any fee, remuneration or other benefit which may be paid or provided to any director.
  - (5) Subject to paragraph (6) of this article, the proceedings of any committee appointed under paragraph (1)(a) of this article with two or more members shall be governed by such of these articles as regulate the proceedings of directors so far as they are capable of applying, and the quorum at a meeting of any such committee shall be two.
  - (6) Subject to the provisions of these articles, the directors may make rules regulating the proceedings of such committees, which shall prevail over any

rules derived from these articles pursuant to paragraph (5) of this article if, and to the extent that, they are not consistent with them, save that the directors may not make rules which relate to the Audit Committee and/or the Governance and Editorial Committee under this article 111(6) which are inconsistent with any of the other provisions of these articles.

112. Subject to the provisions of these articles (including article 100), the directors may, by power of attorney or otherwise, appoint any person, whether nominated directly or indirectly by the directors, to be the agent of the Company for such purposes and subject to such conditions as they think fit, and may delegate any of their powers to such an agent. Subject to the provisions of these articles, the directors may revoke or vary any such appointment or delegation and may also authorise the agent to sub-delegate all or any of the powers vested in him.

#### APPOINTMENT AND RETIREMENT OF DIRECTORS

113. (1) At the annual general meeting in every year there shall retire from office by rotation:
- (a) all directors who held office and were subject to retirement by rotation at the time of the two preceding annual general meetings and who did not retire by rotation at either of them; and
  - (b) such additional number of directors as shall, when aggregated with the number of directors retiring under paragraph (a) above, equal the Relevant Proportion, provided that:
    - (i) the provisions of this paragraph (b) shall only apply if the number of directors retiring under paragraph (a) above is less than the Relevant Proportion; and
    - (ii) subject to the provisions of the Acts and to the following provisions of these articles, the directors to retire under this paragraph (b) shall be those who have been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (2) In this article 113 "Relevant Proportion" shall mean:
- (a) one-third of the number of directors, in circumstances where the number of directors is three or a multiple of three; or
  - (b) in all other circumstances, the whole number which is nearest to but does not exceed one-third of the number of directors.

114. Subject to the provisions of the Acts and subject to the following provisions of these articles, the directors to retire by rotation shall include (so far as is necessary to obtain the number required) any director who wishes to retire and not to offer himself for re-election and otherwise shall be those who, at the date of the notice of meeting, have

been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

115. If the Company, at the meeting at which a director retires by rotation, does not fill the vacancy the retiring director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or a resolution for the reappointment of the director is put to the meeting and lost.
116. No person other than a director retiring at the meeting shall be appointed or reappointed a director at any general meeting unless:
  - (a) he is recommended by the directors; or
  - (b) not less than seven nor more than 42 days before the date appointed for holding the meeting, notice executed by a member qualified to vote on the appointment or reappointment has been given to the Company of the intention to propose that person for appointment or reappointment, stating the particulars which would, if he were appointed or reappointed, be required to be included in the Company's register of directors, together with notice executed by that person of his willingness to be appointed or reappointed.
117. At a general meeting a motion for the appointment of two or more persons as directors by a single resolution shall not be made, unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it, and for the purposes of this article a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.
118. Subject to the provisions of these articles, the Company may by ordinary resolution appoint a person who is willing to act as a director, and is permitted by law to do so, to be a director, either to fill a vacancy or as an additional director, and may also determine the rotation in which any additional directors are to retire.
119. Without prejudice to article 99, the directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed as the maximum number of directors. A director so appointed shall retire at the next following annual general meeting and shall then be eligible for reappointment and shall not be taken into account in determining the directors who are to retire by rotation at the meeting.
120. A director who retires at an annual general meeting may be reappointed. If he is not reappointed or deemed to have been reappointed, he shall retain office until the meeting appoints someone in his place or, if it does not do so, until the end of the meeting.

#### **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

121. In addition to any power of removal under the Acts, the Company may, by special resolution, remove a director before the expiration of his period of office and, subject to these articles, may, by ordinary resolution, appoint another person who is willing to act as a director and is permitted by law to do so, to be a director instead of him. A

person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed or reappointed a director.

122. The office of a director shall be vacated if:

- (a) he ceases to be a director by virtue of any provision of the Acts or he becomes prohibited by law from being a director; or
- (b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or
- (c) by reason of his mental health a court makes an order which wholly or partly prevents him from personally exercising any powers or rights he would otherwise have; or
- (d) he resigns his office by notice in writing to the Company; or
- (e) in the case of a director who holds any executive office, his appointment as such is terminated or expires and the directors resolve that he should cease to be a director; or
- (f) he is absent for more than six consecutive months without permission of the directors from meetings of the directors held during that period and the directors resolve that he should cease to be a director; or
- (g) he is requested in writing or using electronic communications by all the other directors to resign.

#### DIRECTORS' APPOINTMENTS AND INTERESTS

123. The directors may appoint one or more of their number to the office of chief executive or to any other executive office of the Company and, subject to the provisions of the Acts, any such appointment may be made for such term, at such remuneration and on such other conditions as the directors think fit. A chief executive shall be subject to retirement by rotation. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim for damages for breach of any contract of service between the director and the Company.

124. (1) Subject to the provisions of the Acts, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
- (b) may (or any firm of which he is a member may) act in a professional capacity for the Company or any other body in which the Company is otherwise interested; and
- (c) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is interested, and (i) he shall not by

reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate; (ii) he shall not infringe his duty to avoid a situation in which he has, or can have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company as a result of any such office or employment or any such transaction or arrangement or any interest in any such body corporate; (iii) he shall not be required to disclose to the Company, or use in performing his duties as a director of the Company, any confidential information relating to such office, employment or interest if to make such a disclosure or use would result in a breach of duty or obligation of confidence owed by him in relation to or in connection with such office, employment or interest; (iv) he may absent himself from discussions, whether in meetings of the directors or otherwise, and exclude himself from information, which will or may relate to such office, employment, transaction, arrangement or interest; and (v) no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

(2) For the purposes of this article:

- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
- (c) a director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of any body corporate in which the Company is interested.

125. (1) The directors may (subject to such terms and conditions, if any, as they may think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation) authorise, to the fullest extent permitted by law:

- (a) any matter which would otherwise result in a director infringing his duty to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest (including a conflict of interest and duty or conflict of duties); and
- (b) a director to accept or continue in any office, employment or position in addition to his office as a director of the Company and without prejudice to the generality of paragraph (1)(a) of this article may

authorise the manner in which a conflict of interest arising out of such office, employment or position may be dealt with, either before or at the time that such a conflict of interest arises,

provided that the authorisation is effective only if (i) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and (ii) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

- (2) If a matter, or office, employment or position, has been authorised by the directors in accordance with this article then (subject to such terms and conditions, if any, as the directors may think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation or the permissions set out below) -
- (a) the director shall not be required to disclose to the Company, or use in performing his duties as a director of the Company, any confidential information relating to such matter, or such office, employment or position if to make such a disclosure or use would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter, or that office, employment or position;
  - (b) the director may absent himself from discussions, whether in meetings of the directors or otherwise, and exclude himself from information, which will or may relate to that matter, or that office, employment or position; and
  - (c) a director shall not, by reason of his office as a director of the Company, be accountable to the Company for any benefit which he derives from any such matter, or from any such office, employment or position.

#### **DIRECTORS' GRATUITIES AND BENEFITS**

126. The directors may (by the establishment of, or maintenance of, schemes or otherwise) provide benefits, whether by the payment of allowances, gratuities or pensions, or by insurance or death, sickness or disability benefits or otherwise, for any director or any former director of the Company or of any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse or civil partner and a former spouse or former civil partner) or any person who is or was dependent on him and may (before as well as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

#### **PROCEEDINGS OF DIRECTORS**

127. (1) Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.
- (2) A director may, and the secretary at the request of a director shall, call a meeting of the directors by notice. A notice of a meeting of the directors shall

be deemed to be properly given to a director if given to him personally or sent to him at his last known address or any other address given by him to the Company for this purpose.

- (3) Questions arising at a meeting shall be decided by a majority of votes. A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote; and an alternate director who is appointed by two or more directors shall be entitled to a separate vote on behalf of each of his appointors in the appointor's absence.
128. No business shall be transacted at any meeting of the directors unless a quorum is present. The quorum at a meeting of the board of directors shall be three directors, which, to the extent that the business of a meeting involves the consideration of editorial or journalistic matters, must include an Independent Director with senior editorial and/or journalistic expertise. A director shall not be counted in the quorum present in relation to a matter or resolution on which he is not entitled to vote (or when his vote cannot be counted) but shall be counted in the quorum present in relation to all other matters or resolutions considered or voted on at the meeting. An alternate director who is not himself a director shall, if his appointor is not present but is entitled to be counted in the quorum, be counted in the quorum.
129. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.
130. The directors shall at any time elect from their number, and may remove, a chairman of the board of directors, who shall be an Independent Director. The chairman shall preside at all meetings of the directors, but if there is no chairman, or if at the meeting the chairman is not present within five minutes after the time appointed for the meeting, or if the chairman is not willing to act as chairman, the directors present may choose another Independent Director to be chairman of the meeting.
131. All acts done by a meeting of the directors, or of a committee of the directors, or by a person acting as a director, shall notwithstanding that it may afterwards be discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, or that the meeting was not quorate (provided that the directors present at the inquorate meeting believed, in good faith, that the meeting was quorate and made all such enquiries as were reasonable in the circumstances to establish that the meeting was quorate), be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote and that the meeting was quorate.
132. A resolution in writing agreed to by all the directors entitled to receive notice of a meeting of the directors or of a committee of the directors and who would be entitled to vote (and whose vote would have been counted) on the resolution at a meeting of the directors shall (if that number is sufficient to constitute a quorum) be as valid and effectual as if it had been passed at a meeting of the directors or (as the case may be) of that committee, duly convened and held. A resolution in writing is adopted when all such directors have signed one or more copies of it or have otherwise indicated

their agreement to it in writing. A resolution agreed to by an alternate director need not also be agreed to by his appointor and, if it is agreed to by a director who has appointed an alternate director, it need not also be agreed to by the alternate director in that capacity.

133. Without prejudice to paragraph (1) of article 127, a meeting of the directors or of a committee of the directors may consist of a conference between directors who are not all in one place, but each of whom is able (whether directly or by conference telephone or by any other form of communication equipment) to hear each of the other participating directors, and to speak to and be heard by each of the others simultaneously. A director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in the quorum accordingly and the word "meeting" in these articles shall be construed accordingly.

134. (1) Subject to any other provision of these articles, a director shall not vote at a meeting of the directors (or at a meeting of a committee consisting of one or more directors) on any resolution concerning a material matter in which he has, directly or indirectly, a material interest (other than an interest in shares, debentures or other securities of, or otherwise in or through, the Company), unless his interest arises only because the case falls within one or more of the following sub-paragraphs:

- (a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him at the request of, or for the benefit of, the Company or any of its subsidiaries;
- (b) the resolution relates to the giving to a third party of a guarantee, security, or indemnity in respect of a debt or obligation of the Company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
- (c) the resolution relates to the giving to him of any other indemnity which is on substantially the same terms as indemnities given or to be given to all of the other directors and/or to the funding by the Company of his expenditure on defending proceedings or the doing by the Company of anything to enable him to avoid incurring such expenditure where all other directors have been given or are to be given substantially the same arrangements;
- (d) his interest arises by virtue of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any shares in or debentures or other securities of the Company for subscription, purchase or exchange;
- (e) the resolution relates to an arrangement for the benefit of the employees and directors and/or former employees and directors of the Company or any of its subsidiaries, and/or the members of their families (including a spouse or civil partner or a former spouse or former civil partner) or any person who is or was dependent on such

persons, including but without being limited to a retirement benefits scheme and an employees' share scheme, which does not accord to any director any privilege or advantage not generally accorded to the employees and/or former employees to whom the arrangement relates; and

- (f) the resolution relates to the purchase or maintenance for any director or directors of insurance against any liability.
- (2) For the purposes of paragraph (1) of this article,
- (a) an interest of any person who is a connected person of a director within the meaning of section 252 of the Companies Act 2006 shall be taken to be the interest of that director and, in relation to an alternate director, an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise; and
  - (b) without prejudice to the generality of paragraph (1) of this article, a director shall be considered to be interested in a matter if it relates to a transaction or arrangement with a person or body corporate of or in which he is an officer, employee, shareholder, consultant, adviser or representative or in which he is otherwise interested.
- (3) Where proposals are under consideration concerning the appointment (including the fixing or varying of terms of appointment) of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested, the proposals may be divided and considered in relation to each director separately and (provided he is not for any reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
135. The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these articles prohibiting a director from voting at a meeting of the directors or of a committee of the directors or ratify any transaction not duly authorised by reason of contravention of any such provision.
136. If a question arises at a meeting of the directors, or a meeting of a committee of the directors, as to the right of a director to vote, including whether a director has a material interest and/or whether a matter is material for the purposes of article 134, the question may, before the conclusion of the meeting, be decided by a resolution of a majority of directors present at the meeting (other than the director concerned and any other director having a like interest as such director) and such resolution shall be final and conclusive.

#### **GOVERNANCE AND EDITORIAL COMMITTEE**

137. For so long as News Corporation in combination with any member(s) of the same Group of Interconnected Bodies Corporate as News Corporation does not control more than 50% of the votes capable of being cast at a general meeting of the

Company, the Company shall establish and maintain a Governance and Editorial Committee.

138. The Governance and Editorial Committee shall be chaired by an Independent Director and shall consist of directors of the Company provided that a majority of the Governance and Editorial Committee shall consist of Independent Directors. At least one of the Independent Directors sitting on the Governance and Editorial Committee shall be a person with senior editorial and/or journalistic experience.
139. The Governance and Editorial Committee shall:
- (1) oversee compliance by the Company with the Governance and Editorial Committee Matters;
  - (2) operate under terms of reference which shall stipulate that the Governance and Editorial Committee will:
    - (a) be adequately resourced and have powers to review and investigate all areas within the remit of the Governance and Editorial Committee;
    - (b) meet at least four times a year;
    - (c) report on a regular basis to the Company's board of directors;
    - (d) cause a statement to be included in the Company's annual report on its activities including its oversight functions relating to the Governance and Editorial Committee Matters;
    - (e) consider any representation made by the Head of Sky News as to the Company's compliance with articles 90 and 91 and report any such representations to the board of the Company; and
    - (f) advise the Company's board of directors on any issues within its remit, including any approvals specified in article 91; and
  - (3) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic experience is present.
140. Subject to the provisions of these articles, the terms of reference of the Governance and Editorial Committee shall be determined by the Company's board of directors.

#### AUDIT COMMITTEE

141. The Company shall establish and maintain an Audit Committee, which shall consist exclusively of Independent Directors and will have the power to approve the transactions referred to in articles 92 and 93.
142. Subject to the provisions of these articles, the terms of reference of the Audit Committee shall be determined by the Company's board of directors.

#### MINUTES

143. The directors shall cause minutes to be made in books kept for the purpose:

- (a) of all appointments of officers made by the directors; and
- (b) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company, and of the directors, and of committees of the directors, including the names of the directors present at each such meeting.

Minutes shall be retained for at least ten years from the date of the appointment or meeting and shall be kept available for inspection in accordance with the Acts.

144. Any such minutes, if purporting to be signed by the chairman of the meeting to which they relate or of the meeting at which they are read, shall be sufficient evidence without any further proof of the facts therein stated.

#### SECRETARY

145. Subject to the provisions of the Acts, the secretary shall be appointed by the directors for such term, at such remuneration and on such other conditions as they think fit; and any secretary so appointed may be removed by them.

#### THE SEAL

146. The seal shall be used only by the authority of a resolution of the directors or of a committee of the directors. The directors may determine whether any instrument to which the seal is affixed, shall be signed and, if it is to be signed, who shall sign it. Unless otherwise determined by the directors:
- (a) share certificates and, subject to the provisions of any instrument constituting the same, certificates issued under the seal in respect of any debentures or other securities, need not be signed and any signature may be applied to any such certificate by any mechanical or other means or may be printed on it; and
  - (b) every other instrument to which the seal is affixed shall be signed by two authorised persons or by a director in the presence of a witness who attests the signature and for this purpose an authorised person is any director or the secretary of the Company.
147. Subject to the provisions of the Acts, the Company may have an official seal for use in any place.

#### DIVIDENDS

148. Subject to the provisions of the Acts, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.
149. Subject to the provisions of the Acts, the directors may pay interim dividends of such amounts and on such dates and in respect of such periods as they may think fit if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if at the time of payment, any preferential dividend is in arrear. The directors may also pay at intervals settled by them any dividend payable at a

fixed rate if it appears to them that the profits available for distribution justify the payment. If the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

150. Subject to the provisions of the Acts and except as otherwise provided by these articles or the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. If any share is issued on terms that it ranks for dividend as from a particular date, it shall rank for dividend accordingly. In any other case (and except as aforesaid), dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. For the purpose of this article, an amount paid up on a share in advance of a call shall be treated, in relation to any dividend declared after the payment but before the call, as not paid up on the share.

151. A general meeting declaring a dividend may, upon the recommendation of the directors, by ordinary resolution direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to the distribution, the directors may settle the same as they think fit and in particular (but without limitation) may issue fractional certificates (or ignore fractions) and fix the value for distribution of any assets, and may determine that cash shall be paid to any member on the basis of the value so fixed in order to adjust the rights of members, and may vest any assets in trustees.

152. (1) Any dividend or other money payable in respect of a share may be paid by cheque or warrant sent by post to the registered address of the person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of that one of those persons who is first named in the register of members or to such person and to such address as the person or persons entitled may by notice direct. Every cheque or warrant shall be made payable to the order of or to the person or persons entitled or to such other person as the person or persons entitled may by notice direct and payment of the cheque or warrant shall be a good discharge to the Company. Any such dividend or other money may also be paid by any other method (including direct debit and bank transfer or, in respect of shares in uncertificated form, where the Company is authorised to do so by or on behalf of the holder or joint holders, in such manner as the directors may from time to time consider sufficient, by means of a relevant system) which the directors consider appropriate. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other money payable in respect of the share.

(2) The Company may cease to send any cheque or warrant (or to use any other method of payment) for any dividend payable in respect of a share if:

(a) in respect of at least two consecutive dividends payable on that share the cheque or warrant has been returned undelivered or remains uncashed (or that other method of payment has failed); or

(b) following one such occasion, reasonable enquiries have failed to establish any new address of the holder,

but, subject to the provisions of these articles, shall recommence sending cheques or warrants (or using another method of payment) for dividends payable on that share if the person or persons entitled so request and have supplied in writing a new address or account to be used for that purpose.

153. No dividend or other money payable in respect of a share shall bear interest against the Company, unless otherwise provided by the rights attached to the share.
154. Any dividend which has remained unclaimed for 12 years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company.
155. The directors may, with the authority of an ordinary resolution of the Company, offer any holders of ordinary shares the right to elect to receive ordinary shares, credited as fully paid, instead of cash in respect of the whole (or some part, to be determined by the directors) of any dividend specified by the ordinary resolution. The following provisions shall apply:
  - (a) The said resolution may specify a particular dividend (whether or not declared), or may specify all or any dividends declared or payable within a specified period, but such period may not end later than the beginning of the fifth annual general meeting next following the date of the meeting at which the ordinary resolution is passed.
  - (b) The entitlement of each holder of ordinary shares to new ordinary shares shall be such that the relevant value of the entitlement shall be as nearly as possible equal to (but not greater than) the cash amount (disregarding any tax credit) that such holder would have received by way of dividend. For this purpose "relevant value" shall be calculated by reference to the average of the middle market quotations for the Company's ordinary shares on the London Stock Exchange as derived from the Daily Official List, for the day on which the ordinary shares are first quoted "ex" the relevant dividend and the four subsequent dealing days, or in such other manner as may be determined by or in accordance with the ordinary resolution. A certificate or report by the auditors as to the amount of the relevant value in respect of any dividend shall be conclusive evidence of that amount.
  - (c) No fraction of a share shall be allotted and the directors may deal with any fractions which arise as they think fit.
  - (d) The directors shall, after determining the basis of allotment, notify the holders of ordinary shares in writing of the right of election offered to them, and specify the procedure to be followed and place at which, and the latest time by which, elections must be received in order to be effective.
  - (e) The directors may exclude from any offer any holders of ordinary shares where the directors believe that the making of the offer to them would or might involve the contravention of the laws of any territory or that for any other reason the offer should not be made to them.
  - (f) The dividend (or that part of the dividend in respect of which a right of election has been given) shall not be payable on ordinary shares in respect of which an election has been duly made ("the elected ordinary shares") and

instead additional ordinary shares shall be allotted to the holders of the elected ordinary shares on the basis of allotment determined as aforesaid. For such purpose the directors shall capitalise out of any amount for the time being standing to the credit of any reserve or fund (including any share premium account or capital redemption reserve) or any of the profits which could otherwise have been applied in paying dividends in cash, as the directors may determine, a sum equal to the aggregate nominal amount of the additional ordinary shares to be allotted on that basis and apply it in paying up in full the appropriate number of unissued ordinary shares for allotment and distribution to the holders of the elected ordinary shares on that basis.

- (g) The directors shall not proceed with any election unless the Company has sufficient reserves or funds that may be capitalised to give effect to it after the basis of allotment is determined.
- (h) The additional ordinary shares when allotted shall rank pari passu in all respects with the fully paid ordinary shares then in issue except that they will not be entitled to participation in the dividend in lieu of which they were allotted.
- (i) The directors may do all acts and things which they consider necessary or expedient to give effect to any such capitalisation, and may authorise any person to enter on behalf of all the members interested into an agreement with the Company providing for such capitalisation and incidental matters and any agreement so made shall be binding on all concerned.

#### CAPITALISATION OF PROFITS.

156. (1) The directors may with the authority of an ordinary resolution of the Company:
- (a) subject as hereinafter provided, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of any reserve or fund of the Company (including any share premium account or capital redemption reserve);
  - (b) appropriate the sum resolved to be capitalised to the members in proportion to the nominal amounts of the shares (whether or not fully paid) held by them respectively which would entitle them to participate in a distribution of that sum if the shares were fully paid and the sum were then distributable and were distributed by way of dividend and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full shares or debentures of the Company of a nominal amount equal to that sum, and allot such shares or debentures credited as fully paid to those members or as they may direct, in those proportions, or partly in one way and partly in the other, but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this article, only be applied in paying up shares to be allotted to members credited as fully paid;

- (c) resolve that any shares so allotted to any member in respect of a holding by him of any partly paid shares shall so long as such shares remain partly paid rank for dividend only to the extent that the latter shares rank for dividend;
  - (d) make such provision by the issue of fractional certificates (or by ignoring fractions) or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable in fractions;
  - (e) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for the allotment to them respectively, credited as fully paid, of any further shares to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all such members; and
  - (f) generally do all acts and things required to give effect to such resolution as aforesaid.
- (2) Where, pursuant to an employees' share scheme (within the meaning of section 1166 of the Companies Act 2006) the Company has granted options to subscribe for shares on terms which provide (inter alia) for adjustments to the subscription price payable on the exercise of such options or to the number of shares to be allotted upon such exercise in the event of any increase or reduction in or other reorganisation of the Company's issued share capital and an otherwise appropriate adjustment would result in the subscription price for any share being less than its nominal value, then, subject to the provisions of the Acts, the directors may, on the exercise of any of the options concerned and payment of the subscription price which would have applied had such adjustment been made, capitalise any such profits or other sum as is mentioned in paragraph (1)(a) above to the extent necessary to pay up the unpaid balance of the nominal value of the shares which fall to be allotted on the exercise of such options and apply such amount in paying up such balance and allot shares fully paid accordingly. The provisions of paragraphs (1)(a) to (f) above shall apply mutatis mutandis to this paragraph (but as if the authority of an ordinary resolution of the Company were not required).

#### RECORD DATES

157. Notwithstanding any other provision of these articles, but without prejudice to the rights attached to any shares, the Company or the directors may fix a date as the record date by reference to which a dividend will be declared or paid or a distribution, allotment or issue made, and that date may be before, on or after the date on which the dividend, distribution, allotment or issue is declared, paid or made (as the case may be). Where such a record date is fixed, references in these articles to a holder of shares or member to whom a dividend is to be paid or a distribution, allotment or issue is to be made shall be construed accordingly.

#### ACCOUNTS

158. No member (other than a director) shall have any right of inspecting any accounting record or other document of the Company, unless he is authorised to do so by statute, by order of the court, by the directors or by ordinary resolution of the Company.

#### NOTICES AND OTHER COMMUNICATIONS

159. Any notice to be given to or by any person pursuant to these articles shall be in writing other than a notice calling a meeting of the directors which need not be in writing.
160. (1) Any notice, document or information may (without prejudice to articles 163 and 164) be given, sent or supplied by the Company to any member either:-
- (a) personally; or
  - (b) by sending it by post in a prepaid envelope addressed to the member at his registered address or postal address given pursuant to article 160(4), or by leaving it at that address; or
  - (c) by sending it in electronic form to a person who has agreed (generally or specifically) that the notice, document or information may be sent or supplied in that form (and has not revoked that agreement); or
  - (d) subject to the provisions of the Acts, by making it available on a website, provided that the requirements in article 160(2) are satisfied.
- (2) The requirements referred to in article 160(1)(d) are that: -
- (a) the member has agreed (generally or specifically) that the notice, document or information may be sent or supplied to him by being made available on a website (and has not revoked that agreement), or the member has been asked by the Company to agree that the Company may send or supply notices, documents and information generally, or the notice, document or information in question, to him by making it available on a website and the Company has not received a response within the period of 28 days beginning on the date on which the Company's request was sent and the member is therefore taken to have so agreed (and has not revoked that agreement);
  - (b) the member is sent a notification of the presence of the notice, document or information on a website, the address of that website, the place on that website where it may be accessed, and how it may be accessed ("notification of availability");
  - (c) in the case of a notice of meeting, the notification of availability states that it concerns a notice of a company meeting, specifies the place, time and date of the meeting, and states whether it will be an annual general meeting; and
  - (d) the notice, document or information continues to be published on that website, in the case of a notice of meeting, throughout the period beginning with the date of the notification of availability and ending

with the conclusion of the meeting and in all other cases throughout the period specified by any applicable provision of the Acts, or, if no such period is specified, throughout the period of 28 days beginning with the date on which the notification of availability is sent to the member, save that if the notice, document or information is made available for part only of that period then failure to make it available throughout that period shall be disregarded where such failure is wholly attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid.

- (3) In the case of joint holders of a share:-
- (a) it shall be sufficient for all notices, documents and other information to be given, sent or supplied to the joint holder whose name stands first in the register of members in respect of the joint holding (the "first named holder") only; and
  - (b) the agreement of the first named holder that notices, documents and information may be given, sent or supplied in electronic form or by being made available on a website shall be binding on all the joint holders.
- (4) A member whose registered address is not within the United Kingdom shall not be entitled to receive any notice, document or information from the Company unless he gives to the Company an address (not being an electronic address) within the United Kingdom at which notices, documents or information may be given to him.
- (5) For the avoidance of doubt, the provisions of this article 160 are subject to article 57.
- (6) The Company may at any time and at its sole discretion choose to give, send or supply notices, documents and information only in hard copy form to some or all members.
161. A member present either in person or by proxy, or in the case of a corporate member by a duly authorised representative, at any meeting of the Company or of the holders of any class of shares shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
162. (1) Any notice to be given to a member may be given by reference to the register of members as it stands at any time within the period of 15 days before the notice is given; and no change in the register after that time shall invalidate the giving of the notice.
- (2) Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register of members, has been given to the person from whom he derives his title; but this paragraph does not apply to a notice given under section 793 of the Companies Act 2006.
163. Subject to the Acts, where by reason of the suspension or curtailment of postal services within the United Kingdom, the Company is unable effectively to give notice

of a general meeting, the general meeting may be convened by a notice advertised in two national daily newspapers published in the United Kingdom. The Company shall send a copy of the notice to members in the same manner as it sends notices under article 160 if at least seven clear days before the meeting the posting of notices to addresses throughout the United Kingdom again becomes practicable.

164. Subject to the Acts, any notice, document or information to be given, sent or supplied by the Company to the members or any of them, not being a notice to which article 163 applies, shall be sufficiently given, sent or supplied if given by advertisement in at least one leading national daily newspaper published in the United Kingdom.
165. Any notice, document or information given, sent or supplied by the Company to the members or any of them:-
- (a) by post, shall be deemed to have been received 24 hours after the time at which the envelope containing the notice, document or information was posted unless it was sent by second class post or there is only one class of post, or it was sent by air mail to an address outside the United Kingdom, in which case it shall be deemed to have been received 48 hours after it was posted. Proof that the envelope was properly addressed, prepaid and posted shall be conclusive evidence that the notice, document or information was sent;
  - (b) by advertisement, shall be deemed to have been received on the day on which the advertisement appears;
  - (c) by electronic means, shall be deemed to have been received 24 hours after it was sent. Proof that a notice, document or information in electronic form was addressed to the electronic address provided by the member for the purpose of receiving communications from the Company shall be conclusive evidence that the notice, document or information was sent;
  - (d) by making it available on a website, shall be deemed to have been received on the date on which notification of availability on the website is deemed to have been received in accordance with this article or, if later, the date on which it is first made available on the website;
  - (e) by means of a relevant system, shall be deemed to have been received 24 hours after the Company, or any sponsoring system participant acting on the Company's behalf, sends the issuer-instruction relating to the notice, document or information.
166. Any notice document or information may be given, sent or supplied by the Company to the person entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it in any manner authorised by these articles for the giving of notice to a member addressed to that person by name, or by the title of representative of the deceased or trustee of the bankrupt or by any like description, at the address, if any, within the United Kingdom supplied for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

167. If on three consecutive occasions notices, documents or information sent or supplied to a member have been returned undelivered, the member shall not be entitled to receive any subsequent notice, document or information until he has supplied to the Company (or its agent) a new registered address or a postal address within the United Kingdom, or (without prejudice to article 160(4)) shall have informed the Company, in such a manner as may be specified by the Company, of an electronic address. For the purposes of this article, references to notices, documents or information include references to a cheque or other instrument of payment; but nothing in this article shall entitle the Company to cease sending any cheque or other instrument of payment for any dividend, unless it is otherwise so entitled under these articles.
168. Where a document is required under these articles to be signed by a member or any other person, if the document is in electronic form, then in order to be valid the document must either:
- (a) incorporate the electronic signature, or personal identification details (which may be details previously allocated by the Company), of that member or other person, in such form as the directors may approve, or
  - (b) be accompanied by such other evidence as the directors may require in order to be satisfied that the document is genuine.

The Company may designate mechanisms for validating any such document and a document not validated by the use of any such mechanisms shall be deemed as having not been received by the Company. In the case of any document or information relating to a meeting, an instrument of proxy or invitation to appoint a proxy, any validation requirements shall be specified in the relevant notice of meeting in accordance with articles 56 and 84.

#### DESTRUCTION OF DOCUMENTS

169. (1) The Company may destroy:
- (a) any instrument of transfer, after six years from the date on which it is registered;
  - (b) any dividend mandate or notification of change of name or address, after two years from the date on which it is recorded;
  - (c) any share certificate, after one year from the date on which it is cancelled; and
  - (d) any other document on the basis of which an entry in the register of members is made, after six years from the date on which it is made.
- (2) Any document referred to in paragraph (1) of this article may be destroyed earlier than the relevant date authorised by that paragraph, provided that a permanent record of the document is made which is not destroyed before that date.
- (3) It shall be conclusively presumed in favour of the Company that every entry in the register of members purporting to have been made on the basis of a document destroyed in accordance with this article was duly and properly

made, that every instrument of transfer so destroyed was duly registered, that every share certificate so destroyed was duly cancelled, and that every other document so destroyed was valid and effective in accordance with the particulars in the records of the Company, provided that:

- (a) this article shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties to it) to which the document might be relevant;
- (b) nothing in this article shall be construed as imposing upon the Company any liability in respect of the destruction of any such document otherwise than in accordance with this article which would not attach to the Company in the absence of this article; and
- (c) references in this article to the destruction of any document include references to the disposal of it in any manner.

#### WINDING UP

170. If the Company commences liquidation, the liquidator may, with the sanction of a special resolution and any other sanction required by law, subject to the provisions of the Acts divide among the members in specie the whole or any part of the assets, whether they shall consist of property of the same kind or not, of the Company and may, for that purpose, value any assets as he deems fair and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he may with the like sanction determine, but no member shall be compelled to accept any assets upon which there is a liability.

#### INDEMNITY

171. Subject to the provisions of the Acts, the Company may:
- (a) indemnify to any extent any person who is or was a director, or a director of any associated company, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company; and/or
  - (b) indemnify to any extent any person who is or was a director of an associated company that is a trustee of an occupational pension scheme, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any liability incurred by him in connection with the company's activities as trustee of an occupational pension scheme; and/or
  - (c) purchase and maintain insurance for any person who is or was a director, or a director of any associated company, against any loss or liability or any expenditure he may incur, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company.

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## Summary of responses to the consultation seeking views on the undertakings offered by News Corporation 3 March – 21 March 2011

We received submissions from a range of stakeholders.

### 1. Commercial and professional organisations

- BT
- Slaughter and May on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group
- Virgin Media
- Trinity Mirror PLC
- DTT Multiplex Operators Limited

### 2. Lobbying groups

- DLA Piper on behalf of Avaaz

### 3. Academic and industry observers

- Steve Barnett
- Bournemouth Media School, Bournemouth University
- Communications and Media Research Institute (CAMRI)
- Jewish Funds for Justice
- Media Matters for America
- UK Coalition for Cultural Diversity
- Campaign for Press and Broadcasting Freedom

### 4. Unions

- TUC
- BECTU
- National Union of Journalists, Parliamentary Group
- National Union of Journalists

### 5. Direct submissions from individuals and MPs

### 6. Over 40,000 individuals via an online campaign organised by Avaaz

## Annex

## Analysis of Responses

1. Responses from commercial and professional organisations

BT – (redacted version)

- BT expressed concern that News Corp has full control of Sky News for 9 month interim period when it can influence Sky News' future agenda. 3 months normally considered the maximum acceptable period. UILs will not prevent News Corp interfering in Sky News during this time, nor prevent the sharing of confidential information between News Corp and Sky News.
- BT considers that the UILs pave the way for News Corp to make a full bid for Sky News in 10 years' time. The impending expiry of the carriage agreement between BSkyB and Sky News that underpins viability of Newco will make it less attractive to competing bidders. The acquisition of further shares by News Corp in 10 years may not trigger a control review.
- **Not independently viable:** the UILs do not ensure the Newco is independently viable in terms of voting rights, directorships, the web of contracts between News Corp/BSkyB and Sky News and the insufficiency of independent contracts for Sky News.
- **Voting rights may be used by News Corp to undermine the UILs:** BT argues that as News Corp through BSkyB is likely to have a majority of voting rights at general meetings of Newco, it will enable BSkyB to block important resolutions. This could give News Corp control over an important source of funding for Newco and a share issue may be blocked by BSkyB.
- Newco will have no independent way of raising money and all Newco's revenue streams will have to come from third party contracts. BT says that third party contracts are a fragile basis for funding particularly when the principal contract Newco relies on is the carriage agreement. The UILs should ensure that Newco's borrowing powers are enshrined in the Articles.
- **The independence of the board is not guaranteed** since only one independent director has to have senior editorial/journalistic experience, this may result in a majority of industry experts on Sky News Board being BSkyB appointees. The single expert independent director will be the lynchpin for guaranteeing the board's independence and the UILs do not provide enough support; no fellow independent expert board members, no requirement that they should be present at meetings, no provision to cover for any long term absence.
- BT said independent non-experts may not have the experience required to probe some of the more complex board proposals.
- **Contracts can be used to frustrate the undertakings:** All of Newco's contracts will be with BSkyB and that this will give News Corp multiple opportunities to use BSkyB's contractual rights to frustrate the UILs. BT referred to a number of points as examples which are set out below:
  - The 10 year carriage agreement is not long enough to secure Newco's independence.
  - BT was concerned that the Brand Licensing Agreement might be used as a control mechanism by News Corp; the example given was an

- obligation not to denigrate the brand could be used to control Newco's activities.
- BT thought that it was not satisfactory that the Carriage Agreement should end once the Brand Licensing Agreement ceases as they believe this prevents Newco from ending the Brand Licensing Agreement after the initial 7 year term in readiness for the Carriage Agreement elapsing.
  - BT said that BskyB and Newco being required to share premises and facilities for 15 years is all to BskyB's advantage as it will bring huge scope for fertilisation and influence. BT said that the UILs should ensure that News Corp provides Newco with the financial means to be physically separate.
  - BT say that the UILs should require advertising to be handled by a third party albeit funded by BskyB, as BskyB may otherwise try to secure terms that advantage News Corp or BskyB instead of securing the most attractive financial deal for Sky News.
- **News Corp can reacquire Newco after 10 years:** BT states that the impending expiry of the carriage agreement between BskyB and Sky News will make Newco less attractive to other bidders, leaving the field open for News Corp. BT's concern is that a bid for Newco would not necessarily trigger the merger control provisions of the Enterprise Act as: gross assets may be below the £70 million threshold and may not increase a share of supply of 25% or more.
  - BT believes that the Audit Committees powers are too vague to be effective. The corporate governance and editorial committee's powers are central to the UILs and are insufficiently defined. The UILs should set out Newco's obligations in greater detail including a requirement for breaches to be reported to the Editorial Committee and then reported to OFT or Ofcom who should be given formal responsibility for supervision of the operation of the UILs. UILs should require the head of Sky News to make representations to the Editorial committee on compliance with the principle of editorial independence.
  - BT also state that there should be a requirement in the UILs for News Corp and BskyB not to discriminate against Newco in their commercial deals, and to grant Newco no less favourable terms than a third party.
  - BT in conclusion consider that the UILs pave the way for News Corp to make full bid for Sky News in 10 years' time and that the proposal should be referred to the Competition Commission to unpick the complexities of the UIL and ensure future of media plurality.

**DTT Multiplex Operators Limited (DMOL) (redacted version)**

- DTT Multiplex operators limited noted that New Corporation have undertaken to use all reasonable endeavours to transfer or make available to Newco capacity for one standard definition channel until the expiry of Sky's existing agreement in respect of broadcast of Sky News and ensure that Newco is provided with an EPG slot which is no work than Sky News current slot on Sky Platform.
- DMOL then noted that Sky has refused to enter into a LCN (Logical Channel Numbers) agreement or have discussions with DMOL about them. DMOL are

concerned that News Corporation's endeavours regarding Newco EPG slot are limited to Sky Platform alone and no consideration has been given to the provision of the Newco EPG slot on DTT. DMOL feel that Newco will have a more favourable view and long term commitment to the DTT platform.

- DMOL suggested that Secretary of State makes an LCN agreement by Sky with DMOL for Sky News a requirement of the acquisition and the agreement allows Sky News to take advantage of the DMOL LCN policy.
- DMOL confirmed that if Newco do not sign a DMOL LCN Agreement or receive the benefit of such an agreement via Sky it risks losing security over its current LCN and continued engineering support from DMOL for service information related changes.

**Slaughter and May on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group— sent to Hugh Robertson MP and then forwarded.**

- A letter was sent on behalf of the alliance of media organisation setting out why they believe the proposed undertaking will be ineffective and not achieve their stated aim of protecting plurality in news media. It also set out arguments why the UILs should not be accepted and the matter referred to the Competition Commission.
- **The letter argued that Newco will be in a state of economic dependency vis a vis News Corporation** as will rely on News Corp for 85% of its revenue and for access to the market via digital satellite BSkyB platform. Newco will also be tied into the royalty bearing brand licensing agreement with News Corp for the Sky News and other associated brands. It is felt that this will provide a means for News Corp to exert influence.
- **The safeguards for editorial independence are weak and of the sort that News Corporation has previously been adept at undermining.** Only one of the independent directors of Newco will be required to have editorial or senior journalistic experience. The remedy relies on an unspecified principle of editorial independence and the safeguards for staff are too legalistic and written in employment terms. They require editorial staff to put themselves into dispute with employers in defence of editorial independence which is regarded as an extreme and risky step. The proposal for a subcommittee of main board of Newco to oversee this is a remedy precisely of the sort that has previously been undermined by the News Corporation.
- **Neither OFCOM or OFT regard this remedy as a sustainable solution.** The Alliance feel that OFCOM's and OFT's advice about the proposed remedy only being effective in the short to medium term does not amount to advice as to the appropriate duration of the remedy.
- **The proposed consultation is insufficient** The alliance do not regard it as practically possible to prepare review and anticipate the complex effects of the proposals in a two week consultation period especially as some of the key elements of the arrangements have not been made public.
- **The remedy puts too much power in the hands of the Culture Secretary rather than independent regulators.** The alliance mention that 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. The undertakings to protect independence would be extinguished should News Corporation acquire over 50% of Newco. It was mentioned that this would require the consent of and consultation by the Culture Secretary. There were concerns that if it were 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.

- **The law to protect plurality has failed and needs urgent strengthening**  
The alliance agree with OFCOM that the current laws protecting plurality do not work well and 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. They feel that the need for a review is intensified by the increase in market power that will be exerted by the merged News Corporation/BSkyB entity. They feel they 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.

**Virgin** (redacted)

**Trinity Mirror PLC** (also part of the Group of Media companies – but they submitted a separate submission)

- Trinity Mirror PLC (TM) believes that the proposed merger would have profound implications for their businesses, and also on plurality in the UK.
- They say Sky News's audience is boosted by being heavily promoted on other BskyB channels. Under the new arrangements will Sky News be charged "rate card" for the time paid for advertising? If the time is to be given free or at a discount, Sky News becomes further beholden to BskyB and therefore News Corporation and if it loses viewers it will become less viable.
- They doubt that Newco will have freely and publicly tradable shares.
- TM do not feel that the governance provisions in the remedy proposal can safeguard Sky News' editorial independence in circumstances where it is financially and commercially dependent on News Corporation.
- They mention that previous experience show that obligations of this type have not prevented News Corporation from influencing editorial policy.
- They also feel that you can rely on the independent directors to act as the guardians of editorial independence. They mention that the independent directors will have a legal obligation to promote the best commercial interest of Sky News, which equates to maintaining the financial support of News Corporation on which Sky news will be dependent.
- They feel that in reality there will be no independent external oversight of Sky News editorial policy.

## 2. Lobbying groups who responded

**DLA Piper** (submitted their response on behalf of Avaaz – the company responsible for the internet generated letters)

DLA Piper/Avaaz believe that the proposed acquisition should be referred to the Competition Commission on the grounds that for News Corp to have 100% ownership of BskyB in addition to 37% of the UK newspaper market gives one enterprise and one individual too much control of the media. Moreover the UILs are insufficient to prevent News Corp exercising a significant degree of control. Given that there has been a month of negotiations 'behind closed doors', 17 days for public consultation is insufficient to take account the significant public concerns expressed.

However, if the Secretary of State decides accept the UILs and not refer the proposed acquisition, the DLA Piper submission comments on ways in which the UILs must be strengthened:

- Media Plurality should be protected permanently and not just for 10 years.
- Completion of the acquisition should be delayed until after Sky News has been spun off.
- A Monitoring Trustee should be appointed to supervise the negotiations on the commercial contracts and spin off of Sky news.
- Newscorp to have limited voting rights to avoid it having *de facto* control over Sky News.
- Ensure that Sky News can become financially independent. The terms of commercial agreements should be improved including a requirement that they should be on fair and reasonable terms and terminable by Sky News.
- More active monitoring by strengthening the obligations regarding compliance and reporting on adherence to the UILs including financial penalties for breach given upfront.
- Impose a non-compete obligation on Newscorp so that it cannot circumvent the UIL and undermine Sky News.

#### **Letter from Avaaz of 20 April**

This is Avaaz's record of a meeting with the Secretary of State on 15 April.)

- The Secretary of State is reported to have said that News Corp's 8th April admission of liability on phone hacking is not relevant to the BskyB deal.
- When the Secretary of State issued the European intervention notice on the takeover, he was unaware of relevant matters that now give rise to additional public interest considerations. This makes the original notice defective and invalid and obliges him to issue a fresh notice specifying all of the public interest considerations that now arise.
- The announcement on 8th April shows that News Corp is not a suitable guardian of our media standards, that its owners are not fit and proper people as set out in the 2003 Communications Act, and that they cannot be trusted to implement in good faith the letter or spirit of the undertakings they have proposed.
- The Secretary of State should delay announcement on the merger, and to issue a new European intervention notice expanding the scope to look at media standards and fit and proper persons owning our media. He should not take an inappropriately narrow interpretation of his powers, but rather to interpret them broadly so as to safeguard the public interest.

### 3. Responses from Academic and noted industry observers

#### **Patricia Holland, Senior Lecturer, Bournemouth Media School**

- It was stated that if the acquisition were to go ahead UILs will not guarantee the editorial or operational independence of Sky News as the new company will be partially controlled by News Corporation. The UILs also leave open the possibility after 10 years that Sky News may be fully owned by News Corp.
- The problem of market dominance and plurality of provision extends across the broadcasting genres, and is not confined to news.
- It was also noted that the strength and international reputation of UK broadcasting has been built on an ecology which balances provision from the publicly funded BBC with that from a range of different commercially funded companies. Pluralism in provision has meant vigorous competition for quality and audiences between the differently funded organisations and between the different commercial companies resulting in a breadth and diversity which benefits all parts of the viewing and listening audience.
- Ms Holland also referred to the media analyst Claire Enders who pointed out in her report of Sept 2010 that Sky is already bigger than the BBC in broadcasting revenues. Sky could grow to control 50% of the newspaper and television markets respectively. Consequences are cultural as well as financial and affect the broad range of programming especially the domestically produced programming.
- The issue of cultural consequences of having a dominance of a powerful internationally company need to be addressed but are outside the terms of reference of the Competition Commission.
- She concluded that the Secretary of State should refer the proposal to the Competition Commission and take into account the aspects which are not within the Competition Commission's remit.

#### **Campaign for Press and Broadcasting freedom (CPBF)**

CPBF do not believe undertakings address the concerns they expressed in original Ofcom submission and events since have highlighted the inadequacy of UK media ownership law and regulation.

- Argued to Ofcom that takeover would "represent a transformative shift in UK media ownership"
- Consultation fundamentally flawed because it excluded any competition aspects of the proposed merger and narrows discussion on the viability or otherwise of undertakings regarding Newco.
- Issue of Sky News, though important in terms of plurality of news, is marginal in terms of the overall impact the merger would have on UK media. From News Corps perspective the obligation to fund Sky News is a minor concession to gain full control of the profits B SkyB will generate in the future.
- Argues that the proposed merger raises both competition and media plurality issues which are inextricably linked and that EC ruling does not directly address the impact on the domestic UK media market and still allows UK to "take appropriate measures, including prohibiting proposed transactions to protect legitimate interests, such as the plurality of the media".

- Argues that News Corp wants BSkyB for two reasons:
  - BSkyB has already invested heavily in its infrastructure – broadband and HD TV and profits are rising;
  - Merged organisation will be a multi-media emporium able to bundle and cross-promote its products. It would completely dominate UK media and is capable of damaging or destroying other media.
- No consideration of the future impact of the merger company on other UK media companies.
- Newco will not be a viable independent news business. Its economic dependency will make it vulnerable if News Corp exerts influence.
- The definition of independence and the safeguards for editorial independence in the UILs are weak.
- Concerned that monitoring compliance lies with Secretary of State rather than independent regulators. At least seven different ways in which the Secretary of State can be required to approve or agree to behaviours governed by the undertakings, which make them susceptible to more or less implicit political interference in the future.
- Some key elements of the arrangements have not been made public.
- Query whether the further test on the viability and robustness of the commitments advised by OFT has been possible during the consultation process.
- Bid has highlighted that the media ownership laws are unfit for purpose – need a wider review of the current laws on media plurality, establishment of a Media Commission and a proper definition of media plurality.

**Prof Steven Barnett, University of Westminster, Communications and Media Research Institute (CAMRI)**

- Prof Steven Barnett believes that the UILs are inadequate for 3 reasons (highlighted below) and that taken together should be sufficient reason for the Secretary of State to refer the matter to the Competition Commission.
- **Independent Board of Directors will not insulate Sky News from potential editorial influence from News Corporation.** On the two previous occasions when similar boards have been established to safeguard editorial independence within News Corporation the structure has failed; the Times Newspaper and the Wall Street Journal. The new company will be almost entirely financially dependent on News Corp who will also be presumably responsible for paying the bulk of the salaries of independent directors.
- **Ofcom's advice in relation to the UIL appears to be qualified and contingent on the detail of further negotiations with News Corporation.** How can an acquisition with profound repercussions for media diversity in Britain be acceptable when the main communications regulator has not yet been satisfied about the precise terms of UILs which are then to be determined behind closed doors.
- **Any undertakings will apply for 10 years only, after which News Corp will be able to take full control of Sky News.** Why has a time limit been imposed given the uncertainty over how media plurality and consumption will unfold? There is an assumption by Ofcom and government that the direction of travel is towards greater plurality, but this is contrary to empirical evidence.

- Prof Barnett also stated that the coalition parties are committed to better democratic practices allowing important decisions to be properly and publicly interrogated. However, this transaction is apparently to be permitted after nothing more than an exchange of letters between government, regulators and News Corp constrained by an extremely tight timetable. A reference to the Competition Commission would allow for proper detailed transparent and public scrutiny of the merger. The decision itself and the indecent haste in which the Secretary of State is seeking to impose it are affront to the principles of democratic accountability and transparency.
- He concludes that there is not sufficient knowledge of the detailed arrangements to know whether they are sustainable and there is no evidence that the media environment will be sufficiently benign after the proposed 10 year period to accommodate a full editorial takeover of Sky News by News Corp. Also that the manner in which the decision is being taken is undemocratic and contrary to the public interest and asks the matter to be referred to the Competition Commission.

### **Jewish Funds for Justice (JFJ)**

JFJ believe that the UIL's do not sufficiently mitigate or prevent the public interest concerns in relation to media plurality and fall short of protecting the UK public. They believe UIL's should be referred to Competition Commission for full investigation.

- JFJ stated that 'Newco' would not be adequately independent to protect media plurality.
- JFJ raised concerns about the content of some of News Corporation's TV broadcasts in the US and argue that it does not give reason to believe that News Corp will act in a way that protects the greater public interest in UK.
- JFJ do not believe the consultation was long enough to allow parties to fully investigate the UILs and that there are questions outstanding. Referral to the Competition Commission would be a way of investigating these, including, are the checks and enforcement clauses adequate to ensure that Murdoch will not exert editorial influence over 'Newco'? What will prevent Murdoch from increasing the profile of Fox News in the UK? Are the timescales adequate to protect the long-term media plurality?
- JFJ also raised the question of public interest protection. They feel the acquisition threatens media plurality, prospect of fair and balanced reporting and the partial independence granted to Sky News will not solve these. The submission cited Rupert Murdoch's tolerance of comments by Glenn Beck that they feel are anti-Semitic in nature as examples of this.
- JFJ believe the merger is counter to the public interest both on grounds of protecting media plurality and preventing dangerous rhetoric from receiving greater prominence on UK television.

### **Media Matters for America**

- Insufficient checks to ensure the undertakings are strictly adhered to and only valid for 10 years.
- Nothing in the proposals prevents News Corp from creating a news station totally under the aegis of BSkyB (and hence News Corps editorial control). This would be antithetical to the public interest and not enhance plurality.

- Refers to Murdoch's purchase of the Times and Dow Jones as precedent of promises of maintaining independence not kept.
- Assumes independence can be measured – editorial influence can be exerted in a number of immeasurable ways.
- UILs do not prevent News Corp from building the profile of Fox News in the UK and therefore a "Foxification" of news agenda leads to viewers being misinformed on key areas.

#### **UK Coalition for Cultural Diversity**

- Concerned that the acquisition bid does not take account of the commitments to the AVMS Directive, which requires all television channels where practical to carry a majority of national/European content, excluding sport, current affairs, news and game shows. Also any concessions or measures should take account of the objectives of the UNESCO Convention on promotion and Protection of Diversity of Cultural Expressions, 2005.
- Believe that BSkyB has already used its purchasing power to get audiences away from national broadcasters i.e. Mad Men bought for £225,000 per programme compared with the BBC £65,000 and sports events. Argue that the inclusion of BSkyB within News Corp will increase this fiscal intimidation for market space to the detriment of diversity of expression in programming.
- The Secretary of State should demonstrate how the issues and compliance with the AVMS Directive or diversity of expression are taken into account in the negotiations with News Corp and the promise of a longer debate with media organisations and experts prior to a Green Paper to allow issues of public interest to be protected.

#### **David Elstein**

- Believes the Ofcom report is flawed – the Secretary of State should not believe that there really is a plurality issue. Neither the Competition Commission nor a judicial review of the Ofcom report could conceivably sustain its methodology.
- Attached was a note he prepared in February detailing a series of errors and questionable judgments in the Ofcom report, whose combined effect is to enlarge the potential effect on media plurality.
- The figures given by Ofcom on the two key indicators reach and share from combining the businesses 51% and 24% are wrong and more plausible figures are 9% and 14%.
- The methodology is misguided and no reliance can be put on it.
- If Ofcom: seemingly does not know how to define reach in comparable terms as between different media; does not understand the significance or even the quantum of supposed consumption of news across different media; and chooses to ignore the detailed research about consumer behaviour it has commissioned; it is hard to have much confidence in its ability even to define the circumstances for non-transaction intervention.
- The government will have ample time to consider the wisdom of the Ofcom bid for extra powers in the run-up to a new Communications Act in 2015 and that the UILs offered by News Corp and are accepted by Ofcom and OFT will do as little damage as possible.

- The merger should not be referred to the Competition Commission and that the best outcome would be for the merger to proceed without restrictions.

#### **James Firth, Dalton Firth Limited**

- Concerned that the proposed merger will impact competition and plurality in the online news market and that this has not been fully assessed. It could lead to a closed market of news for BSkyB customers and challenges for other online newspapers.
- Concerns stem from the estimated 2.5 million broadband subscribers using BSkyB's internet service Sky Broadband. The proposed deal could put News Corporation in a position to give discounted, bundled or preferential access for Sky Broadband subscribers to its online news titles.
- This could adversely affect other publishers in the online news sector if News Corporation chose to promote News Corps online titles to Sky Broadband customers and in the sale of advertising slots which may have an adverse impact on competition in the market for advertising.
- The deal might restrict the plurality of news sources accessed by a bulk of Sky Broadband subscribers if News Corporation decided to promote its own online news content on its portal services.

#### **4. Unions**

##### **BECTU**

- BECTU do not accept that the competition issues have been satisfactorily dealt with.
- The sheer size and reach of the proposed merged company gives rise to clear concerns that it would be anti-competitive. These include: the merged company would be the largest private media company ever seen in the UK; an enlarged News Corp with an expected turnover of £9b within a few years would have almost double the revenue of the BBC. Its size and scale would dominate every other media organisation in the UK; the combined BSkyB/News Corp would reach across all significant media platforms.
- News Corp would have opportunities on a scale unavailable to any competitor to cross promote News Corp new titles and channels, to bundle news products with other media services, to develop integrated news products for convergent devices and media to win wholesale news contracts, to distort the advertising market with cross platform deals, to take a dominant position in competing for rights.
- The proposed new company operating Sky News would be independent, but it would be small and commercially dependent on News Corp/BSkyB for 85% of its revenue and 25% of its costs. News Corp would be its largest shareholder as well as sole funder, and there is no guaranteed mechanism for the new company to escape this position of dependence in the future.
- The measures to provide 'editorial independence' appear to be completely inadequate, especially given News Corp's previous record of promises of editorial independence and integrity at the time of earlier takeovers.
- Concern this is taking place whilst News Corp companies are subject to civil actions and police investigation concerning illegal phone hacking.

- Concerned about News Corp's commitment to editorial independence as they noted it was not willing to undertake that the chair should be independent.
- They note that following reports from Ofcom and OFT Secretary of State was minded to refer the issue to the Competition Commission, and question why News Corp were then allowed the privilege of series of private discussions with regulators without any public scrutiny leading to reluctant and unconvincing undertakings.
- BECTU in conclusion calls on the Secretary of State to refer the proposed merger to the Competition Commission rather than abjectly accepting this inadequate settlement. They also call on the Government to institute a broader review of the statutory framework governing the public interest in media pluralism.

#### **National Union of Journalists**

- Believes the massive power of the planned Newscorp/BSkyB operation through financial and other resources which the merger would make available is inimical to the public interest.
- Financial power of merged Newscorp/BSkyB can only damage the sustainability of the other media groups which are an important factor in media plurality as well as strengthening any political or other causes which Newscorp/BSkyB or its proprietor chooses to support.
- Exclusion of competition aspects of the proposed merger means the overall effect on media and media plurality in the UK has been ignored.
- Merger would also allow opportunities for cross-promotion giving it an advantage over other media.
- Guarantees of editorial independence queried.
- Will not be a viable independent news business – using BSkyB platforms to access viewers.
- Query whether the further test on the viability and robustness of the commitments advised by OFT have been possible during the consultation process.

#### **National Union of Journalists Parliamentary Group**

- Concern that previous guarantees and assurances have been disregarded citing Murdoch's takeover of The Times and Sunday Times.

#### **TUC**

- UIL's are inadequate.
- Does not believe that Newco will be a viable independent news business. Will be economically dependent on News Corp/BSkyB and vulnerable to influence.
- Guarantees of editorial independence inadequate as News Corp executives will be able to exert influence over Sky News.
- Previous guarantees over editorial independence broken.
- UIL's place great onus on the Secretary of State – seven ways in which he can be required to approve or agree to behaviours governed by the UILs. Has to be seen in the context where Newscorp is a major player in British political life.

### 5.a) Individual submissions

The Department for Culture, Media and Sport received over 40,000 direct submissions in response to the consultation. The majority opposed the proposed merger and requested that the proposal be referred to the Competition Commission. Issues raised include:

#### **UILs – safeguards for independence**

- A large number of respondents were concerned that the UILs do not address the fundamental concerns and not all concerns raised by Ofcom have been addressed. It is felt that the UILs for independent board, appropriate skills, independent director, editorial independence, governance undertakings will not guarantee independence. There is concern that there is nothing in the agreement to reverse the situation of ownership of BSkyB should Sky News fail as an independent organisation.
- The UILs do not ensure the Board of Directors will be sufficiently independent because:
  - Former employees of News Corporation can be directors of the Board as long as they have not been employed by News Corporation within 5 years prior to appointment to the Board;
  - Anyone with material business relationship with News Corporation can be a director, only need to demonstrate that this relationship ceased three years before appointment to the Board.
  - Family members of News Corporation advisers, directors or senior employees can become directors, only need to demonstrate not close family members;
  - No provision to prevent friends of News Corporation advisers, directors or senior employees or any former politicians who have benefited from News Corporation directly or through their political parties from becoming directors.
- The Chairman should have no past involvement with News Corp and this should be added to the undertakings.
- The decision is fatally flawed because it will: severely undermine media pluralism, destroy competition, give Murdoch more antidemocratic, monopolistic media power, allow more offshore tax avoidance by News International, allow further anti-democratic, anti-cultural diversity and anticompetitive cross media ownership concentration, allow potential further illegal reporting on the News of the World Glen Mulcaire/Coulson model.
- Some raised concerns that under the terms of the UIL there is nothing to stop individual members of the Murdoch family being one or more of the independent directors of Sky News or Newco.
- There was concern that Ofcom has not given unqualified support to UILs and has stated that their effectiveness in addressing plurality concerns will depend on the detail of the arrangements. It was felt that if further negotiations take place behind closed doors how will the public to be satisfied that the regulator's concerns about the precise detail of the undertakings have been responded to.

- The matter of monitoring Sky News was raised by a number of respondents in particular who would conduct the daily monitoring to ensure no Murdoch interference and who will pay for it and the cost to the taxpayer.
- There were doubts that the proposed Corporate Governance and Editorial Committee could ensure compliance with the principles of the editorial independence and integrity when the existing regulatory framework 'The Press Complaints Commission' has shown itself incapable of controlling the excesses of the press. Especially as News Corp seem adept at circumventing regulation.

### **Media Plurality**

- The proposed acquisition would result in too much media control in the hands of one individual and this raises moral, ethical and political concerns and democratic health of the country. It would not just harm media plurality but harm the quality of output and amount of investment in UK talent. A belief that Murdoch already owns too much media in the UK.
- A number argued that the deal would undermine the diversity and quality of media and that there was a need to have a balanced, plural set of media both for entertainment and for news coverage.
- Films often have a political dimension and ownership by News Corporation may influence the nature of films shown. Documentaries that expose News Corporation's misconduct are likely not to be commissioned and sports programmes can be influenced by owners (Commentators).
- Media plurality is not just about the number of owners but the range of views represented in the media sector. Currently right-wing bias is in most areas of the news media. It was felt that genuine plurality cannot emerge without a multiplicity of media owners and editors who are truly independent of each other and who have roughly equal powers of influence
- Publishers in different media push their own agenda through their papers, radio and television programmes. The plurality of media ownership in the UK has in the past offered some protection and balance to free speech with the BBC as the gold standard for independent reporting.

### **10 year carriage contract and 7 year brand licensing**

- The undertakings for 10 year carriage contract and 7 year brand licensing will result in Mr Murdoch retaking control of Sky News sooner or later.
- There were suggestions that there is not a problem with the theory of the 10 year carriage and 7 year (plus 7) brand licensing agreement but there is a problem in the likely practice and News Internationals failure to keep to its agreement as history suggests that no matter what "agreement" is reached the reality is it will work to NI's benefit.

### **Referral to the Competition Commission**

- The proposal should be referred to the Competition Commission for impartial scrutiny, especially due to the significant political and economic implications of this highly significant and controversial media merger.
- Some commented that Jeremy Hunt's announcement against the Ofcom recommendation to refer the proposal to the Competition Commission and it

was arrogantly bypassing the process laid down in the UK by refusing to let the UK Competition Commission review this proposal.

- A few people have also requested that the matter be exposed to a public debate in Parliament.

### **Suggestions to strengthen UILs**

- There was a concern that there are omissions in the undertakings offered by News Corp; what happens in the event of a breach of the UILs by News Corp? There is nothing in the UILs that will prevent Rupert Murdoch buying Sky News at a later date.
- Suggested additional safeguards/undertakings including:
  - a quota for UK produced content for each of Sky's channels;
  - a cap on American imports;
  - a requirement to make expensive public service type programmes including high quality kids TV on free to air channels;
  - requiring BSkyB to take at least 80% of its news and current affairs programming from Sky News; and
  - the proposed local television licences; the addition of diversity and pluralism through online media;
- News Corp should be restricted to no more than 15% of the Sky News shares. The current proposal allowing News Corp to retain 39.1% of the hived-off Sky News undermines Sky News's proposed status as an independent news provider. News Corp would retain the power to block any strategic decisions that directors might refer to shareholders where consent of more than 75% of those voting required for approval.

### **Threat to democracy**

- It was argued that a media organisation which has 37 % of the newspaper market and 35% of the broadcasting market has, not only the monopolistic power to unduly influence the broadcasting market, but also the power to unduly influence politicians and government. This is detrimental to the UK Constitution and UK Parliamentary democracy.
- The proposed takeover of BSkyB would be the most serious threat to democracy in Britain since World War 2.
- Granting Murdoch control of BSkyB would trample our media ownership laws and threaten our democracy.

### **Comments in relation to past experiences**

- The proposal and process showed that we are relying too heavily on minimal regulation and a market economics based approach to policy.
- The proposed acquisition would result in the UK's media being similar to the Berlusconi's situation in Italy.
- There were a number of accusations that Sky has been detrimental to the broadcasting environment in the UK broadcast. For example, the high number of channels has diluted spending by advertisers, restricting access to high quality domestic content as you have to be a subscriber, and spreading football over several sports channels.

### **Comments relating to the Rupert Murdoch's/News Corp integrity**

- There were a number of concerns raised about Rupert Murdoch and News Corporations fitness to own so much media including:
  - dumbing down the Times, turning the Sun into a porn magazine which is available to Children;
  - appear to tolerate or encourage illegal activity;
  - News Corp and Murdoch pay no or little tax in the UK; and
  - the quality and type of programmes currently broadcast on Murdoch's channels often one-sided political prejudice;
- disagree strongly with the government over the BBC and Murdoch has influenced policy regarding license fees.
- A number of respondents asked the Government to stand up to Murdoch and not to allow him to run the country.

### **Comments on Secretary of State's integrity**

- Respondents made the point that the approval of the acquisition was favours being returned following Murdoch media's endorsement of the Conservative party at the general election.

### **Impact on BBC**

- The merger would leave News Corp the undisputed dominant player in the UK's media market and able to dictate terms to both suppliers and customers. The combined revenues of BSkyB and News Corp will be 2-3 times that of the BBC while BSkyB alone has turnover of more than BBC and ITV put together.
- Some raised concerns about the impact on British broadcasting, in particular News Corp removing programmes from the BBC, therefore taking viewers to Sky. This reference is in relation to Rupert Murdoch recently purchasing daughters company Shine TV which produces some BBC shows.
- A number of people mentioned the Government trying to destroy the BBC with funding cuts.

### **Competition concerns**

- Some respondents said that the EU does not have competence to deal with UK competition concerns. Also that the BSkyB primary market does not cross European borders.
- The massive dominance of one company should be a major concern to a coalition so committed to competition.

### **"Bundling" and "cross promotion" concerns**

- The merger would put News Corp in a strong position to offer cross promotion, cross subsidising, advertising sales packages that span print, online and TV and to bundle newspaper subscriptions with SkyTV/Sky Broadband subscriptions. Many believe that BSkyB revenues will be used to support News Corp's non profitable newspapers leading to a negative impact on other newspapers facing difficulties due to declining circulations.

- If the proposed merger goes ahead there is a possibility that online versions of News Corporations newspapers will be given exclusive access to multimedia content from BSkyB's TV channels that BSkyB owns the broadcast rights to.

#### Other relevant comments

- That impartiality laws should apply to print newspapers and their online counterparts separating news from opinion columns.
- If the acquisition goes ahead then it would be one more British company to no longer be British.
- Trust this decision is successfully challenged in the courts.
- A number of people mentioned that they would like to review any business plans Sky may present for a standalone Sky News PLC. They feel that they could identify material financial questions currently unanswered and help in negotiating the appropriate amendments to the business plan with Sky.
- The numbers of actual people reached by News Corp compared with other media should be examined not just the provision of news.
- News Corp would be one of three providers of UK-wide news and current affairs on three of four platforms at the retail level but the only news and media provider present on all four platforms (TV, newspapers, on-line and radio).
- In terms of "news minutes" consumed, News Corp would consolidate its position as the second place provider behind the BBC.
- There were a number of questions raised by the respondents:
  - Who would appointment the new board and select the new chairman?
  - What will happen to the ownership of Sky News in the longer term?
  - Why should News Corp be able to have any shares at all in Sky News?
  - Who will make senior editorial appointments and for how long a so-called separation of one channel from a corporate parent be sustained?
  - Will the proposed Corporate Governance and Editorial Committee have jurisdiction over both Sky News and BSkyB?
  - Does governance require a compliance report to be published unrestricted and public annually?
  - What incentives/penalties/restraints are there to assure that Sky News remains a viable business and is not closed and a new business set up outside the realm of the Corporate Governance and Editorial Committee?
  - Is there a requirement for BSkyB to adhere to Ofcom's Broadcasting Code added and enshrined in the company's articles of association?
  - Who will conduct the daily monitoring of Sky News to ensure no Murdoch or News International interference and who will pay for this monitoring and at what cost to the taxpayer?
  - Is BSkyB prevented from setting up another news channel within BSkyB after takeover?
  - Is BSkyB prevented from showing any programme with a political element that could influence viewers on any political subject after takeover?
  - What extent will BSkyB be allowed to show fiction with a strong political bias which has been shown to influence views after takeover?

- What extent will employees of BSkyB after takeover be allowed to openly campaign on air for any one political party or political view or be allowed to openly recommend on air the assassination of people?
- Who will ensure that the employees of BSkyB do not hack into private emails or answer phone services as Murdoch's employees and agents have done already and what cost to the taxpayer?

**Individuals who were in favour of the acquisition made the following comments:**

- A few changed the Avaaz campaign letter to say it would not undermine media diversity and quality and feel our democracy will live with this takeover.
- As a Sky customer for years found coverage of news and current affairs to be of good quality, fair and unbiased.
- Some felt that Rupert Murdoch has done more to modernise the television service than ITV and BBC together. ITV and BBC have borrowed his on screen style his 15min 24 hour news turn around and Sky box
- There was disapproval at the start of the ITV network of companies, and reflects on the enormous influence it had on the BBC.

**MPs**

- A number of MPs have expressed views of constituents as part of the consultation, either by forwarding letters received or by noting points raised.

Points raised include:

**UILs – safeguards for independence**

- The safeguards for editorial independence are weak and the arrangements for Sky News will not be sufficient to prevent a media monopoly as Rupert Murdoch will be a large shareholder and able to influence decisions by putting people on the board of Newco.
- MPs do not feel reassured by the principle UILs which envisage a majority of independent directors and an independent chairman of the Board guaranteeing editorial independence at Sky News. Concern that despite this arrangement Rupert Murdoch will still wield significant influence over the agenda and philosophy of Sky News which will compromise the plurality of media and news control in the UK.
- There was concern that the definition of independence in the UILs relies on an unspecified principle of editorial independence. Potential that this would lead to editorial staff putting themselves into dispute with their employer in defence of editorial independence.
- The on-going management of the UILs puts too much power to the Secretary of State rather than independent regulators. Direct oversight by Government risks politicising the agreement.
- A number of questions were asked in relation to the proposed UILs including:
  - Who will appoint the Sky News Board and the proportion who will be Newscorp representatives or independent non-executive directors?
  - Who will be responsible for hiring and firing Sky News editorial staff?
  - Whether Sky News will be dependent on News Corp for finance?

- Who will monitor the independence of Sky News?
- Will the broadcasting news impartiality rules will remain in place?
- Whether other UK media organisations who opposed the acquisition have been consulted during the past month?
- Do you accept the following in relation to Newco?
  - It will be dependent on a contract with News Corporation for 85% of its revenues and 25% of its costs
  - It will be dependent on News Corporation to distribute its TV news output on the BSkyB network
  - It will only be viable long-term if Newscorp are willing to renew the carriage agreement.
- How is the proposed remedy consistent with OFT's guidance that it is rare to accept even interim purchase/supply arrangements between merging partners and the divestment business given the requirements for a clear cut remedy in lieu of a competition commission reference?
- What steps are you taking to ensure that the 40% stake Mr Murdoch will have in Newco will not allow him to have an undue influence on decisions made by the Newco Board?
- What steps are you taking to ensure that if there are concerns Mr Murdoch is influencing the output of the channel these can be thoroughly investigated and dealt with?

#### **Media Plurality**

- The safeguards are so weak that they will be rendered ineffective and that the takeover is a serious threat to media plurality.
- Some MPs have highlighted the point made by Ofcom about the inadequacy of the current laws protecting media plurality and call for a review of the laws protecting media plurality in order to improve and modernise the regulations.
- Concerns that the proposed acquisition of BSkyB might result in an over concentration of power over news media over 4 different media platforms, thus compromising media plurality.

#### **Past experience**

- A lack of trust that News Corp will deliver what it promises. Previously News Corp has offered UILs in relation to acquisitions but has not lived up to these. There were references to broken promises in relation to the Times as well as its general attitude to the industry and media plurality.
- Questions were asked about whether any assessment has been undertaken of News Corp's approach to past UILs.

#### **10 year carriage contract and 7 year brand licensing**

- Concern that the carriage agreement between News Corp and Newco, will provide financial stability, but will also leave Sky News in a state of economic dependency vis-a-vis News Corp and lacking control of its own affairs.
- The government needs to set out what will happen at the end of the 10 year period; i.e. what restrictions will be placed on the ability of News Corporation to regain control of Sky News as currently the UILs leave open the possibility;

where will the decision rest; will News Corporation or any of its newspapers be able to establish another 24 hour news channel within this period?

### **Referral to the Competition Commission**

- The matter should be referred to the Competition Commission for independent scrutiny.

### **Comments relating to Rupert Murdoch's/News Corp integrity**

- The Department should delay or extend the consultation period until the reopened criminal investigations by the Metropolitan Police into Murdoch's News of the World has been completed.

## **6. Campaign submissions**

### **a) Avaaz internet campaign**

*Avaaz is a global 'citizens' network with 7 million members worldwide (over 500,000 members in the UK). Avaaz's particular interest is in safeguarding democracy.*

The Department for Culture, Media and Sport received 38,465 responses which replicated the standard text proposed by Avaaz:

"I am deeply concerned that News Corporation's bid for full ownership of BSkyB would harm our democracy. I strongly urge you to reject it. The proposals that you are consulting on would undermine our media quality and diversity. The temporary safeguards you propose for News Corporation are weak and can easily be circumvented. News Corporation would still have strong control over Sky News through its shareholding, its financing and its control of satellite access. Rupert Murdoch has exploited his media power for political influence and opinion polls show that 9 out of 10 members of the public oppose his takeover of BSkyB. I object to the proposed deal and call on you to immediately refer it to the Competition Commission"

A significant number of these submissions contained different text in one form or another, with many raising further points and making additional comments including:

### **Government influence**

- The most common addition related to a perception that the decision not to refer the proposed acquisition to the Competition Commission was political, and a form of pay back for Murdoch's support of the Conservative Party at the last election. Blatant example of government being bought by big business.
- The Secretary of State appears biased in favour of the deal.
- Comments about the U-turn from the original "minded" to refer to private meetings and allowing time for Murdoch to negotiate the UIL's.
- Support democracy in Libya and elsewhere but allowing it to be stifled here.

- Government is simply taking the line of least resistance rather than trying to support and sustain the reputation of Britain and its cultural media.
- It is clear from the evidence of phone and email-hacking, the failure of the Metropolitan police to adequately investigate in a timely manner, and from the appointment of a former NoW editor as Cameron's press secretary, that the relationship between this government and Murdoch's empire is, at the very least, unhealthy; indeed morally and ethically corrupt.
- Belief that Rupert Murdoch wields too much power and has been able to determine elections in the past – jeopardising democracy. Murdoch has more influence on UK politics than millions of voters.

### **Comments relating to the Rupert Murdoch's/News Corp integrity**

- Is Rupert Murdoch not a fit person to own so much media.
- There is a conflict of interest as Mr Murdoch's son is chair of BSkyB
- A number of people referred to his Australian/American nationality.
- Many people included the following quote from Private Eye (1986): " You tell these bloody politicians whatever they want to hear, and once the deal is done you don't worry about it. They're not going to chase after you later if they suddenly decide what you said wasn't what they wanted to hear. "
- Seen as a threat to a cohesive multicultural nation, stifling diversity of reason and opinion.
- Many gave the example of Fox News in the US as an example of what we could expect to see more of. Shows he does not respect principle of impartiality in broadcast news and current affairs.
- Murdoch stake in TNT who might bid for Royal Mail.
- He is interested in media domination. News Corp is a rapaciously acquisitive organisation and does not have a good reputation for political neutrality and objectivity.
- He is a serial monopolist – reference to his stranglehold on sport and charges he makes to pubs for showing matches.
- Murdoch has had an appalling influence on UK politics and TV programmes.

### **Threat to democracy.**

- Concern about 1 person, with such strong views, controlling a large part of UK media. Murdoch's influence already evident; to increase it further is anti-democratic.
- Secretary of State should be acting as a guard and gate keeper to the free and fair operation of democracy in Britain.
- Corporate monopoly smothers democracy as effectively as state control.
- Murdoch has always opposed real democracy if it threatens his substantial interests, and manages to terrify governments, especially those who support socialist or liberal values.
- UK's great heritage is free speech and democracy. Both would be harmed.
- The merger would leave us with a media sector dominated by one family with only the BBC left to stem the tide. What's more, it isn't even a British influence which is coming to dominate our screens, as well as our papers. We have already seen much of our manufacturing sector allowed to fall under foreign ownership (& often closure) e.g. Cadbury, our utilities are dominantly owned

by the French and Germans, and even insurance lies largely in the hands of international groups,

- The efforts of civilians in the Arab world to address monopoly media and political control is admired by our politicians...and yet you are considering allowing the creation of an overly powerful media monopoly here in the UK.
- Influence the political climate to undermine political leaders and promote extremism in order to draw attention to his media outlets.
- Need objective, analytic, well researched information, accessible to all to enable people to make balanced decisions

### **Comments in relation to past experiences**

- News Corp in the past has broken undertakings in relation to previous acquisitions i.e. Dow; Times and Sunday Times.
- Recent example of BSkyB's acquisition of Virgin media's TV channels and closing them down within 3 months.
- Mention of supporting price rigging in the case of pub landlords having to pay BSkyB fees

### **Competition**

- BSkyB removed some competition by buying Living TV group from Virgin Media. It then closed Bravo and Virgin 1as they competed with existing Sky channels.
- BSkyB/News Corp's earnings would multiply as packages bundle together monopolistic sports, TV archive and film rights, combining advertising and sales offers across newspapers, their websites and all digital platforms and make it impossible for competitors to enter the market.
- Should not support monopolies, but instead introduce real competition to big business.
- There are no alternative satellite TV operators in the UK, why should such a large company which is 100% dominant in the satellite TV sector be allowed to be taken over by a foreign company?
- Government should seek to increase the spread of media ownership by limiting how many titles and broadcasters any one company, individual, consortium or umbrella organisation can own
- Has already used buying power to outbid competitors for TV programmes which have won an audience on terrestrial TV- Mad Men, Lost – HBO back catalogue for Sky Atlantic. Can only get worse if Murdoch gets his way.

### **Media Plurality**

- News Corp share of global and UK media market is already having an adverse effect on plurality of views and on public discussion.
- Need for free and unbiased media. Lost diversity will not be regained. This has happened with the local press which is losing accountability.
- The power of the media should never be underestimated and it is absolutely vital that we maintain the integrity of the information our society consumes. Although system is not perfect, it does serve as an example to the world and helps maintain an intelligent free thinking, creative and tolerant society.

### **UILs – safeguards for independence**

- UILs should restrict NewsCorp from distorting competition through cross-promotion, bundling, banning rivals' advertisements and distorting the advertising market with cross platform deals.
- Note the UILs protect news output; however, News Corp would be able to broadcast their views via other programming.
- Nothing to stop BSkyB introducing a news channel to undermine Sky News.
- Murdoch family could buy shares in Sky News to increase 39.1% stake
- Despite the UILs, Murdoch would still be able to influence/control Sky News.
- A large number doubted Sky News would be financially viable as the majority of funding could come from News Corp.
- News Corp will find ways to undermine 10 year undertaking.

### **Comments relating to BBC**

- A number raised concern that the BBC funding is being cut, and limiting BBC's spending power all the quality/expensive and special events will be broadcast behind a paywall costing £240/year.
- Government insisted that BBC now has to pay for running fibre optic cables across country even though beneficiary would be subscription only services owned by Murdoch's company.
- Believe Murdoch strengthening will undermine BBC. Demonstrates Secretary of State/government hostility to BBC.
- Sky pressure on government to restrict BBC online services because they compete with the 'commercial' sector.

### **Other comments**

- A number of respondents referred to an ICM poll where: (sample size 2,500)
  - 63% said there should be an independent investigation before deciding whether to allow the deal to proceed
  - 84% said that a single organisation should not be allowed to control too much of the news media
  - 75% said it was important to have competing independent sources of news in the UK
  - 44% oppose the deal with a mere 5% in favour; opposition among Conservative voters was nearly as strong with 43% opposed and just 5% in favour
  - 53% of those who currently identify themselves as Lib Dem oppose the deal with just 4% in favour
- As a minimum today all media outlets should make the public aware that they are owned or controlled by a single person or entity where more than 20% of shares are not held by public. For example TV should broadcast regularly who they are owned by, and Newspapers set out on the front page.
- Draining the UK of important tax money because his organisation does not pay UK tax. This money should be re-injected into the UK economy.
- Few people indicated whether they were or had been BSkyB subscribers.

### **b) Media Matters campaign**

Media matters sent in a letter which had been signed by about 300 people in the UK. The letter argued that they were unconvinced that the UILs would satisfactorily remedy, mitigate or prevent the public interest concerns in relation to media plurality. In particular the following points were made:

- Although News Corp may have committed to the independence of Sky News from BSkyB there are not sufficient checks and balances to ensure that News Corp strictly adheres to the UILs.
- Concern that the UILs do not prevent Murdoch or News Corp from building the profile of Fox News in the UK. There is nothing to prevent Murdoch creating a new news channel along the lines of Fox News. It was felt that the UILs do not go far enough to prevent the 'Foxification' of the UK's news agenda.
- Requested more time be given to considering this matter further either by pursuing a full investigation by the Competition Commission which would allow for proper scrutiny and public protection. At the very least insist News Corp promise new UILs for consideration by UK public which address the issues above and truly protect the public interest concerns raised by Ofcom's report.

Annex

In addition, a number of comments on how the process and consultation has handled were received:

- **Length of consultation** Some respondents commented that the 18 day consultation was not long enough to test the UILs
- A number felt that sufficient time has not been spent in reaching the decision.
- A few were concerned had not published any information about how many people contacted the Government.
- **Question over capacity and expertise** of DCMS due to the haste which responsibility transferred.
- **Secret meetings** A number of people have referred to Jeremy Hunt, David Cameron having un-minuted meetings with James Murdoch from News Corporation and Prime Minister's lunch over Christmas with the CEO of News Corp and members of Murdoch family. Therefore proposed decision for non-referral is biased and partial.
- **Secretary of State position** A number of people are sceptical about the impartiality of Secretary of State in relation to the merger, and therefore not the right person to make the decision.
- It is felt that the Secretary of State has a **bias against the BBC** and allowing News Corp to acquire BSkyB is a way of further weakening the position of the BBC by allowing an already significant competitor to become even stronger.
- Should have run extensive opinion polls at the start of this matter (not the end) asking whether the British public had any wish to extend News Corp ownership of the media available to us.
- **OFT restrictions** A number of people have asked questions relating to OFT consultation including why they did not consult with third parties, did not have sufficient time to test the veracity of statements given by News Corp, regarding the UIL. Terms of reference given to the OfT restricted to 'practical and financial viability; why did they not test democratic balance of potential ownership and influence implied by the UIL?

## News Corporation / BSkyB merger

064/11  
30 June 2011

The Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt, has today published the results of the consultation launched on 3 March on the undertakings in lieu offered by News Corporation in relation to their proposed merger with BSkyB. Alongside this he has also published subsequent advice from Ofcom and the OFT and has set out the next steps in the process.

The undertakings published on 3 March 2011 involve Sky News being 'spun off' as a separate company, operating independently from BSkyB. The Secretary of State, based on advice from the OFT and Ofcom, had said he was minded to accept the undertakings in lieu of a reference to the Competition Commission.

The consultation produced no new information to cause Ofcom and the OFT to change their earlier advice that the undertakings in lieu addressed Ofcom's media plurality concerns and were viable for 10 years. However, a number of suggestions were made which could further strengthen the undertakings. As a result, Mr Hunt has today published a revised more robust set of undertakings for consultation.

The changes, which are set out in full in the revised undertakings published today, include:

The need for Sky News board meetings to include an independent director with senior editorial and/or journalistic expertise if decisions on editorial matters are to be made.

The appointment of a monitoring trustee whose main role is to ensure that News Corp complies with the undertakings in the run up to spin-off.

A requirement for Sky to continue to cross-promote Sky News on its channels.

A requirement for Sky News' Articles of Association to be approved by the Secretary of State.

Mr Hunt said:

"I am aware of the huge interest in the proposed merger and am grateful to those who responded to the consultation. I have considered carefully the points raised and, as at all steps in this process, taken advice from the independent regulators.

"The regulators have confirmed that the proposed undertakings are still sufficient to ensure media plurality. I could have decided to accept the original undertakings but a number of suggestions were made in response to the consultation which could further strengthen the undertakings, particularly around editorial independence, business viability and the articles of association. I am therefore proposing some changes to the undertakings and I will now hold a further public consultation."

The consultation period on the revised undertakings will run until midday Friday 8 July.

More than 40,000 representations were received in response to the consultation, including a very large number of near-identical responses as a result of internet campaigns. The Secretary of State also met representatives from Trinity Mirror, the Guardian Media Group, the Telegraph Media Group, Associated News and Media, Slaughter and May and Avaaz. The substantive points raised were considered carefully by the Secretary of State, advised by the regulators.

The Secretary of State is required to look at the specific issue of media plurality related to the merger (competition issues having already been dealt with at European level).

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**Notes to editors**

**Publications:**

The Department for Culture, Media and Sport has today published on its website:

**A summary of responses to the previous consultation**

**Reports from Ofcom and the OFT**

**A consultation document on the revised undertakings**

**The revised undertakings**

## The articles of association for the new Sky News company

The Secretary of State will also make a **written statement** in Parliament later today.

### Timeline:

**3 November 2010:** News Corporation notified the European Commission of its intention to acquire the shares in BSkyB that it does not already own.

**4 November 2010:** Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. The Business Secretary asked Ofcom to investigate and provide advice and recommendations on the public interest consideration in section 58 of the Enterprise Act 2002. This public interest consideration concerns the sufficiency of plurality of persons with control of media enterprises.

**21 December 2010:** The European Commission published the results of its competition inquiry into the proposed merger of BSkyB and NewsCorp. They find no competition issues and clear the merger to go ahead

**21 December 2010:** Jeremy Hunt takes over responsibility for media mergers.

**25 January 2011:** Jeremy Hunt announced that he intended to refer the merger to the Competition Commission as he considered that it may operate against the public interest in media plurality, but that he would first consider (and ask the OFT and Ofcom for advice on) **undertakings in lieu offered by News Corporation**.

**3 March 2011:** Jeremy Hunt announced that, following advice from Ofcom and OFT, he intended to accept undertakings from NewsCorp in lieu of a referral to the Competition Commission. **He launched a consultation on the undertakings**, which would involve Sky News being 'spun off' as an independent public limited company.

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## Written Ministerial Statement: NewsCorp/BSkyB merger

Thursday 30 June 2011

**The Secretary of State for Culture, Olympics, Media and Sport (Mr Jeremy Hunt):** I am today publishing the results of the consultation on the undertakings in lieu I launched on 3 March alongside the subsequent advice I have received from Ofcom and the OFT. The consultation did not produce any information which has caused Ofcom and the OFT to change their earlier advice to me. I could have decided to accept the original undertakings. However a number of constructive changes have been suggested, and as a result, I am today publishing a revised, more robust set of undertakings and will be consulting on them until midday Friday 8 July.

As previously, I was not required to involve independent regulators in assessing the revised undertakings. However I have again done so, and sought their independent advice. I am today also publishing that advice, which after careful consideration I have decided to accept.

### Background

On 3 March I informed the House that based on advice that I had received from OFT and Ofcom, I was minded to accept undertakings from News Corp in lieu of a reference to the Competition Commission. As the Enterprise Act 2002 requires, I published these undertakings for a public consultation which ended on 21 March.

I received over 40,000 representations to this consultation, including a very large number of near-identical responses as a result of internet campaigns. I have placed summaries of the main responses on the DCMS website. I met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media, and Slaughter and May on 24 March and met Avaaz on 15 April. Notes of meetings will be published at the end of the process.

The substantive points have been carefully considered by me, advised by the independent regulators.

### The Carriage and Brand Licensing Agreements

The Carriage and Brand Licensing Agreements are an important part of this process and I will only accept the undertakings once I have approved these agreements.

These documents have been reviewed in great detail by OFT, Ofcom and external lawyers. I believe that their independent, expert advice provides confidence that the undertakings and key Agreements are robust. They have concluded that the drafts of the Carriage Agreement and the Brand Licence Agreement are now fully consistent with the proposed undertakings. In addition, OFT confirm that the terms of the Carriage Agreement and Brand Licensing Agreement mean that Sky News will be practically and financially viable for the lifetime of the carriage agreement. I can now therefore confirm that I am satisfied with both Agreements and am able to approve them in line with the requirement in the undertakings. I will not be publishing these Agreements given the nature and the extent of the commercially confidential material they contain.

### Undertakings in Lieu

I received advice from Ofcom and OFT on 22 June, copies of which have been placed on the DCMS website. Both regulators are clear that the points raised in the consultation exercise do not require them to change their previous advice to me. Nevertheless, there have been some constructive suggestions for strengthening the undertakings which I am minded to accept.

### Editorial Independence

A number of changes have now been made to the undertakings to strengthen further the arrangements for editorial independence:

Sky News' Articles of Association set out the definition of independent directors; Meetings of the board of Sky News about editorial or journalistic matters will only be quorate if an Independent Director with senior editorial and/or journalistic expertise is present. Similar arrangements apply to the corporate governance and editorial committee. This is a response to representations that these arrangements could be undermined if this Director was often unavailable for meetings for whatever reason. The change will ensure that Sky News organises its business so

as to ensure that there is always appropriate senior editorial and/or journalistic expertise at relevant meetings.

The appointment of a Monitoring Trustee whose main role is to ensure that News Corp complies with the undertakings and make sure that News Corp does not do anything "that would prevent Newco [i.e. the spun off Sky News] being placed in an overall position of editorial, governance, commercial and financial independence in which it will contribute to plurality as Sky News did prior to the Transaction"

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### **Business viability**

Some representations were made about Sky News' continued financial viability. I consider that Sky News' financial viability is adequately secured through the Carriage and Brand Licensing Agreements. However, in the light of representations received in response to the consultation exercise, I am proposing to modify the undertakings to ensure that Sky continues to cross-promote Sky News on its channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the date on which the undertakings are accepted. This is important to ensure that Sky News continues to enjoy the same promotional support as the current business.

Also, the Monitoring Trustee will provide advice to me in my review of the key operational agreements requiring my approval to ensure that they are fair and reasonable.

### **Articles of Association**

Because so many of the safeguards are contained in the Articles of Association, including the requirement that Sky News' services will abide by the principle of editorial independence and integrity in news reporting, the undertakings have been amended so that I have to approve them. Furthermore, News Corp has offered an additional undertaking not to attempt to cause Sky News to act in breach of its Articles of Association. A copy has been published along with the consultation document and the revised undertakings.

These are the main changes. All the changes are set out in the published revised undertakings, and a more detailed explanation of the reasons for the changes is included in the consultation document and OFT's report. In my view, they provide a further layer of very important safeguards. As amended, I believe that the undertakings will remedy, mitigate, or prevent the threats to plurality which were identified at the start of this process. I therefore propose to accept the undertakings in lieu of a reference to the Competition Commission.

I have today placed on my Department's website a revised version of the undertakings and an associated consultation document. There will now be a final consultation period starting today and ending at midday on Friday 8 July. During this time all interested parties will be able to express their views on the revised undertakings.

Once again I will seek the advice of Ofcom and the OFT on any responses to this consultation. As expert regulators they are best placed to thoroughly understand the issues and to offer comprehensive and impartial advice. Once I have considered these representations and the independent regulators' advice, I will reach a decision on whether I still consider that the undertakings should still be accepted in lieu of a reference to the Competition Commission. If, after the consultation, I remain of the view that the undertakings properly address the concerns about media plurality, I will accept them and not refer this merger to the Competition Commission.

I am required to publish the revised undertakings in Lieu and an explanation as to why I have made the proposed changes, and I have done so. In the interests of transparency I have also published a number of other documents where there is no legal requirement upon me to do so. These are: the advice I have received from OFT and Ofcom; the Articles of Association of Sky News; and a summary of responses to the consultation process. The Carriage Agreement and the Brand Licence Agreement have not been published given the nature and the extent of the commercially confidential material they contain. I hope that this openness will help strengthen public confidence in the process and decision.

## **Other issues raised in the consultation**

During the consultation period, a number of issues were raised that were not material to the issue of media plurality.

A number of respondents raised competition issues. In addition to the fact that this could not be considered as part of the media plurality public interest test, these issues have already been considered by

the European Commission which concluded on 21 December last year that the increased shareholding would not significantly impede effective competition.

Some respondents also argued that News Corp could not be relied upon to abide by the requirements set out in the undertakings, citing previous guarantees and assurances given by News in the past, and the current phone hacking allegations against The News of the World.

I have taken the view that News have offered serious undertakings and discussed them in good faith. In all the circumstances and given that the implementation of those undertakings will be overseen by the Monitoring Trustee and thereafter monitored and if necessary enforced by the OFT, I believe that there are sufficient safeguards to ensure compliance with the undertakings. Furthermore, the various agreements entered into pursuant to the undertakings will each be enforceable contracts. Therefore whilst the phone hacking allegations are very serious they were not material to my consideration.

I would also like to draw attention to a point stressed by Ofcom in its report. Namely, that the undertakings must be assessed against the fact that the plurality concerns arose out of a change in the degree of control News Corporation has over Sky. The undertakings do not and should not seek to establish Sky News in a position where News Corporation has no relationship with it at all, because today News Corporation controls 37.19% of Sky's voting shares.

I am committed to maintaining the free and independent press for which this country is famous. I have sought and published independent advice throughout this process. I have listened carefully to points made in the consultation and amended the undertakings where appropriate. I have also gone for maximum transparency whilst taking reasonable account of commercial confidentiality considerations. I continue to believe that, if I allow this deal to proceed, Sky News will be able to continue its high-quality output and in fact will have greater protections for its operational and editorial independence than those that exist today.

[Ends]

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**DEPARTMENT FOR CULTURE, MEDIA AND SPORT  
NOTICE OF CONSULTATION ON THE PROPOSED ACQUISITION BY NEWS  
CORPORATION OF UP TO 60.9% OF BRITISH SKY BROADCASTING  
GROUP PLC  
UNDERTAKINGS GIVEN BY NEWS CORPORATION PURSUANT TO  
PARAGRAPH 3 OF SCHEDULE 2 OF THE ENTERPRISE ACT 2002  
(PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003**

**Views are sought by midday on Friday 8 July 2011 as to whether the attached undertakings in lieu are sufficient to remedy, mitigate or prevent the public interest concerns in relation to media plurality raised by this merger. For reasons explained below, the Secretary of State is not consulting on any competition aspects of the proposed merger.**

Executive Summary

The Secretary of State has considered the points raised during the consultation period and further reports from OFT and Ofcom. These reports make it clear that nothing raised during the consultation process has led the OFT and Ofcom to reconsider their earlier advice to the Secretary of State. A number of constructive changes have been suggested to strengthen the undertakings which the Secretary of State has accepted and he therefore proposes to consult further for a period ending at midday on Friday 8 July 2011.

In particular a number of changes were suggested that would strengthen the arrangements around the editorial independence of Sky News:

- Sky News' Articles of Association set out the definition of independent directors, mirroring the definition in the undertakings.
- Meetings of the board of Sky News about editorial or journalistic matters will only be quorate if an Independent Director with senior editorial and/or

journalistic expertise is present. Similar arrangements apply to the corporate governance and editorial committee. The change will ensure that Sky News organises its business so as to ensure that there is always appropriate senior editorial and/or journalistic expertise at relevant meetings.

Representations were also made about interim protection for Sky News. As a consequence, the undertakings require the appointment of a Monitoring Trustee whose main role is to ensure that News complies with the undertakings in the run up to Sky News being spun off.

There were also suggestions around operational and financial sustainability. As such the Secretary of State has made the following changes:

- The undertakings have been changed to ensure that Sky continues to cross-promote Sky News on its channels. This means Sky News will continue to enjoy the same promotional support as the current business.
- The Monitoring Trustee will advise the Secretary of State in his review of the key operational agreements requiring his approval to ensure that they are fair and reasonable.

As a number of the safeguards are contained in the Articles of Association, including the requirement that Sky News' services will abide by the principle of editorial independence and integrity in news reporting, the undertakings have been amended so that the Articles have to be approved by the Secretary of State. An additional undertaking has been included to ensure that News shall not attempt to cause Sky News to act in breach of its Articles of Association. A copy of the Articles of Association is published along with the consultation document and the revised undertakings.

The Secretary of State considers that the changes made to the undertakings strengthen them in a number of areas highlighted in the consultation responses. As such he proposes to accept these changes and have a further consultation period ending at midday on Friday 8 July 2011. Further more detailed explanation of these and other changes are outlined later in this document.

## Background

On 3 November last year, News Corporation (News) indicated that it intended to increase its shareholding in British Sky Broadcasting Group Plc (Sky) from 39.1% to 100%. In light of the turnover of the merging companies and the interaction of United Kingdom and European law, any competition concerns arising in relation to the transaction fell to be considered by the European Commission. On 21 December last year, the European Commission concluded that the increased shareholding would not significantly impede effective competition.

However, under UK law, an issue arose as to whether this transaction gave rise to concerns about plurality of persons controlling media enterprises. The Secretary of State for Business, Innovation and Skills issued a European intervention notice raising this public interest. He asked Ofcom to investigate and report to him by 31 December. That report was produced by Ofcom and provided to the Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt (the Secretary of State). In addition, the OFT provided a report on jurisdiction on 30 December [<http://www.culture.gov.uk/publications/7737.aspx>].

On 25 January, the Secretary of State informed Parliament of his initial decision on the proposed News/BSkyB merger. Having considered the Ofcom report and the concerns raised, he concluded that the relevant statutory test was met and intended to refer the merger to the Competition Commission. However, before doing so he also made it clear that he would consider undertakings in lieu of that reference which had been offered by News and which, in his opinion, had the potential to remedy, mitigate or prevent the potential threats to media plurality identified in the Ofcom report.

The Secretary of State asked for further advice from OFT and Ofcom on the extent to which the undertakings in lieu addressed the plurality concerns raised in the Ofcom report, and whether the undertakings were likely to be financially and practically viable. Further reports were received from both organisations on 11 February and 1 March. [<http://www.culture.gov.uk/publications/7880.aspx>]

On 3 March the Secretary of State made a statement to the House explaining that, on the basis of the advice he had received, he believed that the proposed undertakings addressed the plurality concerns that Ofcom had identified in its report of 31 December 2010 and were practically and financially viable for up to 10 years. He therefore announced that he intended to accept undertakings from News on its proposed merger with BSkyB in lieu of a reference to the Competition Commission. However, before he did so he launched a public consultation seeking views on the undertakings. [<http://www.culture.gov.uk/consultations/7887.aspx>]

The undertakings provide that Sky News be spun-off as an independent public limited company. Shares are to be distributed amongst the existing shareholders of Sky in line with their existing shareholdings. The effect of this would be that, after the proposed News/BSkyB merger was completed, the shareholdings in Sky News would remain as if the merger transaction had not happened. The new company would have a majority of independent non-executive directors and have long-term carriage and brand licensing agreements with the newly-merged News/BSkyB company so as to ensure its financial viability. The undertakings specify that News would not be able to increase its shareholding in the new company without the permission of the Secretary of State for a period of 10 years. After that period, any reacquisition would be subject to the general legislative merger control provisions, including a reference to the Competition Commission on plurality grounds depending on circumstances at that time.

#### Summary of the Undertakings

The undertakings which were consulted upon are as follows:

- The Board of the new company must have a majority of independent directors who have no other News, or News-associated, interest;
- The Board, including the independent non-executive directors, must have the appropriate balance of skills, experience, independence and knowledge, and at least one must have senior editorial and/or journalistic experience;

- The Chairman must be an independent director;
- Sky News' services must abide by the principle of editorial independence and integrity in news reporting;
- The Board must have a Corporate Governance and Editorial Committee to ensure compliance with the principles of editorial independence and integrity in news reporting;
- A 10 year carriage contract which sets out the future financing arrangements;
- A 7 year brand licensing (with potential to extend for a further 7 years).

### Changes to the undertakings following consultation

This consultation on the proposed undertakings closed on 21 March. There were over 40,000 responses, including a very large number of near-identical responses as a result of internet campaigns. Summaries of the main responses<sup>1</sup> are today published on the DCMS website. The Secretary of State met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media, and Slaughter and May on 24 March and met Avaaz on 15 April. Notes of meetings will be published at the end of the process.

These representations have been carefully considered by the Secretary of State and, where appropriate, Ofcom and OFT. The Secretary of State is grateful to Ofcom<sup>2</sup> and the OFT<sup>3</sup> for the written advice they provided him with on 22 June and both these reports are today published on the DCMS website.

Both regulators make it clear that they consider that the points raised in the consultation exercise do not require them to change their previous advice to the Secretary of State. Both they and the Secretary of State do consider, however, that there have been some constructive suggestions for strengthening the undertakings and, as a result, the Secretary of State proposes to consult on amended undertakings. Set out below are the main changes and, where not-self-explanatory, the Secretary of State's reasons for making them. A number of minor drafting

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<sup>1</sup> <http://www.culture.gov.uk/consultations/8257.aspx>

<sup>2</sup> <http://www.culture.gov.uk/publications/7880.aspx#1>

<sup>3</sup> <http://www.culture.gov.uk/publications/7880.aspx#1>

changes to the undertakings are not included in this document though they are included in the version of the undertakings published today and a more detailed explanation of the reason for all the changes is included in the OFT's report.

### *Articles of Association*

The Articles of Association of Sky News must be approved by the Secretary of State prior to the undertakings being accepted [3.1]. This reflects the importance of the Articles of Association to Sky News and, in particular, addresses concerns that the Articles might limit Sky News' ability to borrow. The Secretary of State is satisfied that the borrowing arrangements set out in the Articles of Association are reasonable.

The undertakings require that the Articles of Association set out the definition of independent directors [3.1(iv)]. This is consistent with the definition in the undertakings, and is found in Article 1(1).

The original undertakings require News to establish Sky News with Articles of Association which provide that Sky News will abide by the principle of editorial independence and integrity in news reporting. News now offers an additional undertaking not to attempt to cause Sky News to act in breach of its Articles of Association [3.3].

### *Independent Director with senior editorial and/or journalistic expertise*

Article 128 provides that meetings of the board of Sky News about editorial or journalistic matters shall only be quorate if an Independent Director with senior editorial and/or journalistic expertise is present. Similar arrangements apply to the corporate governance and editorial committee (at articles 138 and 139). This is a response to representations that these arrangements could be undermined if this Director was often unavailable for meetings for whatever reason. This will ensure that Sky News organises its business so as to ensure that there is always appropriate senior editorial and/or journalistic expertise at relevant meetings

[3.1(iii)(C); 3.1(ix)(E)].

*Solicitation*

News shall not solicit staff transferred to Sky News for a period beginning on the Closing Date and ending [words added] 24 months after the date of spin-off. This extends the non-solicitation provision to cover the period between Closing Date and spin-off [4.2].

*Carriage and Brand Licensing Agreement*

For the avoidance of any confusion, the reference to a 7 year Brand Licensing Agreement which is automatically renewed for a further 7 years has been changed to a reference to a 14 year Brand Licensing Agreement [4.6].

*Promotion of Sky News*

News shall ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the date on which the undertakings are accepted. This is important to ensure that Sky News continues to enjoy the same promotional support as the current business [4.9].

*Operational Agreements*

News shall ensure that Sky will, prior to or at spin-off, enter into the agreements with Sky News under which Sky will provide facilities and support services to Sky News on arms'-length terms which are fair and reasonable [words added]. This change provides the context for the Monitoring Trustee (see below) to assess News' fulfilment of its obligations in relation to the terms of the operational agreements [5.1].

Charges to Sky News under the main operational agreements are set for the first

year at a fixed price equivalent to the cost of Sky providing the relevant services plus a 5% margin. Thereafter charges will be increased by the Consumer Price Index (CPI). The undertakings have been changed to cap this increase. This caps the CPI-related charges payable by Sky News to News and so provides an enhanced degree of financial security for Sky News [5.3(iii)].

The payments will also be adjusted for actual usage where appropriate and savings or cost increases of services which Sky obtains from a third party. The undertakings have been changed to give Sky News audit rights in relation to these adjustments if Sky fails to provide any relevant information [5.3].

News must ensure that operational agreements will contain a dispute resolution mechanism. The undertakings have been amended to provide that, in the case of the agreements requiring the approval of the Secretary of State, they cannot be terminated until any dispute between Sky News and Sky has gone through the dispute resolution process. News will bear all reasonable costs (including Sky News' reasonable costs) of any dispute resolution process originating from a proposed termination by Sky [5.4].

#### *Appointment of Monitoring Trustee*

It was suggested that the undertakings should include the requirement for a Monitoring Trustee to ensure that News complies with the undertakings in the period leading up to the spin-off of Sky News. As a consequence there are now five new sections dealing with the appointment, functions and obligations of a Monitoring Trustee [6-10].

The undertakings have been amended so that, in effecting the spin-off, "News shall not take any action that would prevent the new company being placed in an overall position of editorial, governance, commercial and financial independence in which it will contribute to plurality as Sky News did prior to the Transaction" [2.1]. This provides a context for Monitoring Trustee to assess News' fulfilment of its obligations in respect of the spin-off of Sky News.

In addition to ensuring that News is complying with its obligations under the undertakings, the Monitoring Trustee will provide advice to the Secretary of State in relation to the latter's review of the key operational agreements requiring his prior approval. These include agreements on satellite capacity, playout, and uplink.

Within 20 Working Days of the undertakings being agreed, News has to nominate a Monitoring Trustee to be approved by the Secretary of State. Although News has to pay for the Monitoring Trustee, whoever is selected must be independent and have no material conflict of interest. Paragraph 7.1 of the undertakings expressly provides that the Monitoring Trustee acts on behalf of the Secretary of State. The Monitoring Trustee will remain in place until all of the operational agreements detailed become effective.

#### *Interim Protection*

In addition to the provisions for a Monitoring Trustee, there are a number of other changes which are designed to ensure that News cannot undermine Sky News in the run up to spin-off. For example, prior to the spin-off of the Sky News business, News must ensure that the Sky News business (as at the Closing Date) [words added] is maintained as a going concern [13.1(i)] and that the Sky News business, including its facilities and goodwill [words added], is maintained and run normally [13.1(iii)]. Similarly, News must not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off [13.1(iv)] and must provide information to the Secretary of State to enable him to monitor News' compliance by with these undertakings [13.2].

#### *Definitions*

The definition of "Material Transaction" has been extended to cover the lease agreement and the main operational agreements (that is, those requiring prior approval by the Secretary of State).

As amended, the Secretary of State now considers that the concerns relating to plurality identified by Ofcom are now prevented, remedied or mitigated by the undertakings.

### Carriage and Brand Licensing Agreements

The terms of the undertakings also ensure that the detailed provisions of the Carriage and Brand Licensing Agreements have to be approved by the Secretary of State before the merger can go ahead. The Secretary of State has therefore carefully considered the advice of Ofcom and OFT on these key Agreements. They have concluded that the drafts of the Carriage Agreement and the Brand Licence Agreement are consistent with the proposed undertakings. In addition, OFT conclude that the terms of the Carriage Agreement and Brand Licensing Agreement mean that Sky News will be practically and financially viable for the lifetime of the carriage agreement.

In terms of the length of the Carriage Agreement, OFT has reiterated its advice that the undertakings are likely to be practically and financially viable in the short and medium term. Its earlier reports have expressed concern about whether the undertakings would be viable over the long term, but recognised that the appropriate time-frame in this market was for the Secretary of State to decide, with Ofcom's advice.

Ofcom has reiterated its view that it considers a 10 year carriage agreement in the context of industry dynamics in this sector to be a long-term measure. The Secretary of State agrees with this view and therefore considers that the provision of a 10 year carriage agreement and a 14 year brand licensing agreement are of sufficient length to remedy, mitigate or prevent the concerns in relation to media plurality.

The Secretary of State is satisfied, following the advice from Ofcom and OFT, that the Carriage Agreement and Brand Licensing Agreements will ensure the financial and commercial independence of the new Sky News company over what is a very

long period in terms of this sector. He considers the Agreements along with the governance provisions will ensure editorial and operational independence of Sky News.

#### Other issues raised in the consultation

During the consultation period, a number of other issues were raised that were not material to the issue of media plurality and did not affect the Secretary of State's decision to consult on revised undertakings.

A number of respondents raised competition concerns. In addition to the fact that this could not be considered as part of the media plurality public interest test, these issues have already been fully considered by the European Commission which concluded on 21 December last year that the increased shareholding would not significantly impede effective competition.

Some respondents also argued that News could not be relied upon to abide by the requirements set out in the undertakings, citing previous guarantees and assurances given by News in the past, and the current phone hacking allegations against The News of the World. The Secretary of State takes the view that News have offered serious undertakings and discussed them in good faith. In all the circumstances and given that the implementation of those undertakings will be overseen by the Monitoring Trustee and thereafter monitored and if necessary enforced by the OFT, he takes the view that there are sufficient safeguards to ensure compliance with the undertakings. Furthermore, the various agreements entered into pursuant to the undertakings will each be enforceable contracts. Therefore whilst the phone hacking allegations are very serious they were not material to his consideration.

#### Conclusion

Having taken into account all relevant considerations, the Secretary of State proposes to accept the amended undertakings in lieu of a reference to the Competition Commission. As required by the Enterprise Act, he will undertake a

further consultation period starting today and ending at midday on Friday 8 July 2011. During this time all interested parties will be able to express their views on the undertakings in lieu. Once he has considered representations, he will reach a decision on whether he still considers that the undertakings (as amended) should still be accepted in lieu of a reference to the Competition Commission. If, after the consultation, he remains of the view that the undertakings address the concerns about media plurality, he will accept them and not refer this merger to the Competition Commission.

Representations should be sent to  
bskyb-newscorp.consultation2@culture.gsi.gov.uk by **midday on Friday 8 July 2011**

Postal representations should be sent to:

BSkyB-News Corporation Consultation

Media Team

Department for Culture, Media and Sport

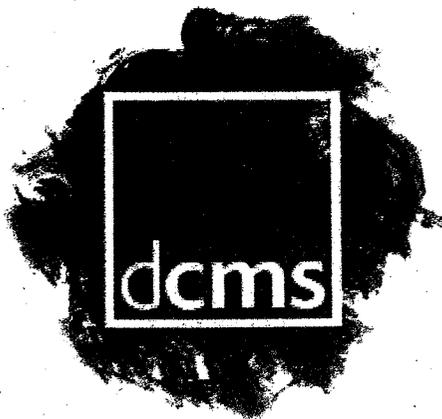
2-4 Cockspur Street

London

SW1Y 5DH

## News Corp - BSkyB merger update - June 2011

Culture Secretary Jeremy Hunt's statement following consultation on the proposed merger.



department for  
culture, media  
and sport

The Secretary of State for Culture, Olympics, Media and Sport, **Jeremy Hunt**, has today **published the results of the consultation launched on 3 March** on the undertakings in lieu offered by News Corporation in relation to their proposed merger with BSkyB. Alongside this he has also published subsequent advice from Ofcom and the OFT and has set out the next steps in the process.

The undertakings published on 3 March 2011 involve Sky News being 'spun off' as a separate company, operating independently from BSkyB. The Secretary of State, based on advice from the OFT and Ofcom, had said **he was minded to accept the undertakings in lieu** of a reference to the Competition Commission.

The consultation produced no new information to cause Ofcom and the OFT to change their earlier advice that the undertakings in lieu addressed Ofcom's media plurality concerns and were viable for 10 years. However, a number of suggestions were made which could further strengthen the undertakings. As a

result, Mr Hunt has **today published a revised more robust set of undertakings for consultation.**

The changes, which are set out in full in the revised undertakings published today, include:

The need for Sky News board meetings to include an independent director with senior editorial and/or journalistic expertise if decisions on editorial matters are to be made.

The appointment of a monitoring trustee whose main role is to ensure that News Corp complies with the undertakings in the run up to spin-off.

A requirement for Sky to continue to cross-promote Sky News on its channels.

A requirement for Sky News' Articles of Association to be approved by the Secretary of State.

Mr Hunt said:

"I am aware of the huge interest in the proposed merger and am grateful to those who responded to the consultation. I have considered carefully the points raised and, as at all steps in this process, taken advice from the independent regulators.

"The regulators have confirmed that the proposed undertakings are still sufficient to ensure media plurality. I could have decided to accept the original undertakings but a number of suggestions were made in response to the consultation which could further strengthen the undertakings, particularly around editorial independence, business viability and the articles of association. I am therefore proposing some changes to the undertakings and I will now hold a further public consultation."

The **consultation period on the revised undertakings** will run until midday Friday 8 July.

More than 40,000 representations were received in response to the consultation, including a very large number of near-identical responses as a result of internet campaigns. The Secretary of State also met representatives from Trinity Mirror, the Guardian Media Group, the Telegraph Media Group, Associated News and Media, Slaughter and May and Avaaz. The substantive points raised were considered carefully by the Secretary of State, advised by the regulators.

The Secretary of State is required to look at the specific issue of media plurality related to the merger (competition issues having already been dealt with at European level).

### Further information

#### Consultation on revised undertakings in lieu

[http://www.culture.gov.uk/news/news\\_stories/8259.aspx](http://www.culture.gov.uk/news/news_stories/8259.aspx)

14/03/2012

MOD300005222

**Publication of letters and reports related to the process  
News release with further details  
Written Ministerial Statement on the merger**

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## News Corp B SkyB merger

### Lines to take

- Phone hacking is wrong and illegal. The law is quite clear and the prosecuting authorities should follow it wherever it leads.
- The Culture Secretary has to make a quasi-judicial decision about the impact of the proposed merger on media plurality issues alone. The Culture Secretary will only allow this transaction to proceed and accept the undertakings in lieu if they are legally robust and enforceable, and address media plurality concerns.
- The Culture Secretary has at all times sought and followed advice from OFT and Ofcom, the independent and expert regulators. He has been as transparent as possible, publishing much more than required to do by the legislation.
- He has already consulted on the undertakings and, having carefully considered representations, has further strengthened them. Nothing raised in the consultation exercise led the regulators to reconsider their earlier advice.
- In line with the legislation, he is now having a further consultation period which ends on 8 July.
- This decision is to be made by my RHF the Culture Secretary. I have no role in it. The Culture Secretary did not discuss this decision with me or any other Cabinet colleague.
- The Secretary of State takes the view that News have offered serious undertakings and discussed them in good faith. In all the circumstances and given that the implementation of those undertakings will be overseen by the Monitoring Trustee and thereafter monitored and if necessary enforced by the OFT, he takes the view that there are sufficient safeguards to ensure compliance with the undertakings. Furthermore, the various agreements entered into pursuant to the undertakings will each be enforceable contracts. Therefore whilst the phone hacking allegations are very serious they were not material to his consideration.

### Background

On 3 March the Culture Secretary announced that, on the basis of the advice he had received from OFT and Ofcom, he believed that the proposed undertakings given by News Corp as part of their proposed merger with B SkyB addressed the media plurality concerns that Ofcom had identified in its report of 31 December 2010, and were practically and financially viable for up to 10 years.

The undertakings provide that Sky News be spun-off as an independent public limited company. Shares are to be distributed amongst the existing shareholders of Sky in line with their existing shareholdings. The effect of this would be that, after the proposed News/BSkyB merger was completed, the shareholdings in Sky News would remain as if the merger transaction had not happened. The new company would have a majority of independent non-executive directors and have long-term carriage and brand licensing agreements with the newly-merged News/BSkyB company so as to ensure its financial viability. The undertakings specify that News would not be able to increase its shareholding in the new company without the permission of the Secretary of State for a period of 10 years. After that period, any reacquisition would be subject to the general legislative merger control provisions, including a reference to the Competition Commission on plurality grounds depending on circumstances at that time.

As the Enterprise Act 2002 requires, the Secretary of State published these undertakings for a public consultation which ended on 21 March. He received over 40,000 representations to this consultation, including a very large number of near-identical responses as a result of internet campaigns. He also met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media, and Slaughter and May on 24 March and met Avaaz on 15 April.

A number of constructive changes were suggested to strengthen the editorial independence and financial viability of Sky News which the Secretary of State has accepted. In line with the legislation, he is having a further consultation period ending at midday on Friday 8 July 2011. Once this second consultation process is completed, he will decide whether to accept the undertakings or refer the merger to the Competition Commission.

The Secretary of State's decision in this case has to be based on media plurality issues, as this was specified in the notice issued. The Secretary of State has said that he is satisfied that these undertakings were offered in good faith to address the issues of media plurality raised by Ofcom in its original report, and that they address those issues.

**News Corporation's proposed acquisition of BSkyB****Supplementary Q&A***Phone hacking*

**Phone hacking allegations show that News Corp cannot be trusted to honour the undertakings they have given as part of the BSkyB merger?**

The Culture Secretary has to look at the safeguards contained in the undertakings News Corp have given as part of the merger process based on their merits, and consider whether these safeguards are sufficient to ensure compliance. Both the UIL and Articles of Association contain robust safeguards, the UIL and Articles of Association are legally binding agreements.

Safeguards include:

- Independent directors
- A corporate governance and editorial committee
- A Monitoring Trustee.
- OFT's on-going monitoring

Ofcom also has a role in ensuring that all persons who hold a broadcasting licence should be and continue to remain "fit and proper persons".

**The decision on the merger should be delayed until the results of the phone-hacking inquiries are known?**

The merger has been investigated on the basis of the effect it could have on media plurality.

The Secretary of State takes the view that News have offered serious undertakings and discussed them in good faith. In all the circumstances and given that the implementation of those undertakings will be overseen by the Monitoring Trustee and thereafter monitored and if necessary enforced by the OFT, he takes the view that there are sufficient safeguards to ensure compliance with the undertakings. Furthermore, the various agreements entered into pursuant to the undertakings will each be enforceable contracts. Therefore whilst the phone hacking allegations are very serious they were not material to his consideration.

**The merger should be looked at again in terms of the need for a genuine commitment to the broadcasting standards objectives, as set out in the Communications Act 2003?**

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The intervention, and ultimately the Secretary of State's decision has been made on the basis of plurality concerns. Once an intervention notice has been made on one basis, the legislation does not permit a second intervention on another basis.

*[Section 67(5) of the Enterprise Act 2002 provides that no more than one European Intervention Notice may be given to the same relevant merger situation.]*

**The merger should now be referred to the Competition Commission, so that they could consider the effect on plurality and a commitment to broadcasting standards.**

The Secretary of State could only refer the case to the Competition Commission for consideration on the basis of the effect the merger could have on media plurality, and not for any other public interest consideration. However, Ofcom, as an independent regulator, has said that the undertakings News Corp have given address their media plurality concerns and on that basis the Secretary of State has made clear he is proposing to accept the Undertakings in lieu of a referral to the CC.

*Independence of Sky News*

**Why should the new Sky News board be any more effective in maintaining editorial independence than the Times board?**

The undertakings offered by News Corporation provide a stronger degree of independence for Sky News than the provisions for The Times. These safeguards operate at a number of levels and taken together should ensure the editorial independence of Sky News. In particular:

- News Corp will remain a minority owner
- The new company will have a majority of independent directors and be independently chaired.
- At least one independent regulator must have senior editorial and/or journalistic experience.
- The company's articles of association explicitly embed the principle of editorial independence and integrity in news reporting.
- There will be a corporate governance and editorial committee to ensure compliance with these requirements, which will also have a majority of independent directors and be independently chaired.

**What is News Corp proposing and how does this meet the plurality concerns?**

News Corp is proposing that they make Sky News into an independent PLC. The shareholding would remain the same as it currently is with BSkyB but additional safeguards would be added to ensure editorial impartiality. In reality

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the Murdochs will have less control of Sky News if this merger goes through than before.

**How will this ensure Sky News' editorial independence?**

The board of the New Company will be made up of a majority of Independent Directors and will have an independent chair (ie not James Murdoch). In addition to this an editorial committee will be put in place to ensure a greater level of editorial independence.

**How can you ensure that directors will be independent?**

The Articles of Association for this new Company, which have been published, clearly set out what is meant by an independent director. This includes restrictions in respect of News Corp, Sky or any interconnected body in relation to:

- o recent employment;
- o material business relationships;
- o cross-directorships;
- o shareholdings.

Whatever appointment process is followed must produce these results.

*Overall decision*

**Is it right that Rupert Murdoch will now own such a large percentage of the UK media?**

Ofcom, the independent regulator has said that any plurality concerns they had about the deal have been addressed by the proposed undertakings in lieu News Corp have put forward. The competition concerns have already been addressed by the EU.

*Process*

**What happens now?**

The Secretary of State announced last week that he will be consulting on a revised, more robust set of undertakings until midday 8 July after which he will make a final decision to accept the undertakings or refer the merger.

**Why the need to consult again?**

The responses to the first consultation raised a number of points which have allowed the undertakings to be strengthened. It is reasonable to give other interested parties an opportunity to comment on the revised undertakings

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before the Secretary of State takes a final decision on whether to accept them or not.

**What are the various potential outcomes from the consultation?**

The Secretary of State will consider the responses to the second consultation will then either accept undertakings or refer the merger.

**Is it still possible that this might be referred to the CC? What would it take for this to happen?**

Yes it is. If, as a result of the consultation or other consideration, the Secretary of State does not believe the undertakings would address the plurality concerns I can decide to refer to the CC.

**What meetings/discussions has SoS had with the PM/Cabinet colleagues?**

He did not discuss this decision with any Cabinet Colleague. It is a quasi-judicial process in which he makes the decision without such consultation.

**What meetings has SoS had with News Corp/BSkyB/OFT/Ofcom etc? What was discussed?**

SoS has been clear that he has not met with News Corp or BSkyB since his statement to Parliament on 25<sup>th</sup> January 2011

He met with Ofcom and the OFT to clarify some of the undertakings in lieu on 24 March 2011.

*Plurality Test*

**Ofcom recommended that the government consider undertaking a wider review of the statutory framework to ensure sufficient plurality in the public interest. How does the government propose to address this issue?**

The government recognises that there is a potential weakness in the media plurality public interest test because it is only triggered by a merger. It cannot address concerns arising from organic growth.

I said that I want to consider this as part of the review of communications regulation which I announced in January of this year.

## Oral statement: NewsCorp/BSkyB merger update

Monday 11 July 2011

**The Secretary of State for Culture, Olympics, Media and Sport (Mr Jeremy Hunt):** Mr Speaker the events of last week shocked the nation. Our proud tradition of journalism, which for centuries has bravely held those in positions of power or responsibility to account without fear or favour, was shaken by the revelation of what we now know to have happened at News of the World. The perpetrators of those acts not only broke the law, they preyed on the grief of families who had lost loved ones either as a result of foul murders or giving their life for their country. I hope the law shows no mercy on those responsible and no mercy on any managers who condoned such appalling behaviour.

As a result of what happened the Prime Minister last week announced two independent enquiries to examine what went wrong and recommend to the government how we can make sure it never happens again.

First, a full, judge led, public inquiry into the original police investigation. Witnesses will be questioned under oath and no stone will be left unturned. As The Prime Minister announced on Friday that Inquiry will need to answer the following questions. Why did the first police investigation fail? What exactly was going on at the News of the World, and what was going on at other newspapers? The bulk of the work of this inquiry can only happen after the police investigation has finished but we will start what we can now.

Second, a separate inquiry to look at the culture, the practices and the ethics of the British press. In particular, they will look at how our newspapers are regulated and make recommendations for the future. That Inquiry should start as soon as possible, ideally this summer. As the Prime Minister said a free press is an essential component of our democracy and for our way of life. But press freedom does not mean that the press should be above the law and in announcing this inquiry the Prime Minister has invited views on the way the press should be regulated in the future.

I also have to make a decision about News Corporation's plans to buy the shares it does not already own in BSkyB. I know that colleagues on all sides of this House and the public at home feel very concerned at the prospect of the organisation which allegedly allowed these terrible things to happen being allowed to take control of what would become Britain's biggest media company.

I understand that in the last few minutes News Corporation have withdrawn their Undertakings in Lieu.

On **January 25th** I said I was minded to refer News Corporation's proposed merger with BSkyB to the Competition Commission in the absence of any specific undertakings in lieu.

As a result of News Corporation's announcement this afternoon I am now going to refer this to the Competition Commission with immediate effect and will be writing to them this afternoon.

Today's announcement will be an outcome that I am sure the whole house will welcome.

It will mean that the Competition Commission will be able to give further full and exhaustive consideration of this merger taking into account all relevant recent developments.

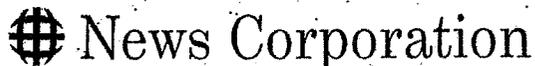
Mr Speaker, protecting our tradition of a strong, free and independent media is the most sacred responsibility I have as Culture Secretary. Irresponsible, illegal and callous behaviour damages that freedom by weakening public support for the self-regulation upon which it has thrived. By dealing decisively with the abuses of power we have seen, hopefully on a cross-party basis, this government intends to strengthen and not diminish press freedom, making this country once again proud and not ashamed of the journalism that so shapes our democracy.

[Ends]

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**Back to top**

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**STRICTLY CONFIDENTIAL**

Rt Hon Jeremy Hunt MP  
Secretary of State for Culture, Olympics, Media and Sport  
Department for Culture Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

11 July 2011

Dear Jeremy,

News Corporation - British Sky Broadcasting Group Plc.

I am writing formally to confirm News Corporation's decision to withdraw the undertakings which we offered on 14 June 2011 and upon which you have consulted.

I am of course aware that Ofcom and OFT recommended that those undertakings were sufficient to remedy the preliminary issues identified by Ofcom in its report of 31 December 2010.

I have seen your letters to Ofcom and OFT of 11 July 2011 in which you ask for their advice on whether you should now reconsider accepting undertakings from News Corporation upon which you have consulted. You and officials from your Departments have previously emphasised in Parliament that due process requires you to assess the proposed transaction by reference to issues of media plurality alone. News Corporation agrees with this position, which was also expressed in the DCMS notice of consultation on our proposed undertakings of 8 July 2011: "whilst the phone hacking allegations are very serious they were not material to [your] consideration".

However, we have listened and considered public sensitivity, political concern and the requests for an independent Competition Commission review. In these circumstances I have taken a decision to withdraw the undertakings. This will allow the matter to be considered by the Competition Commission on an objective and fair basis taking into account factors and evidence which are relevant to the only applicable legal test of sufficiency of media plurality.

News Corporation continues to believe that properly taking into account those factors its proposed acquisition will not lead to there being insufficient plurality in news provision in the UK.

I note that, following our announcement earlier today, you have announced to the House of Commons that you will refer the proposed transaction to the Competition Commission for a detailed review. News Corporation is ready to engage with the Competition Commission on substance and to present its case that there is no reason why the transaction should raise concerns about the sufficiency of plurality in the UK.

Yours sincerely,

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

James Murdoch

**James Murdoch**  
Deputy Chief Operating Officer  
Chairman & CEO, International

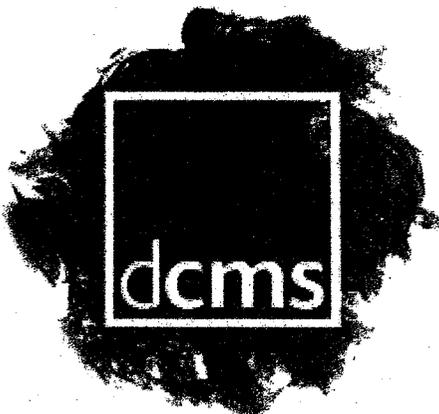
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irm@newscorp.com

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## News Corporation's proposed acquisition of BSkyB

Statement from the Department for Culture, Media and Sport.



department for  
culture, media  
and sport

**Jeremy Hunt made a later statement on this subject following the announcement that News Corporation have withdrawn their undertakings in lieu on 11 July 2011.**

The consultation on undertakings in lieu offered by News Corporation in relation to their proposed merger with BSkyB closes at midday today. The Secretary of State has always been clear that he will take as long as is needed to reach a decision.

The Secretary of State will consider carefully all the responses submitted and take advice from Ofcom and the Office of Fair Trading before reaching his decision. Given the volume of responses, we anticipate that this will take some time. He will consider all relevant factors including whether the announcement regarding the News of the World's closure has any impact on the question of media plurality.

### Related information

- Jeremy Hunt's statement to Parliament following News Corp's withdrawal of their undertakings in lieu (11 July 2011)**
- Jeremy Hunt's letters to Ofcom and the Office of Fair Trading (11 July 2011)**
- Timeline of all DCMS reports and letters published relating to BSkyB-News Corp merger**

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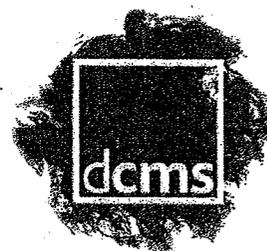
Department for Culture, Media and Sport  
Rt Hon Jeremy Hunt MP  
Secretary of State

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Fax 020 7211 6249

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Clive Maxwell  
Executive Director  
Office of Fair Trading  
Fleetbank House  
2-6, Salisbury Square  
London  
EC4Y 8JX



department for  
culture, media  
and sport

11 July 2011

Dear Clive

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.

However, given the well-publicised matters involving the News of the World in the past week, and which have led to the closure of that paper, I should be grateful if you could let me know whether you consider those revelations and allegations cause you to reconsider any part of your previous advice to me, or otherwise gives rise to concerns, on the credibility, sustainability and practicalities of the undertakings offered by News Corporation.

Although I anticipate it taking some time in order to consider consultation responses, it would be of assistance if you could let me have your response as swiftly as you are able in order that I can factor this into my thinking.

Yours ever,



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



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

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



department for  
culture, media  
and sport

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.



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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 will be advising me on the response to 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

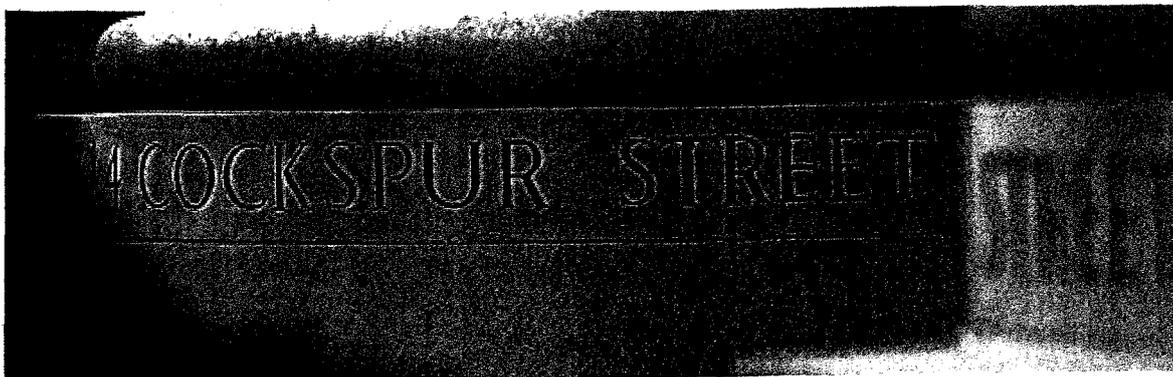


Rt Hon Jeremy Hunt MP  
Secretary of State for Culture, Olympics, Media and Sport

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## News Corp – BSkyB merger to be referred to Competition Commission

Jeremy Hunt makes statement to Parliament following withdrawal of undertakings in lieu.



Secretary of State for Culture, Olympics, Media and Sport **Jeremy Hunt** today made a **statement to Parliament** on the proposed merger between BSkyB and News Corporation.

The statement followed News Corp's statement withdrawing **the undertakings that Mr Hunt had been minded to accept in lieu of referring the merger to the Competition Commission.**

Following the withdrawal of these undertakings, the Secretary of State announced that he will refer the deal to the **Competition Commission** with immediate effect, and will write to them this afternoon. The Competition Commission will be able to give further full and exhaustive consideration of this merger, taking into account all relevant recent developments.

He also laid out details of the judge-led inquiry into the phone-hacking police investigation, and outlined a separate inquiry to look at the culture, the practices and the ethics of the British press.

Mr Hunt said:

"Protecting our tradition of a strong, free and independent media is the most sacred responsibility I have as Culture Secretary. Irresponsible, illegal and callous behaviour damages that freedom by weakening public support for the self-regulation upon which it has thrived.

By dealing decisively with the abuses of power we have seen, hopefully on a cross-party basis, this government intends to strengthen and not diminish press freedom, making this country once again proud and not ashamed of the journalism that so shapes our democracy."

### Further information

**Jeremy Hunt's full statement**  
**News Corp/BSkyB – timeline of publication**  
**Reference to the Competition Commission and Related information**

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[Redacted]

**From:** [Redacted] [Redacted]  
**Sent:** 12 July 2011 10:26  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** Re: Urgent letter to the minister: opportunity to examine fit and proper for BSKyB takeover  
**Attachments:** avaaz-3.bskyb.note.11.7.11Final.pdf

Sorry - here you go.

An early meeting - or a call with a senior official - will be appreciated.

[Redacted]

AVAAZ

Tel: [Redacted]  
Skyp [Redacted]

[www.avaaz.org](http://www.avaaz.org)

Avaaz.org is a 9 million-person global campaign network that works to ensure that the views and values of the world's people shape key decisions.

On 12 July 2011 09:59, [Redacted] [Redacted] wrote:

No attachment!

[Redacted]

DCMS

2-4 Cockspur Street

London SW1Y 5DH

[Redacted]

From: [REDACTED]  
Sent: 11 July 2011 16:10  
To: [REDACTED]  
Subject: Re: Urgent letter to the minister: opportunity to examine fit and proper for BSKyB takeover

Wrong version - pls us this one

Please pass to the minister urgently.

Jeremy Hunt

Minister for Culture, Media and Sport

CMS

Cockspur Street

London

Dear minister,

As mentioned in the FT and on Today Lawyers a specialist competition barrister working for Avaaz has produced the attached note about how you can and should issue a new intervention notice for the BSKyB takeover process.

The legal advice sets out how you could allow the phone hacking scandal to affect his decision on BSKyB. Until now, you and your advisors have argued that you are legally constrained and can only reject the deal on the grounds of media plurality - i.e. that the phone hacking scandal could have NO bearing on the takeover.

This note argues that you are interpreting your powers too narrowly and being far too cautious. It argues that you could withdraw the original European Intervention Notice which said the deal would be scrutinised only on the grounds of plurality and issue a new one which would consider the fitness of News Corp owners to takeover the rest of BSKyB.

This builds on our earlier letters to you from 20 April and last week.

We would welcome an opportunity to meet you urgently this week.

Sincerely,



AVAAZ



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RE: PROPOSED ACQUISITION OF BSKYB BY NEWS CORPORATION

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NOTE

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1. I have been asked by Avaáz to comment, in the present circumstances surrounding the proposed acquisition by News Corporation of the 61% of shares in BSKyB that it does not already own ("the merger situation"), on the advice apparently received by the Secretary of State that he has no power, in his consideration of the merger situation, to make a reference to the Competition Commission ("the CC") on the basis that there is an issue as to News Corporation's fitness to acquire complete control of BSKyB.
2. The basis on which the Secretary of State has acted in this matter to date has been a Notice<sup>1</sup> ("the original Notice") under section 67(2) and (3) of the Enterprise Act 2002 ("the EA02") issued by Dr Cable (the Secretary of State then dealing with the matter) in late 2010. The original Notice specified the public interest consideration which Dr Cable considered was or might be relevant to the merger situation (see section 67(3)(b) of the EA02). That specified consideration was media plurality (i.e. the matters set out in section 58(2C)(b) of the EA02, that is to say, in very

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<sup>1</sup>The term used in the EA02 is a "European Intervention Notice". That term is slightly misleading if it is taken to suggest that the notice involves some form of direct intervention by the EU institutions: in fact, the formulation of the Notice is a matter for the Secretary of State. The reason for the use of the term is simply that, in a merger such as this that is subject to the EU Merger Regulation (Council Regulation 139/2004), the specified interests must be "legitimate interests", other than effects on competition, set out in or approved under Art.21 of that Regulation. For reasons I discuss below, I do not consider that Art.21 would in fact restrict the Secretary of State's ability to specify fitness as a s.67(2) consideration.

broad brush terms, whether the merger would mean that there was no longer sufficient media diversity).

3. The effect of the form of Notice issued by Dr Cable is that the Secretary of State's consideration of the merger situation has been limited to consideration of its potential effect on media plurality, and, as matters stand, any possible reference to the Competition Commission ("CC") would likewise be limited to that issue.
4. According to press reports, the Secretary of State has been advised that he cannot now alter the original Notice, or issue a fresh Notice, under section 67(2) and (3) so as to permit himself, and on a reference the CC, to consider the question of News Corporation's fitness to have complete control of a very important commercial broadcaster such as BSkyB.
5. I see from a letter to OFCOM published on the DCMS website earlier today that the Secretary of State has asked OFCOM whether concerns as to News Corporation's fitness may affect the analysis of media plurality<sup>2</sup> or affect the credibility, sustainability or practicalities of undertakings offered by News Corporation in lieu of a reference to the CC. Those appear to be sensible questions to ask. But whatever OFCOM advise, at the end of the day, as matters stand under the original Notice, the Secretary of State (and the CC on a reference) would not be able to consider fitness except to the extent that it had a possible impact on media plurality or the credibility of undertakings offered, and cannot take decisions based directly on fitness concerns.

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<sup>2</sup> Although the chain of reasoning is not spelt out, it is likely to be somewhat convoluted: for example, it may be said that if News Corporation/BSkyB post-merger is found to be unfit that OFCOM could then use their powers to revoke BSkyB's broadcasting licences and that that would then affect media plurality.

6. The bottom line, as I understand it, is that the Secretary of State's advice is still that he is confined to the terms of the original Notice and cannot amend or replace that Notice.
7. In my view, that advice is far too cautious. I consider that, in fact, there are good grounds for saying that the Secretary of State would in the present circumstances have power to issue a replacement section 67(2) Notice containing the fitness question and therefore enabling both him (and on a reference the CC) to consider fitness directly in deciding whether to clear the proposed merger.
8. The factual basis on which I proceed is that:-
  - a. since the original Notice substantial and credible new information has come to light casting significant doubt on the fitness of News Corporation and/or individuals holding senior positions in News Corporation to have complete control of BSkyB;
  - b. the information in question was known to, or available to, News International at the time of the original Notice but not disclosed to Dr Cable or any other regulatory body; and
  - c. in consequence, that information was not, and could not reasonably have been, known to Dr Cable at the time of the original Notice.
9. I do not need to comment on the accuracy of any of the numerous serious allegations that have been made in the past week or so about the conduct of News International, a subsidiary of News Corporation, in relation to the *News of the World*: all I need say is that it appears that the factual basis I have assumed appears likely to be correct.

10. The basis of the Secretary of State's view that he cannot respond to these developments by issuing a replacement European Intervention Notice is, I would have thought<sup>3</sup>, section 67(5) of the EA02. That subsection provides that: "*No more than one ... notice shall be given under [section 67(2)] in relation to the same relevant merger situation.*"
11. One can readily see that if, having set up an investigation into a certain public interest issue or set of issues, a Secretary of State could later decide to add further public interest issues and require those to be investigated, then there would be a serious risk of the merger control process being used oppressively. Section 67(5) is in my view designed to remove that risk, i.e. to prevent the Secretary of State from "moving the goalposts" during an investigation of a merger.
12. However, it is difficult to believe that Parliament could have intended a situation to arise in which: -
  - a. a party to a merger situation could first fail to disclose information suggesting serious wrongdoing and plainly relevant to a possible public interest consideration (fitness), so that a European Intervention Notice is issued without reference to that public interest consideration, and
  - b. that same party could then rely on section 67(5) to stop the Secretary of State issuing a further European Intervention Notice allowing that public interest consideration to be considered.

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<sup>3</sup> I can see no reason under Art.21 of the EU Merger Regulation (which I discuss further below) that would prevent him from acting now and note that (unlike Art.9 of that Regulation) Art.21 contains no provision requiring the Member State to act within a particular time period.

13. In such a situation, far from being able to complain about "moving the goalposts" if additional considerations were added, it does not seem to me that the party concerned would be able to claim that it had suffered any unfairness.
14. It therefore seems to me that any Court is likely to be ready to adopt an approach to the construction of section 67(5) that avoids that section being used to achieve a situation that Parliament could not have intended.
15. In my view, there are at least two approaches by which that could be achieved.
16. The first is say that in circumstances such as the present, the substantial and significant new information now available to the Secretary of State means that the merger situation is not, now, the "*same merger situation*" for the purposes of section 67(5) as the merger situation considered at the time of the original Notice.
17. The second is to say that, in the circumstances, it is now clear that the original Notice is so fundamentally flawed as a result of News Corporation's failure to disclose relevant facts and Dr Cable's consequent (and understandable) failure to realise that there was a serious potential fitness issue that the original Notice is void or ineffective and does not count, for the purposes of section 67(5), as a valid Notice under section 67(2).
18. Although I cannot claim that the position is certain, I can say that in my view, given the factual context set out above, any attempt by News Corporation to challenge a decision by the Secretary of State to issue a further Notice allowing him and the CC to consider fitness would be more likely than not to fail, notwithstanding section 67(5) of the EA02.

19. Finally, I should note that any decision to specify fitness as a relevant consideration would need to overcome two further hurdles.

- a. The first hurdle is that a decision to issue such a notice would require an order under section 58(3) of the EA02<sup>4</sup> and could be defeated by a vote by either House of Parliament under the negative resolution procedure. Although that is a political not a legal question, the tenor of press comment is that that hurdle would not be difficult to overcome.
- b. The second is that he would need to obtain the European Commission's approval under Article 21 of the EU Merger Regulation. The European Commission would need to be satisfied that a "fitness" test is a "legitimate interest" of the United Kingdom and is compatible with EU law. I do not however see any reason why a suitably drawn "fitness" test, which could be confined to control of large broadcasters, would be incompatible with EU law, and note that since fitness is a requirement of holders of broadcasting licences under the Broadcasting Act 1990 (a requirement which I assume the European Commission regards as consistent with EU law) it is hard to see why there should be any further difficulty in imposing a fitness test in relation to mergers that involve taking control of the holder of such a licence. Further, fitness of controllers of large commercial broadcasters seems to me to be a "legitimate interest" falling under Article 21: indeed, one would have thought it must be better to consider fitness in advance rather than to wait until control has been acquired and then go through a process of licence revocation.

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<sup>4</sup> Adding fitness to the list of possible public interest considerations in section 58 of the EA02

20. I should make it clear that I am not saying that the Secretary of State is *bound* now to issue a replacement Notice allowing fitness to be examined as a public interest consideration. His discretion is a wide one. However, in the present circumstances, the view that he definitely *cannot* lawfully do so seems to me to be far too cautious.
21. I am happy for this Note to be circulated as Avaaz sees fit. Given that possibility, I should make it clear for the record that the view set out above is mine alone and should not to be attributed to my Chambers or any other member of my Chambers.

Monckton Chambers  
1-2 Raymond Buildings  
London WC1R 5NR  
United Kingdom

GEORGE PERETZ

11 July 2011


**RE: PROPOSED ACQUISITION OF  
BSKYB BY NEWS CORPORATION**

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**NOTE**

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**Hausfeld & Co. LLP  
12 Gough Square, London  
EC4A 3DW**

**Ivan Lewis MP**

Shadow Secretary of State for Culture, Media and Sport

House of Commons, London, SW1A 0AA

134A

Rt Hon Jeremy Hunt MP  
Secretary of State for Culture, Media and Sport  
Department of Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

12<sup>th</sup> July 2011

Dear Jeremy

**News Corp/BSkyB merger and your referral to the Competition Commission**

You will be aware of the deeply held, widespread public concern regarding the proposal by News Corp to acquire 100% shares in BSkyB. In the House of Commons yesterday you announced that you intend to refer News Corp's bid to the Competition Commission.

We welcome that decision; we have been calling for the matter to be referred to the Competition Commission for some time. Nonetheless, we have some grave concerns about the referral being made, in your words 'with immediate effect', and without taking time to fully consider the issues in light of yet more shocking allegations that have unfolded in recent days regarding not only the behaviour of reporters at News of the World but also now, The Sun and The Sunday Times.

Given the widespread and legitimate concerns that potential criminality and highly unethical practices were prevalent across News International and potentially wider still, we believe it would be a dereliction of your duty as Secretary of State with responsibility for this matter to allow this legal process to continue without ensuring that the public interest in relation to these fundamental issues are taken into account.

We appreciate the legal technicalities around this issue, and that the Government may feel constrained by the terms of the reference set out in the Notice issued at the start of the merger process, on 4 November 2010, by the then Secretary of State. At that stage it is understandable (although regrettable) that the public interest considerations put forward related solely to media plurality. We are confident that had the Secretary of State at the time been aware of what we now know he would have included broadcasting standards as a public interest consideration.

The failure of News Corp to disclose such critically important information, about the scale and nature of the wrongdoing, prior to the Secretary of State making the decision about the terms of the reference, particularly as it now appears to have been in the possession of News International since 2007, must fundamentally alter the legal path of this merger.

However, unless you change the parameters of the original reference to reflect the dramatic change in circumstances, about which we now know, the Competition Commission will be constrained to look solely at the issue of plurality. This cannot be right.

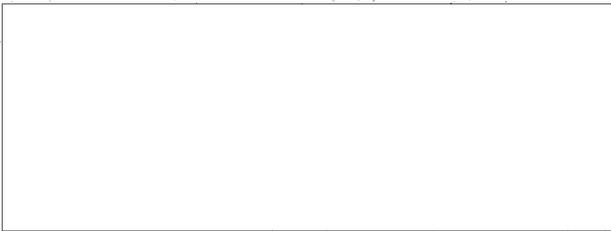
Under these extraordinary circumstances, this is an affront to common sense and a betrayal of the deeply held and justified concerns of the British public.

We therefore urge you, in the public interest, to take time to give proper consideration to the full nature and extent of the concerns which have now been expressed by the public, in Parliament and internationally, before finalising the terms of the reference to the Competition Commission. As there is no time constraint imposed upon this process, it would be unreasonable and against the public interest to fail to do so.

We appreciate that Ofcom may be considering an independent assessment of the fitness of News Corp as a broadcasting license holder in the UK. However, this does not remove the Government's responsibility to take the appropriate and necessary action on this issue and to examine and challenge, if necessary, the legal process by which you may feel you are bound.

The public's abhorrence at the allegations that continue to surface must be taken into account when a decision of this magnitude - that goes to the very heart of our democracy - is taken.

Yours Sincerely



Ivan Lewis MP  
Shadow Secretary of State for Culture, Media and Sport

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**ACQUISITION BY NEWS CORPORATION OF  
60.9% OF THE SHARES IN BRITISH SKY BROADCASTING PLC**

**TERMS OF REFERENCE**

Whereas the Secretary of State for Business, Innovation and Skills has given a European intervention notice in relation to a European relevant merger situation, as defined in section 68 of the Enterprise Act 2002 ("the Act"), and has received a report of the Office of Fair Trading and of OFCOM under articles 4 and 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 ("the Order") in relation to the matter.

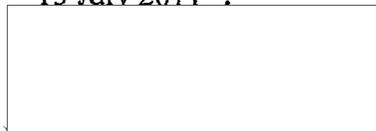
Whereas the Secretary of State believes that it is or may be the case that-

- (a) arrangements are in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation in that:
  - (i) enterprises carried on by or under the control of British Sky Broadcasting plc will cease to be distinct from enterprises carried on by or under the control of News Corporation;
  - (ii) the value of turnover in the United Kingdom of the enterprise to be taken over exceeds £70 million;
  - (iii) the arrangements will give rise to a concentration with a Community dimension within the meaning of the EC Merger Regulation; and
  - (iv) a reference cannot be made under section 33 of the Act;
- (b) the media public interest consideration specified in the European intervention notice concerned with the sufficiency of plurality of persons with control of media enterprises is relevant to a consideration of the European relevant merger situation concerned; and
- (c) taking account only of the media public interest consideration concerned, the creation of the European relevant merger situation will operate or may be expected to operate against the public interest.

Now, therefore, the Secretary of State for Culture, Olympics, Media and Sport, in exercise of his powers under article 5(3) of the Order, hereby refers to the Competition Commission ("the Commission") for investigation and report within a period ending on 27 December 2011 the questions referred to in articles 6(2), (3) and (4) of the Order.

In relation to the question of whether a European relevant merger situation will be created, which arises under article 6(2) of the Order, the Commission shall exclude from consideration one of subsections (1) and (2) of section 23 of the Act if the Commission finds that the other is satisfied.

13 July 2011



Jon Zeff

An official of the Department for Culture, Media and Sport

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**From:** OLDFIELD PAUL  
**Sent:** 13 July 2011 15:12  
**To:** [redacted]  
**Cc:** [redacted] ZEFF JON  
**Subject:** RE: Referral to the Competition Commission: Proposed News Corporation Merger with BSkyB  
**Attachments:** News Corp BSkyB Decision Note FINAL.DOCX

Following the ToR that Jon Zeff sent through earlier today I thought, for completeness, I should also now send you the associated decision note.

Your Sincerely

Paul

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**From:** OLDFIELD PAUL  
**Sent:** 11 July 2011 19:46  
**To:** [redacted]  
**Cc:** [redacted] ZEFF JON  
**Subject:** Referral to the Competition Commission: Proposed News Corporation Merger with BSkyB

Dear [redacted]

Following News Corporation's withdrawal of their undertakings in lieu, and the Secretary of State's statement in Parliament this afternoon, I am writing to alert you that the Secretary of State has decided to refer the proposed merger of News Corporation with BSkyB to the Competition Commission.

I know Jon Zeff has already discussed with you this afternoon and will be doing so again tomorrow morning. A formal letter to you will follow shortly afterwards.

Yours Sincerely

Paul  
 Paul Oldfield  
 Principal Private Secretary to the Secretary of State  
 Department for Culture, Media and Sport

02 [redacted]

## Department for Culture, Media and Sport

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The reference by Jeremy Hunt, the Secretary of State for Culture, the Olympics, Media and Sport, of News Corporation's proposed acquisition of 100% of the shares in British Sky Broadcasting plc to the Competition Commission under Section 58 of the Enterprise Act 2002 dated 13 July 2011.

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### PARTIES

**News Corporation (News Corp)** is a global media company active in: (1) filmed entertainment; (2) television; (3) cable network programming; (4) direct broadcast satellite television; (5) integrated marketing services; (6) newspapers and information services; (7) book publishing; and (8) other activities such as digital media properties and outdoor display advertising. In the UK, it owns several daily and weekly newspapers (those are The Sun, The Times, The Sunday Times and latterly the News of the World) and 39.1 per cent of British Sky Broadcasting Group plc (BSkyB).

The target is **British Sky Broadcasting plc (BSkyB)**. News Corp already holds 39.1% of the shares and several directorships in BSKyB. The acquisition will be effected through an offer to acquire the entire issued and to be issued share capital of BSKyB not already owned by News Corp. BSKyB's activities in the UK include: (1) the creation and retail and wholesale distribution of 'linear' TV channels; (2) the retail distribution of BSKyB's and third parties' 'audio-visual' content; (3) the provision of retail telephony and broadband services; (4) the provision of conditional access, access control and electronic program guide services to broadcasters and interactive service providers; (5) the sale of advertising and sponsorship on BSKyB and third parties' channels and websites; (6) interactive services on BSKyB's platform; and (7) the provision of fixed-odds betting services.

## TRANSACTION

On 3 November 2010 News Corp notified the European Commission of its intention to acquire the shares in BSkyB it does not already own. This would increase its holding from 39.1% to 100%. On 4 November the Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. The notice specified the public interest consideration in section 58 of the Enterprise Act 2002 concerned with the sufficiency of plurality of persons with control of media enterprises. This is:

*“the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience”.*

The Notice required the OFT to investigate and report to the Secretary of State in accordance with Article 4 of the Enterprise Act (Protection of Legitimate Interests) Order 2003 (the Order) within the period ending on 31 December 2010. Article 4 of the Order requires the OFT to provide advice to the Secretary of State on the considerations relevant to the making of a reference under section 33 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under Article 5 of the Order. Specifically, the OFT is required to provide a decision as to whether it believes that it is, or may be, the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation as defined in section 68 of the Act.

The Notice also required the Ofcom to investigate and report in accordance with Article 4A of the Order, within the same period providing advice and recommendations on the specified public interest consideration, which may be relevant to the Secretary of State's decision on whether to refer the case to the Competition Commission. The specified public interest test was the need for there to be sufficient plurality of persons with control of media enterprises. Section 67(5) of the Enterprise Act 2002 provides that no more than one European Intervention

Notice may be given to the same relevant merger situation so it is not therefore possible to modify or add considerations to the original notice.

## **JURISDICTION**

The Secretary of State may make a reference to the Competition Commission, pursuant to article 5 of the Order, on the basis of the specified public interest consideration set out in section 58 of the Act, if he believes that it is or may be the case that –

- (a) a European relevant merger situation has been created;
- (b) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- (c) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

## **ADVICE FROM THE OFT AND OFCOM AND OTHER REPRESENTATIONS**

The OFT produced a report to the Secretary of State under Article 4(2) of the Order dated 30 December 2010. This report concluded that “there are arrangements in progress or in contemplation which, if carried into effect, will create a European relevant merger situation within the meaning of section 68(2) of the Act.”

Ofcom produced a report on 31 December 2010 under section 4A of the Act in which that advised on the relevance and effect of the public interest consideration set out in section 58(2C)(a) on this merger situation. In this report, Ofcom advised that “the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences.”

The OFT and the OFCOM reports have been published by the Secretary of State in accordance with Article 14(2) of the Order.

On 7 January 2011 the Secretary of State concluded that he was minded to refer the merger to the Competition Commission on the grounds that he considered that it may be the case that the merger may operate against the public interest in media plurality.

In coming to his decision, the Secretary of State has taken into account the reports provided to him by the OFT and OFCOM. Further, the information and range of views contained in the detailed summaries of representations made by the parties and third parties and included in the first OFCOM report of 31 December 2010 have been taken fully into account.

#### **UNDERTAKINGS IN LIEU**

The Secretary of State considered whether or not to accept undertakings in lieu of a reference to the Competition Commission pursuant to paragraph 3 of Schedule 2 to the Order. That paragraph provides that where the Secretary of State has the power to make a reference to the Competition Commission and otherwise intends to make such a reference, he may, instead of doing so, and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which may result from the relevant merger situation, accept such undertakings from the parties as he may consider appropriate.

The Secretary of State received an offer of undertakings from News Corp on 18 January 2011 and a revised offer of undertakings in lieu of a reference on 24 January 2011. The Secretary of State sought further advice from the OFT and OFCOM on the appropriateness of the undertakings under section 93 and 106A of the Act respectively who reported to him on both 11 February and 1 March. The advice from OFT and Ofcom were published by the Secretary of State in accordance with sections 107(3)(b) and (ba) and 107(9)(a) of the Act on 3 March 2011.

Having considered these reports, the Secretary of State announced on 3 March that he was minded to accept the undertakings in lieu of a reference to the Competition Commission on the grounds that he believed they would remedy, mitigate or prevent the public interest concerns in relation to media plurality identified in Ofcom's report into the media plurality issues raised by the merger. The consultation period on the undertakings ended on 21 March after which the Secretary of State consulted on revised undertakings with that further consultation period starting on 30 June and ending on 8 July. On 11 July News Corporation announced that it was withdrawing its offer of undertakings in lieu, as a result the Secretary of State announced his intention to refer the merger to the Competition Commission on the same day.

### **SECRETARY OF STATE'S DECISION**

The Secretary of State accepts the decision of the OFT that it is or may be the case that a relevant merger situation has been created.

The Secretary of State believes that the public interest consideration set out in section 58(2C)(a) of the Act, that is, the need, in relation to every different audience in the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience, is or may be relevant to this case. In arriving at this decision, the Secretary of State has taken into account advice to this effect in the OFCOM Report, the reasons contained in that Report, and the detailed summaries of representations made by the parties and third parties.

Taking account only of the relevant public interest consideration, the Secretary of State believes that the creation of that situation operates or may be expected to operate against the public interest. Further, the Secretary of State believes that, as a result of the merger situation, there may not be a sufficient plurality of persons with control of the media enterprises providing news and current affairs to UK-wide cross-media audiences.

In arriving at the decision that the merger situation does or may be expected to operate against the public interest, the Secretary of State has taken into account in

particular the significance of News Corporation and BSkyB in providing news and current affairs to UK-wide cross-media audiences. He has also taken into account the conclusions of Ofcom's 31 December report, including their view that the increase in News Corporation's shareholding from a position of material control to full control results in the reduction in the number of persons with control of media enterprises; and that the proposed merger would bring together one of the three main providers of TV news with the largest providers of newspapers, and the effect of this on share of reference and reach as set out in the report.

He has also taken into account the events in recent weeks which have raised serious concerns about the extent of alleged wrongdoings and the degree of knowledge of senior management in News International.

Whilst it is for the Competition Commission to decide how it is to proceed in relation to its investigation and the preparation of the report, the Secretary of State would note a number of issues which he has considered may be relevant to the assessment of the specified public interest consideration and, should it prove necessary or appropriate, any remedies which might be considered. These are: the operation of Ofcom's on-going "fit and proper person" investigations and the extent to which these could have an impact on the assessment of media plurality; and the extent to which recent allegations are relevant to the credibility, sustainability or practicalities of any undertakings which might be offered by News Corporation or any other remedial arrangements which might be considered (should that prove to be appropriate or necessary in the light of the Competition Commission's analysis).

In light of the conclusions reached by the OFT and OFCOM in their Reports, together with the detailed summaries of the submissions received from the parties and third parties, the Secretary of State has decided that it is appropriate to refer the merger situation to the Competition Commission for a full investigation. The Secretary of State, therefore, refers this merger to the Competition Commission under Article 5(2) of the Order and in accordance with the Terms of Reference to be published separately.

**ACQUISITION BY NEWS CORPORATION OF  
60.9% OF THE SHARES IN BRITISH SKY BROADCASTING PLC**

**TERMS OF REFERENCE**

Whereas the Secretary of State for Business, Innovation and Skills has given a European intervention notice in relation to a European relevant merger situation, as defined in section 68 of the Enterprise Act 2002 ("the Act"), and has received a report of the Office of Fair Trading and of OFCOM under articles 4 and 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 ("the Order") in relation to the matter.

Whereas the Secretary of State believes that it is or may be the case that-

- (a) arrangements are in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation in that:
  - (i) enterprises carried on by or under the control of British Sky Broadcasting plc will cease to be distinct from enterprises carried on by or under the control of News Corporation;
  - (ii) the value of turnover in the United Kingdom of the enterprise to be taken over exceeds £70 million;
  - (iii) the arrangements will give rise to a concentration with a Community dimension within the meaning of the EC Merger Regulation; and
  - (iv) a reference cannot be made under section 33 of the Act;
- (b) the media public interest consideration specified in the European intervention notice concerned with the sufficiency of plurality of persons with control of media enterprises is relevant to a consideration of the European relevant merger situation concerned; and
- (c) taking account only of the media public interest consideration concerned, the creation of the European relevant merger situation will operate or may be expected to operate against the public interest.

Now, therefore, the Secretary of State for Culture, Olympics, Media and Sport, in exercise of his powers under article 5(3) of the Order, hereby refers to the Competition Commission ("the Commission") for investigation and report within a period ending on 27 December 2011 the questions referred to in articles 6(2), (3) and (4) of the Order.

In relation to the question of whether a European relevant merger situation will be created, which arises under article 6(2) of the Order, the Commission shall exclude from consideration one of subsections (1) and (2) of section 23 of the Act if the Commission finds that the other is satisfied.

13 July 2011



Jon Zeff

An official of the Department for Culture, Media and Sport



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## News Release

41/11

25 July 2011

### CC FORMALLY CANCELS NEWS CORP/BSKYB INQUIRY

The Competition Commission (CC) has today formally cancelled its inquiry into the proposed acquisition by News Corporation of the 60.9 per cent of shares in British Sky Broadcasting Group PLC not already owned by it.

The CC has received satisfactory assurances from News Corporation that the proposed acquisition has been abandoned.

The acquisition was referred to the CC by the Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt. This followed News Corporation's decision to withdraw undertakings offered in lieu of referring the acquisition to the CC. However, shortly after the reference was made, News Corporation announced that it would not proceed with its bid.

#### Notes for editors

1. The reference has been cancelled in accordance with the provisions of article 7(1) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.
2. The CC is subject to a duty under article 7(1) to cancel a reference if it is satisfied that the proposal to make the arrangements referred to it has been abandoned. The Chairman of the CC has cancelled the reference in accordance with his powers under Schedule 7 of the Competition Act and paragraph 15(2)(a) of Schedule 4 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.
3. Enquiries should be directed to Siobhan Allen or Rory Taylor or by ringing 020 7271 0242.

**ACQUISITION BY NEWS CORPORATION OF 60.9 PER CENT OF THE SHARES  
IN BRITISH SKY BROADCASTING GROUP PLC**

**Cancellation of reference**

The Competition Commission (CC) has cancelled the reference concerning the proposed acquisition by News Corporation of the 60.9 per cent of shares in British Sky Broadcasting Group PLC not already owned by it.

The reference was made to the CC on 13 July 2011 by the Secretary of State for Culture, Olympics, Media and Sport, in exercise of his powers under article 5(3) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (the Order). A copy of the reference is attached.

The CC has received confirmation from News Corporation that it no longer intends to make an offer for the entire issued and to be issued share capital of British Sky Broadcasting Group PLC not already owned by it and that News Corporation considers that the CC should cancel the reference in accordance with article 7(1) of the Order. The Chairman of the CC, Roger Witcomb, having had regard to News Corporation's statement, is satisfied that News Corporation has, within the terms of article 7(1) of the Order, abandoned the proposal to make arrangements of the kind mentioned in the reference. The Chairman has consequently cancelled the reference in accordance with his powers under Schedule 7 of the Competition Act 1998 and paragraph 15(2)(a) of Schedule 4 to the Order.

This cancellation is published in accordance with requirements laid down by article 14(1) of the Order.

25 July 2011

**ACQUISITION BY NEWS CORPORATION OF  
60.9% OF THE SHARES IN BRITISH SKY BROADCASTING PLC**

**TERMS OF REFERENCE**

Whereas the Secretary of State for Business, Innovation and Skills has given a European intervention notice in relation to a European relevant merger situation, as defined in section 68 of the Enterprise Act 2002 ("the Act"), and has received a report of the Office of Fair Trading and of OFCOM under articles 4 and 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 ("the Order") in relation to the matter.

Whereas the Secretary of State believes that it is or may be the case that-

- (a) arrangements are in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation in that:
  - (i) enterprises carried on by or under the control of British Sky Broadcasting plc will cease to be distinct from enterprises carried on by or under the control of News Corporation;
  - (ii) the value of turnover in the United Kingdom of the enterprise to be taken over exceeds £70 million;
  - (iii) the arrangements will give rise to a concentration with a Community dimension within the meaning of the EC Merger Regulation; and
  - (iv) a reference cannot be made under section 33 of the Act;
- (b) the media public interest consideration specified in the European intervention notice concerned with the sufficiency of plurality of persons with control of media enterprises is relevant to a consideration of the European relevant merger situation concerned; and
- (c) taking account only of the media public interest consideration concerned, the creation of the European relevant merger situation will operate or may be expected to operate against the public interest.

Now, therefore, the Secretary of State for Culture, Olympics, Media and Sport, in exercise of his powers under article 5(3) of the Order, hereby refers to the Competition Commission ("the Commission") for investigation and report within a period ending on 27 December 2011 the questions referred to in articles 6(2), (3) and (4) of the Order.

In relation to the question of whether a European relevant merger situation will be created, which arises under article 6(2) of the Order, the Commission shall exclude from consideration one of subsections (1) and (2) of section 23 of the Act if the Commission finds that the other is satisfied.

13 July 2011

Jon Zeff

An official of the Department for Culture, Media and Sport

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From: [redacted]  
 Sent: 23 August 2011 15:53  
 To: [redacted] BEEBY, Sue; ZEFF JON  
 Cc: AMOS, Stephen; [redacted] STEPHENS JONATHAN; SMITH, Adam; PATEL RITA;  
 Subject: [redacted] RE: Letter from Ivan Lewis to SoS

Thanks [redacted]

The Secretary of State has signed the letter, it should go out today.

[redacted]

Private Secretary to the Secretary of State

Tel: [redacted]

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From: [redacted]  
 Sent: 23 August 2011 11:50  
 To: [redacted] BEEBY, Sue; ZEFF JON  
 Cc: AMOS, Stephen; [redacted] STEPHENS JONATHAN; SMITH, Adam; PATEL RITA; [redacted]  
 Subject: RE: Letter from Ivan Lewis to SoS

Here is the draft with Rita's changes.

[redacted]

DCMS  
2-4 Cockspur Street  
London SW1Y 5DH

V [redacted]  
M [redacted]

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From: [redacted]  
 Sent: 23 August 2011 11:34  
 To: BEEBY, Sue; ZEFF JON  
 Cc: AMOS, Stephen; [redacted] STEPHENS JONATHAN; SMITH, Adam  
 Subject: RE: Letter from Ivan Lewis to SoS

Unless anyone has any final amendments, we'll use Sue's suggested text further down this chain.

Thanks,

[redacted]

Private Secretary to the Secretary of State

[redacted]

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**From:** BEEBY, Sue  
**Sent:** 23 August 2011 11:31  
**To:** ZEFF JON  
**Cc:** AMOS, Stephen; [redacted] STEPHENS JONATHAN; SMITH, Adam; [redacted]  
**Subject:** RE: Letter from Ivan Lewis to SoS

Hi

I've just checked in with Jeremy about this and he definitely wants to respond in the way I suggested last week. Therefore, please can we make the amends Rita suggested last week and then get it to Jeremy for approval.

Thanks  
Sue

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**From:** ZEFF JON  
**Sent:** 22 August 2011 12:02  
**To:** BEEBY, Sue  
**Cc:** AMOS, Stephen; [redacted] WEN HELEN; STEPHENS JONATHAN; SMITH, Adam  
**Subject:** FW: Letter from Ivan Lewis to SoS  
**Importance:** High

Sue

I've just caught up with this on return from leave – perhaps we should have a word? It does seem to me that, as Stephen says, the right way to think of this is as a series of PQs (and/or FOI requests) though perhaps it would help to present the information more narratively, rather than item-by-item. But would be helpful to talk through JH's concerns in a bit more detail.

Jon

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**From:** AMOS, Stephen  
**Sent:** 20 August 2011 10:56  
**To:** BEEBY, Sue  
**Cc:** PATEL RITA; [redacted] SMITH, Adam; STEPHENS JONATHAN; [redacted]  
**Subject:** Privileged legal advice - Re: Letter from Ivan Lewis to SoS

See cc as above, a slightly smaller list than before

Reflecting a bit more on our conversation yesterday, I think the best advice for Jeremy is to play a very straight bat in response to Ivan Lewis and provide his responses to the issues raised, along the lines of [redacted] draft. We should really encourage Jeremy not to view this as a cross examination; it is a list of questions from his Opposition shadow which might well be repeated as PQs.

After the lengths which Jeremy went to in order to ensure a transparent and robust process on the merger decision, consulting regulators where he was not required to etc, where there is a good, strong story to tell, it would be unfortunate and unnecessary to add a note of defensiveness or evasion now, from which inferences are likely to be drawn.

Similarly we do not want to put Jeremy in the position of having to answer PQs which have previously been set out in written correspondence, again allowing others to draw inferences of their own and putting Jeremy on the defensive.

Let's pick this up again next week.

Stephen

Stephen Amos  
Director - Legal