

[REDACTED]

From: Bavasso, Antonio:CO (LN)
Sent: 17 May 2011 11:04
To: 'Nicholas Scola'
Cc: Sheldon Mills; clive.carter [REDACTED]; Stephen.Unger [REDACTED], Ian Windle; John Webster; Marco.Marini [REDACTED] Nuala Cosgrove; Jess Hinings; Jeff.Palker [REDACTED] Andrea.Appella [REDACTED]; Anil.Jhingan [REDACTED] Long, Dominic:CO (LN); Darbon, Cerry:CO (LN)
Subject: News' response to OFT/Ofcom mark up of UIL of 13 May (0012561-0000367)
Categories: Copied to Virtual File
Attachments: CO-#14089135-v1-DV__OFT_UILs_13_May_-_UILs_17_May.pdf
FolderLibrary: CO
FolderNumber: 12977143
MatterInformation: MATTER_ID:0000367|CLIENT_ID:0012561
OriginalSubject: News' response to OFT/Ofcom mark up of UIL of 13 May
ProfileOnSend: YES
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Nick - further to our call I enclose a mark up against the draft you sent us on 13 May.

We have discussed the minor change in section 2.1 which I trust will not be problematic.

You will see the language that I would propose to include in section 7.2 instead of the sentence starting with "in accordance" at the end of section 5.1. We would submit that this language, coupled with the Secretary of State's right of approval, would give the comfort that you seek to achieve and avoids lack of clarity as to News' UIL obligations in relation to the operational agreements.

As discussed we have made some minor changes to the language in section 6 and referred to "best endeavours" which is standard practice in relation to obligations which involve a third party such as the monitoring trustee.

Finally in relation to the new section 10 I have adapted the language that you have proposed. In our view some of the language that you proposed is not appropriate in this context and duplicated provisions which were already contained at the end of clause 7.3. We have added part of the language you proposed in section 10 to clause 7.3 which is now in a new clause 7.4. As discussed we also take the view that imposing an automatic reporting obligation on the Monitoring Trustee is an unnecessary cost and burden given that the previous approach already provided for a duty to report promptly any breach (hence absence of reporting simply means no breach). However in order to close this point News is prepared to accept a reporting obligation as set out in section 10.1 of the attached draft.

All other changes are typos or minor corrections for consistency.

In relation to your specific query on the Brand Licence the Brand License Fee is payable on net revenues after advertising sales commission and margin, but before income tax.

Please let me know if you wish to discuss further.

Regards

A.

ANTONIO BAVASSO
PARTNER
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03/04/2012

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From: Nicholas Scola [REDACTED]
Sent: Friday, May 13, 2011 1:26 PM
To: Bavasso, Antonio:CO (LN); Long, Dominic:CO (LN)
Cc: dive.carter; [REDACTED] Sheldon Mills; Stephen.Unger; [REDACTED] Ian Windle; John Webster; Marco.Marini; [REDACTED] Jeff.Palker; [REDACTED] Andrea.Appella; [REDACTED] Anil.Jhingan; [REDACTED] Darbon, Cerry:CO (LN); Nuala Cosgrove; Jess Hinings
Subject: RE: News' response to OFT/Ofcom RFI of 6 May 2011 (0012561-0000367)

Antonio, Dominic,

Further to your email of 10 May with a revised set of UILs, OFT / OFCOM have collectively marked-up the UILs to show a limited number of changes, principally of a drafting nature but also related to the role of the Monitoring Trustee, that we would request News consider. We believe that the changes are largely self-evident, but we can talk through on a call at the start of next week if this is necessary.

We would also appreciate News' response to a specific query in relation to the Brand Licence, namely for News to confirm whether 'Net Revenues' (of which [REDACTED] are paid by Newco as annual licence fee to News) are intended to be calculated on a wholly gross basis or are calculated after any deductions have been made (and in particular after income tax)).

Kind regards

Nick

Nicholas Scola | Deputy Director, Mergers | Office of Fair Trading
Fleetham House | 2-6 Salisbury Square | London EC4Y 8JX | [REDACTED]

From: Dominic.Long [REDACTED]
Sent: 10 May 2011 13:43
To: Nicholas Scola
Cc: dive.carter; [REDACTED] Sheldon Mills; Stephen.Unger; [REDACTED]; Ian Windle; John Webster; Marco.Marini; [REDACTED] Jeff.Palker; [REDACTED] Andrea.Appella; [REDACTED] Anil.Jhingan; [REDACTED] Antonio.Bavasso; [REDACTED] Cerry.Darbon; [REDACTED]
Subject: News' response to OFT/Ofcom RFI of 6 May 2011 (0012561-0000367)

Nick,

Please find attached News' response to the OFT/Ofcom questions of 6 May, including, as a separate Annex 1, a revised draft set of UILs. For ease of reference I have also attached a mark-up of the UILs showing changes to the version previously submitted to the OFT/Ofcom (on 28 April 2011) but please let me know if it would also be helpful to have a mark-up against the consultation version of the draft

UIL.

Please note that News' response to question 2.4 will be provided separately. News will also shortly (hopefully later today) provide a full form draft of the Carriage Agreement and an amended draft of the Brand Licence Agreement.

Kind regards

Dominic

From: Nicholas Scola [REDACTED]
Sent: 06 May 2011 17:35
To: Bavasso, Antonio:CO (LN)
Cc: Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Darbon, Cerry:CO (LN); Long, Dominic:CO (LN); clive.carter [REDACTED]; Anil.Jhingan [REDACTED]; Sheldon Mills; Stephen.Unger [REDACTED]; Ian Windle; John Webster; Marco Marini
Subject: RE: Restricted - follow up meeting 5 May - MT (0012561-0000367)

Dear Antonio,

Many thanks for your email below confirming certain issues discussed at yesterday's meeting.

In relation to the full form carriage agreement, I would note for the sake of completeness that this will obviously be subject to review by OFT/OFCOM and by DCMS' lawyers when you send it through in due course.

As promised, we attach a short, further set of specific questions as discussed at yesterday's meeting. These are divided into questions on the carriage agreement and queries on the proposed UIL.

We have requested a response to these by 9am on 10 May.

Kind regards,

Nick

Nicholas Scola | Deputy Director, Mergers | Office of Fair Trading
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T: + [REDACTED]

From: Antonio.Bavasso [REDACTED]
Sent: 06 May 2011 15:04
To: Sheldon Mills; Stephen.Unger [REDACTED]
Cc: Nicholas Scola; Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Cerry.Darbon [REDACTED]; Dominic.Long [REDACTED]; clive.carter [REDACTED]; Anil.Jhingan [REDACTED]
Subject: Restricted - follow up meeting 5 May - MT (0012561-0000367)

Dear Sheldon and Steve

Thanks for the meeting yesterday which we thought was productive.

I can confirm that News would be willing to undertake to appoint a trustee to monitor compliance with the undertakings in line with the UILs' purpose envisaged by the Secretary of State in his notice of 3 March. This offer would be made on the basis that this further undertaking would give the OFT and Ofcom sufficient comfort that the agreements that require approval post effective date can be monitored appropriately. I enclose a proposal in this respect which would be added to the final text of the UILs before you finalise your advice to the Secretary of State.

I can also confirm that News will submit to you early next week, possibly on Monday, Newco's proposed Articles of Association which incorporate the relevant undertakings (including the clarification on board quorum discussed yesterday).

Finally I can confirm that we will submit the more detailed and final form of the Carriage Agreement as soon as possible. I understand that you will send us later today a list of issues to be clarified which also include points relating to the Carriage Agreement.

Best wishes

A.

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From: Sheldon Mills [REDACTED]
Sent: Tuesday, April 19, 2011 9:48 PM
To: Bavasso, Antonio:CO (LN)
Cc: Jeff.Palkert [REDACTED]; Andrea.Appella [REDACTED]; Darbon, Cerry:CO (LN); Long, Dominic:CO (LN); Stephen.Unger [REDACTED]; Nicholas Scola; clive.carter [REDACTED]
Subject: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL

Dear Antonio,

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

(1) further questions relating to the brand licensing and carriage agreements which take account of your responses dated 1 April and 12 April.

(2) questions which arise from third party responses to the consultation launched by DCMS on the UIL. As you will appreciate, the responses to

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

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

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

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

Kind regards,

Sheldon

Sheldon Mills

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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.

REDACTED

Comprising 15 pages