

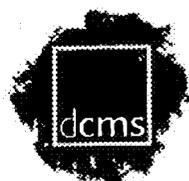
**THE LEVESON INQUIRY****INDEX TO EXHIBIT OF  
STATEMENT BY JONATHAN STEPHENS**

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003	Email from Secretary of State's office on BIS briefing of Secretary of State for new duties	22/12/2010
004	Submission to Secretary of State on handling of Ofcom report	04/01/2011
005	Submission to Secretary of State on Consultation Process (not seen by Secretary of State until 14 <sup>th</sup> March 2011)	10/03/2011
006	Emails between Secretary of State and Permanent Secretary	12/03/2011

Department for Culture, Media and Sport

2-4 Cockspur Street  
London SW1Y 5DH  
www.culture.gov.ukTel 020 7211  
Fax 020 7211

PERSONAL

Adam Smith  
Special Adviser  
Department for Culture, Media and Sportdepartment for  
culture, media  
and sporthost government  
department

14 May 2010

Dear Adam,

Appointment as Special Adviser

I am writing to welcome you to the Department, and I look forward to working as a team with you to help new Ministers in delivering their priorities. My office will be in touch shortly to arrange an initial meeting. Formally, your appointment remains subject to official confirmation from the Prime Minister.

Your role as a Special Adviser is a very important one, and we will want to work with you to ensure it is a success. You can be a great support to both your Minister and the Department. That means working closely with the Private Office. Other civil servants will want to seek your guidance on your Minister's priorities and approach. You will get the best from the department if you respect their role and expertise, and treat them appropriately.

You, and we, will obviously want to establish with the Secretary of State what role he wants you to take on. But in any role, as a Special Adviser:

- you are a civil servant, bound by general civil service terms and conditions, and the Civil Service Code
- you are, however, as a special adviser exempt from the requirement to maintain impartiality
- nevertheless you are employed to support Government business and it is very important, for your own and your Minister's protection, that you do not use public resources for purely party purposes.

More details will be set out in a Special Advisers Code of Conduct, which the Constitutional Reform and Governance Act 2010 now requires.

Improving  
the quality  
of life for all

Department for Culture, Media and Sport

By way of practicalities, you will receive your official contract and terms of employment in due course when it has been provided to us by the Cabinet Office. To ensure that you are paid promptly, we have provisionally appointed you as a Special Adviser at Pay Band 1, with a salary of £ [ ] per annum. In line with Cabinet Office guidance, we will then shortly undertake a review of your Special Adviser role with the aim of determining your correct pay band and salary level for your post. I will write to you once this review has been completed. Carol Carpenter, Head of HR, will be in contact to arrange this process.

Please do feel free to contact me if you have any further queries.

Welcome - we look forward to working with you,



~~Jonathan Stephens~~  
Permanent Secretary

**To: Secretary of State**

**Media Mergers: with specific reference to the current Newscorp and BskyB case**

**Issue:**

You wanted to know what powers you had in relation to media mergers generally.

**Recommendation:**

There is no role in the process for the DCMS so we would recommend that you do not have any external discussions on the BskyB media merger nor write to SofS BIS about it. If you want to contribute, you could write a letter stating facts backed up with evidence, provided it recognises the final decision is for the Business Secretary of State acting alone. However this carries risks to the robustness of the decision.

Prevention of undue concentration of media power is achieved in 3 ways:-

1. The statutory media ownership rules are enforced by Ofcom and provide absolute restrictions on ownership. These statutory rules are set by DCMS.
2. Where a merger is not prohibited altogether by these rules, mergers involving newspapers and media enterprises, like all other mergers, are subject to the competition based regulation by the independent competition authorities. BIS's responsibility.
3. The Secretary of State (BIS) has an exceptional power to intervene in media mergers if necessary, if he believes a potential media merger might have an adverse impact on the public interest concerned with ensuring plurality.

A flow chart which sets out the process where the public interest test is involved is attached.

In taking such decisions, the Secretary of State (BIS) is carrying out statutory functions in accordance with the provisions of the Enterprise Act 2002. He is performing a quasi judicial role as the statutory decision maker. It is the same role a regulator such as the Competition Commission would perform in taking determinative decisions about competition cases.

On introduction of the Enterprise Act 2002, the residual powers that are exercisable by the Secretary of State continued to be exercised by the Secretary of State for Trade & Industry who had taken decisions on all mergers under the previous Fair Trading Act 1973 regime.

But such decisions are case specific and must be taken on the individual merits of the case. They are not decisions about broader matters of Government policy such as might be decided by Cabinet collectively and must be taken by the BIS Secretary of State acting alone.

**BskyB/Newscorp example**

SofS for Business intervened in this merger, asking Ofcom to provide an independent report that considers the mergers' potential impact on the public interest concerned with ensuring media plurality.

BIS took legal advice on this and the risk of challenge if the SofS (BIS) had not intervened was greater than the challenge if he did intervene. The intervention so far has been merely to say that there may be a case under the public interest test, but we need more information. This was not a policy

decision but a decision of referral; he has yet to decide whether to refer it to the Competition Commission. In the plurality debate in the House of Lords last week all speakers from all sides of the House were positive about the decision to intervene.

DCMS role

There is no DCMS role in the decision making process and the Secretary of State (DCMS) has no locus for intervention.

However, given your interest in the sector as Secretary of State for Media, you are within your rights to give your opinion, so long as the tone makes clear the fact that this is a decision for the Secretary of State for Business alone, and that any opinions are backed up with evidence.

If the Ofcom report is made public, you could write to the SofS (BIS) giving your opinion on the report, though any disagreement with the recommendation would need clear evidence to back it up and such a letter could be cited in any forthcoming judicial review and could create difficulties in the defence of the decision.

As Ofcom are conducting the independent review on the public interest test it would not be appropriate for you to discuss this with them as it could be seen to be exercising your political influence.

There is guidance on Ministers intervening in competition cases and it advises against it on the grounds that it could undermine the final decision in any judicial review proceedings.

Ofcom's role to conduct the review is made under statute in the Communications Act 2003. The review will be conducted within a tight framework as set out in section 377 of the Act. It states that the report shall contain advice and recommendation on any media public interest consideration mentioned in the intervention notice concerned. In this case it was "the sufficiency of plurality of persons with control of media enterprises".

After receipt of the report on 31 December, the SofS BIS will decide whether to refer this to the Competition Commission.

Legal Advisers and Jon Zeff have cleared this note.

 12.11.10

CC: Ed Vaizey, Jonathan Stephens, Jon Zeff, , ,  Special Advisers.

002A

[Redacted]

**From:** [Redacted] on behalf of Permanent Secretary  
**Sent:** 12 November 2010 12:39  
**To:** [Redacted]  
**Cc:** ZEFF JON; [Redacted] KILGARRIFF PATRICK; [Redacted]  
**Subject:** FW:  
**Attachments:** 101110 - sofsnote.doc

[Redacted]  
You have just discussed with Jonathan.

He would like some further information on the extent to which SofS is entitled to express a view in the process (in his capacity as SofS). Jonathan felt that there had been previous cases in which this had been possible and would like to give further consideration to whether there is precedent we can point to.

We touched briefly on the fact that this may no longer be the case (or indeed the circumstances he is thinking of may have been different) but I'd be grateful for a further view from you/colleagues in the legal team.

Many thanks,

[Redacted]  
Private Secretary to Jonathan Stephens  
Department for Culture, Media and Sport  
[Redacted]

**From:** [Redacted]  
**Sent:** 12 November 2010 12:13  
**To:** SECRETARY OF STATE'S OFFICE  
**Cc:** Minister for Culture, Communications and Creative Industries Office; Permanent Secretary; ZEFF JON; [Redacted]  
**Subject:** [Redacted]

Please find attached a short note explaining the process for intervention on media mergers. Happy to discuss this – I will bring a hard copy down to you shortly which will include the flowchart.

Thanks

[Redacted]  
[Redacted]  
Head of Public Service Broadcasting | Media Directorate | DCMS | [Redacted]

002B

[Redacted]  

---

**From:** [Redacted]  
**Sent:** 15 November 2010 12:09  
**To:** [Redacted]  
**Cc:** SMITH KEITH; ZEFF JON; KILGARRIFF PATRICK  
**Subject:** RE: Specified considerations

[Redacted]  
Jonathan and Patrick discussion this morning.

Jonathan indicated that the he was thinking about possible overlap in circumstances in which the AG or DPP are required to make difficult decisions around whether to prosecute in certain cases – and in doing so consulting with Govt colleagues.

He suggested it could be argued that SofS had a right to be consulted on this issue (particularly if we were in the plurality rather than competition arena) , as relevant SofSs would be in instances relating to financial or national security.

Patrick agreed to have a further discussion with colleagues at BIS to ascertain whether there is any scope for movement around providing SofS with a formal opportunity to inform the BIS SofS of our view on this issue.

Thanks,

[Redacted]  
Private Secretary to Jonathan Stephens  
Department for Culture, Media and Sport  
[Redacted]

**From:** [Redacted]  
**Sent:** 12 November 2010 14:57  
**To:** [Redacted]  
**Cc:** [Redacted]; ZEFF JON  
**Subject:** FW: Specified considerations

Hi [Redacted]

Please see the advice below from legal. It would still be helpful to have a steer about where to look for the precedents Jonathan was thinking of so we can fully explore those avenues.

Thanks

[Redacted]  
**From:** [Redacted]  
**Sent:** 12 November 2010 14:22  
**To:** [Redacted]  
**Cc:** [Redacted]; KILGARRIFF PATRICK  
**Subject:** Specified considerations

As discussed, I wonder if it's important to emphasise that the ability to intervene is given to the SoS only on "specified grounds". Those are set out in s. 58 of the Enterprise Act and are in relation to (1) national security, (2) plurality, and (3) maintaining the stability of the UK financial system.

In historical terms, the national security consideration is the more ancient, and I would not be remotely surprised if there were formal methods of consulting OGDs. But that seems to be because there are so many who might want a say in national security considerations (MOD, FCO, Home Office, security and intelligence services) that co-ordination would be necessary.

This intervention operates differently anyway, because section 44A has given Ofcom a role in connection with media mergers. That role is expressly to report on the media public interest considerations, and gives Ofcom the power to carry out investigations. Ofcom's role is therefore to report on plurality issues. I daresay that SoS BIS could have asked formally for SoS CMS' views on plurality to inform the decision on whether or not to issue an intervention notice in the first place, but that would be really on whether the initial hurdle of whether to refer to Ofcom had been surmounted and would probably only be useful in a marginal case.

I am not aware of any precedent, nor any formal process of cross-Departmental consultation of the nature which Jonathan is thinking of.

Does that help?

[REDACTED]  
[REDACTED]  
Legal Advisers to the Department for Culture, Media and Sport  
Treasury Solicitor's Department | 2-4 Cockspur Street | London | SW1Y 5DH  
Email: [REDACTED] | Tel: [REDACTED] | fax: [REDACTED] | www.culture.gov.uk

002C

[Redacted]

**From:** KILGARRIFF PATRICK  
**Sent:** 19 November 2010 17:49  
**To:** [Redacted]  
**Cc:** [Redacted]  
**Subject:** Media mergers - plurality - role of SoS  
**Attachments:** 101118 Note on representations (2) (clean).DOCX

[Redacted]

Attached is a note prepared by [Redacted] on the above (and following discussion with lawyers at BIS). I fear it confirms existing advice. Is it what Jonathan had in mind both for himself and to form the basis of a further submission to the SoS. If so, we can go ahead. If not and if something directly from me is required I fear I am at Sunningdale next week (as I suspect is Jon) but I can do something early the following week.

[Redacted]

Patrick Kilgarriff  
Legal Director  
Department for Culture, Media and Sport  
2-4 Cockspur St.  
London SW1Y 5DH

[Redacted]

[Redacted]

**Ability of Secretary of State CMS to intervene  
in relation to mergers raising media plurality issues**

Introduction

1. This note has been prepared following discussion with BIS Legal in order to set out what steps, if any, the Secretary of State CMS can take in connection with a decision to intervene in a media merger. This note has not been formally cleared with BIS Legal (although it will be sent to them for information), but we are aware that they share the conclusions set out.
2. The ability of the Secretary of State to intervene in mergers in response to public interest considerations is set out in section 42 of the Enterprise Act. The specific considerations envisaged are set out in section 58 of the Enterprise Act, and are national security, the need for accurate presentation of news and free expression of opinion in newspapers, a sufficient plurality of views in newspapers, media plurality, and in the interests of maintaining the stability of the UK financial system.

Who exercises the power to intervene?

3. The power to intervene is not, legally, restricted to one particular Secretary of State. However, the power is contained in the Enterprise Act, and it is clear that, as a matter of governance, power to deal with matters arising from the Enterprise Act has been given to the Secretary of State BIS.
4. The ability to intervene in a merger to protect plurality can only be exercised in a case where a relevant merger situation has arisen (section 42). A relevant merger situation is defined in the Enterprise Act, and is a pure competition measure. It is clear therefore, that a case in which a decision in relation to media plurality is necessary, an assessment of the competition effect of the merger will be necessary as a prior consideration. It is for this reason, in addition to the reasons in the preceding paragraph, that the Secretary of State BIS alone is in fact responsible for making the decision.

What is the nature of the decision?

5. The decision to intervene in a merger is a quasi-judicial decision. By this, we mean a decision which is not driven by policy concerns, and has to be taken on the facts before the decision maker. It is not a Cabinet decision, and no collective Cabinet responsibility applies. Similarly, a decision on a planning application, or an application for a harbour revision order would be characterised as quasi-judicial decisions.
6. A decision to intervene is susceptible to challenge (by either party to the merger, or any other person with sufficient interest in doing so) by way of judicial review. The Secretary of State BIS will need therefore to ensure that his decision is robust enough to withstand scrutiny, and takes into account all relevant considerations, and no irrelevant ones. In this particular case, the Secretary of State BIS was advised that it was more likely that a successful challenge could be made to a decision not to intervene than to a decision to intervene.

Consultation requirements in relation to public interest quasi-judicial considerations

7. The Enterprise Act does not require the Secretary of State BIS to consult with any parties before he makes a decision to intervene (or not to). However, he will have to take into account, for the reasons already given, any representations made to him by any party where those representations are relevant. There is no express role for any other Secretary of State to make representations, or to be consulted in respect of any of the specified public interest considerations.
8. The Act does not prevent the Secretary of State BIS from consulting with any other part of government, should he need to, in considering whether to exercise his discretion to issue an intervention notice. It is clear that in relation to national security considerations a number of agencies in government may well have relevant views about intervention, and the Secretary of State may need to consult with those agencies in order to ascertain exactly what the public interest issues are. This may also be the case in relation to the stability of the financial system. In neither of those situations is there one body which could advise the Secretary of State on the gamut of issues.
9. However, the situation in relation to media mergers is different. That is because the Enterprise Act expressly gives Ofcom the duty of reporting to the Secretary of State BIS in relation to the public interest considerations relevant to the merger (section 44A). Once the Secretary of State BIS has received Ofcom's report, he will have to make a further decision on whether to refer the matter to the Competition Commission for a further, and more detailed, consideration of the public interest. The decision making process (and its susceptibility to challenge) will be the same as the above.
10. We have considered whether there are any parallels between the Secretary of State BIS' decision to intervene in a media merger, and cases where the Attorney General's consent is required to prosecute, which is also a quasi-judicial decision. On balance, we do not think that there are sufficient similarities. This is for a number of reasons, set out below.
11. None of the requirements for the Attorney General to give consent that we have considered are expressed to be considered "in the public interest". It is clear that this will be part of the Attorney General's consideration, however. He may need to weigh the public interest over a number of different departments and policy areas, which would mitigate in favour of consultation to assess the effect of a decision on those departments.
12. In some of the offences for which consent is required to prosecute, it is clear that other considerations than a pure public interest consideration will be necessary, and the Attorney General will have to balance this. This is the case, for example, in relation to the Suppression of Terrorism Act 1978, where the Attorney General will have to consider the effect of his decision on international relations. In relation to a prosecution under the Official Secrets Act 1911, the Attorney General may have to balance the public interest considerations with considerations of what information might have to be released in Court, and which is of a confidential (and possible national security) nature. Those decisions are likely to involve the interests of more than one other party in Government, where there is no specialist agency to consider them and advise the Attorney General accordingly.

Can the Secretary of State CMS make representations after receipt of Ofcom's report?

13. Our conclusion therefore is that there is no formal role for the Secretary of State to make representations to the Secretary of State BIS either before a decision to intervene is made, or after receipt of Ofcom's report. The legislation does not invite the making of representations, but it does not preclude them either.
14. It will be a relevant consideration (both for the Secretary of State BIS and the Secretary of State CMS) as to whether any representations which are made are likely to affect the ability of the Secretary of State BIS to resist any challenge to his further decision on whether to remit the matter to the Competition Commission. Representations may give rise to a fear (however ill-founded) that those representations are irrelevant, and, if the Secretary of State BIS considers them, it renders his decision unsafe. Other parties may consider that that, if the Secretary of State BIS does not consider the representations, he should have done and therefore his decision is unsafe. In either event, it runs the risk of increasing the chances of a successful challenge to the decision, when, in any event, a full report on media plurality will be received from Ofcom.
15. It would, in any event, be difficult for the Secretary of State CMS to make representations about the substance of the Ofcom report, since he will not have had access, and will not have been able to analyse, the background information available to Ofcom in the preparation of that report.

It may well be the case that the Secretary of State CMS will be precluded from seeing the Ofcom report in advance in any event, by virtue of the information provisions of Part IX of the Enterprise Act. Section 237 of the Act applies a general restriction on disclosure of information about the business of an undertaking (which would certainly be contained as part of the Ofcom report). There is no provision permitting a general disclosure across government, although section 239 does provide that disclosure may be permitted with consent. Consent would have to be from NewsCorp and BSkyB (and possibly from other parties who made representations). Disclosure of information would be precluded either from Ofcom or from BIS, and would relate to both the report itself and the background information which underpinned the report.

#### Conclusion

16. Whilst there is nothing legally which formally precludes the Secretary of State CMS from making representations to the Secretary of State BIS to inform the latter's decision as to whether to refer the public interest considerations in this merger to the Competition Commission, it would be unwise to do so. This is because the task of assessing the impact of the merger on media plurality is expressly given to Ofcom, and because the Secretary of State CMS will almost certainly be able to see neither the report itself nor the underlying materials. Furthermore, and partly as a consequence, any representations made by the Secretary of State CMS are likely to raise the risk of challenge to a decision made by the Secretary of State BIS because it will appear to be purely political in nature (although, of course, it may well not be in fact, and thus be of limited assistance to him in making his assessment).

002D

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 07 December 2010 13:34  
**To:** [REDACTED]  
**Subject:** FW: Competition issues

Fyil

[REDACTED]  
[REDACTED]

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**From:** KILGARRIFF PATRICK  
**Sent:** 07 December 2010 13:33  
**To:** [REDACTED]; [REDACTED]  
**Subject:** RE: Competition issues

[REDACTED]

Thanks – I appreciate that the advice is not what JS and possibly JH wanted to hear – but I think it amounts to – “do nothing, do not try to convey your thinking to VC, he must act quasi-judicially and only through formal processes”. Further and in any event, the clear legal advice to VC would be that you cannot hear JH on this matter and VC shows all the signs of taking that advice, so the matter would be academic.

Patrick

---

**From:** [REDACTED]  
**Sent:** 07 December 2010 13:26  
**To:** KILGARRIFF PATRICK; [REDACTED]  
**Subject:** Competition issues

Hi both,

I'm very conscious that I've not come back to you with a definitive view from Jonathan following the additional advice you provided a couple of weeks ago.

I mentioned to him briefly and I think we just have to proceed as advised – I've not managed to get formal views from him and I'm conscious that time is marching on.

I will obviously let you know if I get any further in the coming days but otherwise take this as a green light from here (I fully expect you were in any event!!).

Thanks,

[REDACTED]

[REDACTED]

Private Secretary to Jonathan Stephens  
Department for Culture, Media and Sport

[REDACTED]

003

**From:** [REDACTED]  
**Sent:** 22 December 2010 17:44  
**To:** ZEFF JON; KILGARRIFF PATRICK; SMITH, Adam; BEEBY, Sue; [REDACTED]  
 [REDACTED]; [REDACTED]; [REDACTED] Cable MPST  
**Cc:** [REDACTED]  
**Subject:** Meeting with BIS on NewsCorp/BSkyB Merger

Dear all

BIS officials ([REDACTED] and [REDACTED]) came in to brief the SoS this morning on his role in the proposed NewsCorp/BSkyB merger. Ed Vaizey, Jonathan Stephens, Jon Zeff, Patrick Kilgarriff and Adam Smith were also present. Here are the key points/actions from the meeting:

- BIS officials outlined the SoS's role in the process and the various legal considerations.

In regard to the timeline, the SoS said that he needed an adequate timeframe to make a considered decision, but did not want to deviate too far from BIS's initial timeline. His preferred sequence was as follows: (1) Share redacted version of Ofcom's report with NewsCorp and have meeting with them; (2) have one meeting with parties concerned about the merger; and (3) publish Ofcom's report at the same time as announcing his decision. He would also meet with Counsel. In addition, the SoS would inform the PM of his decision shortly before the public announcement.

- The SoS said that he would be grateful if BIS officials could look into the following matters:
  - Are we permitted to share the Ofcom report with NewsCorp, but not with other interested parties?
  - Is 'bundling' a competition issue and something that we need to think about? [ACTION: ● – please could you feed back to us on these issues in w/c 3 Jan?]
- The SoS said that he would be grateful for some reading material that he could peruse over the Xmas break – we should keep this concise. He would particularly like to see a summary of the representations that were made prior to Vince Cable's intervention notice to Ofcom (e.g. Ender's Analysis), as well as the EC Report ● – you have already provided and I have passed to the SoS – many thanks. You also explained that the EC report is not in the public domain].

Please shout if I have missed or misconstrued any points.

Many thanks,

[REDACTED]  
 Private Secretary to the Secretary of State  
 Department for Culture, Media and Sport  
 [REDACTED]

To: Jeremy Hunt

From: [REDACTED]  
Team: Media  
Tel:  
Date: 04/01/2011

004

**OFCOM'S REPORT ON NEWS CORP/BSKYB PROPOSED MERGER**

**Issue**

An aide memoire on the immediate next steps in terms of handling the above report.

**Timeline**

You have by now seen the Ofcom report. As you know, there is an administrative guideline for the decision of 10 working days from receipt of the report, though it is acceptable to take longer. The key dates coming up are below:

- 6, 7 January: receive a further two redacted versions from Ofcom, one that can be published, and one that can be sent to and discussed with News Corp.
- 6-11 January: we suggest that that you discuss the report with Ed Richards.
- 11-14 January: we suggest that News Corp be given an opportunity to make oral representations to you. We will ask for written representations in advance of the meeting. You will want to consider whether there should also be a discussion with the main opponents of the merger, in which case we also need to decide whether they should see the "for publication" version of the report and whether it should be published at this stage rather than that at the time of your decision.
- 17-21 January: Decision announced and redacted version of Ofcom report published if not already done so.

We will arrange for a meeting with you (involving Counsel) as soon as possible to discuss the above process.

**Clearance**

Cleared by Jon Zeff and Patrick Kilgarriff.

- cc. Jonathan Stephens  
Jon Zeff  
Patrick Kilgarriff  
[REDACTED]  
Andrew Rees  
[REDACTED]  
Jonathan Cook

**Process and Indicative timings**

6/7 January

Redacted report from Ofcom expected. On receipt, it will be sent to News Corp and BSkyB with a "minded to" refer letter. The threshold for referral is low: the Secretary of State may make a reference to the Commission if [he] believes that it is or may be the case that... [the merger] is or may be contrary to the public interest.

13 January

Written representations

Week commencing 17 January

Meeting (if requested)

Week commencing 24 January

Referral and publication of redacted report and decision

**OR** (if minded not to refer)

Redacted report published and my reasoning for not referring sent to main parties opposed to the merger for comments.

Week commencing 31 January

Consider representations from parties opposed to the merger.

Week commencing 7 February

Decision on referral.

## Meeting with News Corp – Aide Memoire

- I have carefully read the Ofcom report and I find it very difficult on the basis of what I have seen to date to see any grounds which would allow me to not refer this case to the Competition Commission, especially given that the threshold for referring is relatively low.
- Once I have a redacted copy from Ofcom, expected [today or tomorrow], I will send it to you. I will also send you a letter saying I am "minded to" refer this case.
- I will consider carefully any arguments you subsequently put to me and would be happy to have a further meeting on the substance of the report. But my feeling at this stage is that that you will have to identify some very serious flaws in Ofcom's facts or analysis before I could consider not referring.
- Under the circumstances, you may decide that it is better (and quicker in the long run) to allow the referral to the CC where the threshold for blocking such a merger is higher. This must, of course, be a matter for you to decide.
- If you do want a further meeting, I would ask you to provide me with full written representations at least two days in advance of the meeting.
- I recognise that you do not want me to rush a decision, and I will not do so, but it would be unhelpful to drag out a decision to refer as it will simply prolong the whole process. If you do decide that you want a further meeting, I suggest that it takes place [week commencing 17<sup>th</sup> January]. **Here is a short note on the likely process and timetable.**
- If you persuade me that Ofcom's analysis is seriously flawed, in order to be even-handed, I will then have to share the report and my reasons for not referring with the main opponents of the proposed merger to give them the chance to make their own representations.
- Only once I have considered any further representations will I be able to take a final decision on whether or not to refer.

### Notes

The threshold for referral is low; a "double may" test: the Secretary of State may make a reference to the Commission if [he] believes that it is or may be the case that... [the merger] is or may be contrary to the public interest.

News Corp lawyers yesterday [Wednesday] wrote to officials saying that they think that a 10 day period is too short a period for making a decision to refer and encouraging you to "to take the necessary time to review the facts of the case and to hear submissions from News".

OOS

**Subject:** FW: Consultation correspondence

**From:** [REDACTED]  
**Sent:** 10 March 2011 17:22  
**To:** [REDACTED]  
**Cc:** [REDACTED]; SMITH, Adam; BEEBY, Sue; KILGARRIFF PATRICK; ZEFF JON; STEPHENS JONATHAN  
**Subject:** RE: Consultation correspondence

Revised advice attached. This is a joint note from [REDACTED] and me.

**From:** [REDACTED]  
**Sent:** 10 March 2011 14:22  
**To:** [REDACTED]  
**Cc:** [REDACTED]; SMITH, Adam; BEEBY, Sue; KILGARRIFF PATRICK; ZEFF JON; STEPHENS JONATHAN  
**Subject:** RE: Consultation correspondence

Advice (cleared with lawyers) on how to handle the consultation process. Some of this SoS is well aware, of some will be new.

Happy to discuss.

**From:** [REDACTED]  
**Sent:** 04 March 2011 10:45  
**To:** [REDACTED]  
**Subject:** Re: Consultation correspondence

Hi [REDACTED]  
Sos has just asked for some legal advice on the right way to handle what he is calling the '17 day' consultation.

I think it would be good to explain the process, what he can say at this stage to respondents and more generally how he should refer to the consultation when speaking about it publicly. We should also set out what happens once responses are in.

Would it be possible to have something for close Monday?

Thanks

Sent from my BlackBerry Wireless Device

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Sent:** Fri Mar 04 08:23:44 2011  
**Subject:** RE: Consultation correspondence

It's also occurred to me this morning that we will need some strong lines about what the SoS can and cannot legally do. I think many of the responses focus on what are properly competition concerns, and concentration of media power concerns. Those are different from plurality, and we should, I think, work up some lines (also for a consultation response) to this effect.

[REDACTED]  
[REDACTED]  
Legal Advisers to the Department for Culture, Media and Sport  
Email: [REDACTED] | Tel: [REDACTED]

**From:** [REDACTED]  
**Sent:** 04 March 2011 07:53  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Consultation correspondence

Thank you very much – I'll ask [REDACTED] to set the meeting up.

I am not in the office on Monday and Tuesday (although happy to join the meeting on the spider phone) – but my thoughts are:

We need to ensure we are considering this from the correspondents point of view: do they believe that in writing to Jeremy – at any of the varies emails used, that he will factor the points they have made into his decision making process – if yes, I think we should not respond to the letters but include them as consultation responses ([REDACTED] and I discussed the FOI implications – which can be resolved).

Having looked at some of the letters coming in – I don't think we can send a response - they have read/heard Jeremy's statement and are responding to it, pointing them in the direction of the consultation document seems bureaucratic and unhelpful.

Thought on handling of MP letters and PQs gratefully received.

[REDACTED]  
**From:** [REDACTED]  
**Sent:** 03 March 2011 18:51  
**To:** [REDACTED]  
**Cc:** [REDACTED]; [REDACTED]  
**Subject:** RE: Consultation correspondence

I suggested to both [redacted] and [redacted] earlier that we should have a catch up (sensibly next week; I don't think I am much capable of rational thought by the end of this one) about next steps on Newscorp. I'd suggest that we should consider this.

As an initial take though, I think much depends on the way in which the comments to Jeremy's in-box are structures. We will need a standard position on all of them (whether to respond or not, what to say, whether they go into the consultation and leave it at that). I think we also ought to be thinking about PQs and Ministerial correspondence and working up standard lines.

If someone more compos mentis than me wants to suggest a time early next week, I think this would be very sensible.

[redacted]  
[redacted]  
Legal Advisers to the Department for Culture, Media and Sport  
Email: [redacted] | [redacted]

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**From:** [redacted]  
**Sent:** 03 March 2011 15:03  
**To:** [redacted]  
**Cc:** [redacted]; [redacted]; [redacted]  
**Subject:** RE: Consultation correspondence

Hi [redacted]

Quite understand.

We don't know how many there will be, but obviously writing to Jeremy's various addresses will be a popular option, and as we have no power over these inboxes, we can't put any auto-response on them, telling them to write to the right place (we have made such requests before to no avail). People may well think that by writing to him they have taken part in the consultation exercise, and we have to be careful about being seen to have accepted everyone's views. I imagine that many emails will be of the 'you've made a terrible mistake / change your mind' variety – and I imagine that amongst the well considered replies the consultation inbox will receive, you will get lots of these too. So perhaps there will be not too much difference between the two correspondence streams.

I can quite understand all the key players are shattered, so tomorrow is absolutely fine to look into this further.

PS – we've heard rumours that the protest outside the building is at 5.30 today – have you heard that too?

Many thanks  
[redacted]

[redacted]  
Media Desk Officer  
Department for Culture, Media and Sport | 2-4 Cockspur Street | London | SW1Y 5DH  
DCMS aims to improve the quality of life for all through cultural and sporting activities, to support the pursuit of excellence and to champion the tourism, creative and leisure industries.  
 <http://twitter.com/dcms>  
 <http://www.youtube.com/user/dcms>  
 <http://www.flickr.com/photos/thedcms>

**From:** [REDACTED]  
**Sent:** 03 March 2011 14:52  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Consultation correspondence

Hi [REDACTED]

I am hesitant about letting them go in the consultation in-box, as these are not responses to the consultation. Do you know how many there are and roughly what they are saying? Could you hold off until after I have spoken about it with colleagues, which will be tomorrow since [REDACTED] and [REDACTED] are currently in the Box for both House debates, and will draw to a close their 35 hour shifts once the debates are finished!

Thanks

[REDACTED]  
**From:** [REDACTED]  
**Sent:** 03 March 2011 14:14  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Consultation correspondence

Hi [REDACTED]

We are proposing that BSKyB correspondence from private office (i.e. Jeremy's parliamentary inbox and associated addresses) is forwarded to the consultation inbox rather than PERU, if that's alright with you. (As people know that an announcement has been made, there is not much PERU can do in terms of replying to these emails.)

If you find in amongst them correspondence that you think needs a PERU response, then you can pass it to us for reply, but these are likely to be in the minority.

Can you let me know if you are happy with this, or have any issues. We have the first batch of such cases to pass on.

Many thanks

[REDACTED]  
Media Desk Officer

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

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 <http://twitter.com/dcms>

 <http://www.youtube.com/user/dcms>

 <http://www.flickr.com/photos/thedcms>

## Consultation: Risks and Process

### During the consultation

It is important that you continue to stress that you are taking a quasi-judicial decision. As such, you must not take into account any irrelevant considerations (whether political, economic or whatever) but reach a decision on the merits of the case.

You can refer to the advice which you have received and followed from the regulators, though it is important not to give the impression that you have been directed by them. You must have carefully considered their advice in reaching your own decision.

Given that you may change your mind as a result of the consultation, it is best if you do not, or do not appear to be, too strongly defending the proposal while it is still out for consultation. Where specific criticisms are raised, it would be safest to say that they will be carefully considered before you reach your decision.

It is best to keep to the lines that you have used to date as far as possible. However many good arguments you use, one "bad" argument could be used as the basis of a challenge. The safest course legally is to let the decision speak for itself and direct those with views to participate in the consultation exercise.

That said, it is perfectly reasonable to give primarily factual answers to questions based on the substance of the UILs (as you have done already). It is also reasonable to give a description of the process you have followed and intend to follow.

Once the consultation is over and you have reached your decision, you will then be able to defend whatever decision you make in a much more pro-active fashion than you can during the course of the consultation.

### Meetings

We recommend that you do not offer meetings where they have not been requested.

Where requested, you will need to consider each meeting request on its merits. We would recommend that you agree to requests from the main opponents and would be highly unlikely to recommend meetings with individuals. There will inevitably be some grey cases in the middle where a judgement needs to be made.

One-to-one meetings with MPs do not feel consistent with the transparent approach adopted to date, and we recommend that instead you write all MPs (draft to follow).

If you did want to see MPs, a workable approach may be to have open meetings for MPs. We can discuss this further if you wish.

At all meetings we recommend that you make it clear at the start of the meeting that your primary role is to listen carefully to the representations put to you, not to engage in debate or justification of the proposed UILs. You should also encourage the attendees to make representations in writing.

### **Period of consultation**

You may well have late responses and requests for an extension to the timetable. These will have to be considered on their merits. It may not be reasonable to turn down requests for an extension where the respondent is likely to have substantive points to make. At the same time, it would not be reasonable to allow the process to drag out interminably, so a careful balance will have to be struck. There is no need, however, to say publically that an extension might be considered in some circumstances but equally you should not categorically rule it out.

### **Once the deadline for comments has passed**

You will need to consider all representations, clearly spending more time on those which are more relevant. We will provide you with advice and a summary of all the main representations plus a numerical indication of total representations as soon as possible after the end of the period. It will no doubt take some time for us to read all the representations and produce summaries of ones which raise new or substantive points, and we have secured extra resources for this exercise.

No decision should be taken until you have all these representations before you.

Your final decision will have to be communicated by way of a decision letter. Legal advice is that this should be taken and issued only after all the representations have been read, summarised where necessary, and published on our website.

As indicated above, it is at this point that your decision can be promoted more actively.

006

[Redacted]

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**From:** STEPHENS JONATHAN  
**Sent:** 12 March 2011 09:01  
**To:** [Redacted] OLDFIELD PAUL  
**Subject:** Re: Newscorp

Jeremy

Yes, we'll follow up. I'd seen something on process after consultation ends but I'm afraid this had passed me by. We'll get you something for Mon am.

Jonathan  
Jonathan

Jonathan Stephens  
Permanent Secretary  
Department of Culture, Media & Sport  
2-4 Cockspur St, London SW1Y 5DH  
Tel: [Redacted]  
Mob: [Redacted]  
E-mail: [Redacted]

---

**From:** Jeremy Hunt [Redacted]  
**To:** STEPHENS JONATHAN; OLDFIELD PAUL  
**Sent:** Sat Mar 12 08:43:30 2011  
**Subject:** Newscorp  
Jonathan/Paul

I am a bit worried. I asked for advice on what meetings I need to have and process I need to follow during the consultation period at the end of last week, have followed up with [Redacted] but a week later have heard nothing. We are now half way through the consultation. We talked about meetings with the Guardian/BBC/38 Degrees etc and really if we were being professional we would have contacted them on Friday or Monday to arrange. Could you possibly look into and make sure I get the advice first thing on Monday?

Many thanks  
Jeremy

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