

From: Nicholas Scola [REDACTED]
Sent: 24 May 2011 19:15
To: Bavasso, Antonio:CO (LN)
Cc: Sheldon Mills; clive.carter [REDACTED]; Stephen.Unger [REDACTED];
 Marco.Marini [REDACTED]; Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED];
 Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Anil.Jhingan [REDACTED];
 Long, Dominic:CO (LN); Darbon, Cery:CO (LN)
Subject: RE: Sections 2.1 and 5.1 of UIL (0012561-0000367)
Categories: Copied to Virtual File
FolderLibrary: CO
FolderNumber: 12977143
MatterInformation: MATTER_ID:0000367|CLIENT_ID:0012561

Dear Antonio,

Further to our call, our proposed wording for section 2.1 would read:

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 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.

We look forward to receiving your wording in relation to the appointment of a Monitoring Trustee (sections 6.5-6.7).

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: 18 May 2011 19:52
To: Nicholas Scola
Cc: Sheldon Mills; clive.carter [REDACTED]; Stephen.Unger [REDACTED];
 Marco.Marini [REDACTED]; Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED];
 Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Anil.Jhingan [REDACTED];
 Dominic.Long [REDACTED]; Cery.Darbon [REDACTED]
Subject: Sections 2.1 and 5.1 of UIL (0012561-0000367)

CONFIDENTIAL

Dear Nick

further to our call earlier today I can confirm that News would also be available for a call to discuss the outstanding points on the UILs tomorrow at 6.30pm and would like to proceed on that basis.

With regard to section 2.1 this is the wording that News would propose to add which I hope will prove uncontroversial.

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 consent of the Secretary of State. In effecting the spin-off of the Sky News business, News shall not knowingly 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 it did prior to the Transaction in the manner contemplated by these undertakings. 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.

The first addition is designed to avoid catching inadvertent action. The second and third are designed to ensure that the provision is placed in the right context by anyone looking at it without the benefit of the detailed discussions that we have had OFT and OFCOM and that the additional language you proposed is not interpreted as suggesting obligations other than the ones set out in the UILs themselves. I note from your email below that this appears to be common ground so I hope that we can reach agreement on this.

With regard to section 5.1 News still questions the need to add further language in this part of the undertakings which relate to agreements that are to be "arm's length", "fair and reasonable", and are subject to a Secretary of State right of approval (other than for agreements relating to services widely available from a number of third parties). Referring to concepts which are extraneous to these individual agreements would create confusion and is unnecessary.

Unless you confirm that, based on this email, the OFT and OFCOM consider that no further call would be useful or necessary we will circulate dial in by noon tomorrow.

Best wishes

A.

ANTONIO BAVASSO
PARTNER
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From: Nicholas Scola [REDACTED]
Sent: Wednesday, May 18, 2011 11:12 AM
To: Bavasso, Antonio:CO (LN)
Cc: Sheldon Mills; dive.carter [REDACTED]; Stephen.Unger [REDACTED]; Marco.Marini [REDACTED]; Nuala.Cosgrove [REDACTED]; Jess.Hinings [REDACTED]; Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED]; Anil.Jhingan [REDACTED]; Long, Dominic:CO (LN); Darbon, Cerry:CO (LN)
Subject: OFT response to News' response to OFT/Ofcom mark up of UIL of 13 May (0012561-0000367)

Dear Antonio,

Many thanks for your email and mark-up of the UIL.

We are content with your mark-up, save for the wording in relation to paragraphs 2.1, 5.1 and 6.

Paragraphs 2.1 and 5.1

In relation to paragraphs 2.1 and 5.1, we appreciate News' concern to avoid a lack of clarity as to its obligations under the UIL. We have no wish to introduce ambiguity, or to suggest that News should have additional obligations beyond those required properly to fulfil the UIL. However, we are conscious that the UIL do not attempt to prescribe in minute detail how News should properly fulfil its obligations, nor to detail exhaustively all the potential things that News should avoid doing in order for the UIL to have proper effect. Our wording in paragraphs 2.1 and 5.1 was designed to provide comfort to ourselves and the Secretary of State in this regard.

In order to meet our concerns, and avoid creating uncertainty for News, we would propose that wording is inserted such that these paragraphs read:

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 consent of the Secretary of State. In effecting the spin-off of the Sky News business, News shall do nothing that would prevent Newco being placed in a position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as it 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.

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. In entering into these agreements, News shall do nothing that would prevent Newco being placed in a position of editorial, governance, commercial and financial independence in which it will continue to contribute to plurality as it did prior to the Transaction.

We would hope that News would agree that these prohibitions are unobjectionable given that they clearly do not seek to impose additional obligations on News, but merely require that News should not frustrate the intended purpose of the UILs in giving effect to their defined obligations. These suggested changes would render News' additional wording in paragraph 7.2 unnecessary.

Paragraph 6

Our proposed amendments to paragraph 6 were designed to close a lacuna in the UIL as previously drafted which could exist in a situation in which News - despite its best endeavours - was unable for whatever reason to appoint a Monitoring Trustee. However unlikely this may seem, we are keen to close this lacuna.

We would therefore invite you to propose an alternative solution to avoid this lacuna which you consider is less objectionable from News' perspective (for example, an ability of the Secretary of State to appoint a Monitoring Trustee if News has been unable to do so). In relation to paragraph 6.6, we do not consider that News should be able to acquire control of Sky until a Monitoring Trustee has been appointed.

Although the above points may seem technical in nature to News, we believe they are important. To the extent that News is not prepared to agree to the above, we would therefore request that we convene a call to discuss these issues rather than having a further iteration of correspondence.

Kind regards

Nick

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

From: Antonio.Bavasso [REDACTED]
Sent: 17 May 2011 11:04
To: Nicholas Scola
Cc: Sheldon Mills; clive.carter [REDACTED]; Stephen.Unger [REDACTED]; Ian Windle; John Webster; Marco.Marin [REDACTED]; Nuala.Cosgrove [REDACTED];
Jess.Hinings [REDACTED]; Jeff.Palker [REDACTED]; Andrea.Appella [REDACTED];
Anil.Jhingan [REDACTED]; Dominic.Long [REDACTED]; Cerry.Darbon [REDACTED]
Subject: News' response to OFT/Oftcom mark up of UIL of 13 May (0012561-0000367)

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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
Allen & Overy LLP

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<<http://www.allenoverly.com/AOWEB/AreasOfExpertise/ExpertiseHub.aspx?aofeID=38891&selectedPage=Antitrust%20and%20EU&prefLangID=410>>

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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: clive.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 5 per cent 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
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T: [REDACTED]

From: Dominic.Long [REDACTED]
Sent: 10 May 2011 13:43
To: Nicholas Scola
Cc: clive.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.

Antonio Bavasso
Partner
Allen & Overy LLP

www.allenoverly.com/antitrust
<<http://www.allenoverly.com/AOWEB/AreasOfExpertise/ExpertiseHub.aspx?aofeID=38891&selectedPage=Antitrust%20and%20EU&prefLangID=410>>

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From: Sheldon Mills [REDACTED]
Sent: Tuesday, April 19, 2011 9:48 PM
To: Bavasso, Antonio:CO (LN)
Cc: Jeff.Palker [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

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

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