

SLAUGHTER AND MAY

One Bunhill Row
 London EC1Y 8YY
 T +44 (0)20 7600 1200
 F +44 (0)20 7090 5000

Confidential

12 January 2011

Rt Hon Jeremy Hunt MP
 Secretary of State
 Department for Culture, Media & Sport
 2-4 Cockspur Street
 London SW1 5DH

Your reference

Our reference

BJFL

Direct line

Dear Mr Hunt,

News Corporation/BSkyB

I write to you on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group (together the "Concerned Parties").

It has been widely reported (most recently in this morning's Financial Times) that News Corporation has received a copy of Ofcom's advice to you (or at least an executive summary of that advice). It has also been suggested that your department may be in discussions with News Corporation over possible remedial undertakings in lieu of reference to the Competition Commission ("CC").

The Concerned Parties have asked me to stress the following:

- (i) The legal threshold for reference to the CC is a low one. You only need to believe that "*it is or may be the case that ... [the merger] operates or may be expected to operate against the public interest*" (Article 5 EA 2002 (Protection of Legitimate Interests) Order 2003; emphasis added).
- (ii) There is no precedent for accepting remedies in such a case prior to a CC investigation. The legislation envisages that remedies be considered during (and following) a reference to the CC (Articles 6 and 12 EA 2002 (Protection of Legitimate Interests) Order 2003). Consistent with the low threshold for reference, that is the only sensible procedure in cases such as this one where the issues are complex and warrant an in-depth debate and are therefore beyond the scope of the pre-CC procedure. There are clear parallels here with the UK merger regime, under which the OFT's stated position is that undertakings in lieu can only be appropriate where the remedies provide a "clear cut" solution to identified concerns.

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 EA Codrington
 RMG Goulding
 CES Seligman
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 JR Triggs
 EGL Wyld
 A Beare
 JD Boyce
 MEM Hattrell
 KI Hodgson
 N von Bismarck
 PWH Brien

JM Fenn
 AN Hyman
 AC Johnson
 EF Keeble
 KR Davis
 SR Galbraith
 NDF Cray
 MS Hutchinson
 SRB Powell
 AG Ryde
 JAD Marks
 SD Warna-kula-suriyo
 DA Wittmann
 TS Boxell
 SJ Luder
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JC Twentymen
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 SIM Lee
 AC Cleaver
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 KM Hughes
 G Iversen
 DR Johnson
 RE Levitt
 S Middlemiss
 RA Swallow
 DCR Waterfield
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 HL Davies
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 RA Sumroy
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 RJ Turnill
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- (iii) There are no clear remedies here short of outright divestments and any effective remedy would require detailed consideration.
- (iv) In any event, it would be procedurally wrong for remedies to be agreed with News Corporation without those remedies having been the subject to detailed scrutiny – including that of interested third parties (as is provided for in the course of a CC reference). That would also require those third parties to have received a copy of the Ofcom advice. The Concerned Parties therefore request (a) confirmation as to what (if anything) has already been provided to News Corporation and (b) equal access to the Ofcom advice as well as to any correspondence with News Corporation and/or BSKyB on the subject of remedies.

More generally, the Concerned Parties remain available to meet with you and to provide such further assistance as you would find helpful.

Yours sincerely

Bertrand Louveaux

cc. Stuart Brand