

**STRICTLY CONFIDENTIAL
CONTAINS BUSINESS SECRETS**

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

16 February 2011

Dear Jeremy,

News Corp/BSkyB

Thank you for your letter of 15 February 2011.

You identify four issues which, in your view, would need to be agreed in principle by News in order to move forward in agreeing the undertakings in lieu (UIL) offered by News Corporation (News).

I can confirm that News is willing to agree to the suggested changes in relation to each of the four points which you identify.

Specifically:

- (i) News is willing to agree that the board of Newco will be independently chaired;
- (ii) News is willing to accept a 10-year non-reacquisition commitment without the carve-out in the event of a third party bid which had originally been suggested by News;
- (iii) News is willing to commit that key contracts should be approved by you; and
- (iv) News is willing to clarify the definition of material transactions, as suggested by the OFT, and to provide a detailed schedule of assets to be transferred to Newco.

I attach an amended set of UIL (both in clean version and marked up to show changes against the draft that we sent to DCMS on 24 January 2011) reflecting these concessions and other points already agreed in our previous discussions with the OFT and Ofcom (**Draft UIL**).

In relation to the specific points that you raised, as you will see from these documents:

- (i) this is addressed by section 3.1(iii) of the Draft UIL;
- (ii) this is addressed by section 6.1 of the Draft UIL;

James Murdoch
Chairman & CEO, Europe & Asia

News Corporation 3 Thomas More Square London E98 1EX

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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 consent of the Secretary of State. Shares in Newco shall be distributed 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 4.3, 4.5 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 service will abide by the principle of editorial independence and integrity in news reporting and will comply with the Ofcom Broadcasting Code;
 - (iii) The articles of association of Newco shall provide that, so long as no single shareholder group owns 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;
 - (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 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);

- (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 editorial and/or journalistic experience;
 - (vi) The articles of association of Newco shall provide that the appointment or removal of the head of Sky News must be approved by the board of Newco;
 - (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
 - (viii) The articles of association of Newco shall provide that, so long as no single shareholder group owns more than 50% of Newco's voting shares, Newco shall establish a corporate governance and nominations committee which will:
 - (A) comprise a majority of members who are Independent Directors (including an Independent Director with editorial and/or journalistic experience);
 - (B) be chaired by an Independent Director; and
 - (C) be entrusted with oversight of Newco's compliance with both the corporate governance provisions and 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.
- 3.2 For so long as no single shareholder group owns more than 50% of the voting shares in Newco and News has the right to vote more than 25% of the 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.

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, including:
- (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 12 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 News shall be deemed to have complied with the obligation in section 4.4 above so long as Sky has entered into a Carriage Agreement with Newco which:
- (i) is for a term of 10 years;
 - (ii) does 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 is 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";
 - (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") obliges 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) contains 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 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 News shall be deemed to have complied with the obligation in section 4.6 above so long as the Brand Licensing Agreement entered into between Sky and Newco:

- (i) permits Newco to use the Sky News brand in connection with its news output;
- (ii) does 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 is terminable by Sky only in the event of a material breach that has not been cured and/or in the event of a change in Control of Newco; and
- (iv) contains 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 News and Sky as to the validity of that 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).

5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

5.1 News shall ensure that Sky will, if required by Newco, enter into the agreements listed below with Newco under which Sky will provide facilities and support services to Newco, on arms'-length terms, including:

- (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 (or such shorter time as required by Newco);
- (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 (or such shorter time as required by Newco);
- (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) a broadcast and technical services agreement under which Sky will offer satellite capacity, playout and uplink, DTT transmission, online transmission and mobile distribution to Newco for a term of up to 10 years (or such shorter time as required by Newco) for all services except for DTT transmission, which will be provided until [X] (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
- (v) broadcast operations and creative services agreements.

5.2 News shall ensure that the agreements listed at sections 5.1(ii), 5.1(iii), 5.1(iv) and 5(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 for each following year for the remainder of the agreement, with the following adjustments

- (a) 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);

- (b) 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).

5.3 News shall ensure that any agreements entered into under sections 5.1(i) to 5.1(v) above will contain a dispute resolution mechanism.

6. CONTINUED SEPARATION

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 holding more than 39.14% of the shares in Newco.

7. COMPLIANCE

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 they might be required by these undertakings to do or to refrain from doing.

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.

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.

8. INTERIM ACTION

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 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 is run in the ordinary course;
- (iv) the range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;

- (v) the separate brand identity of the Sky News business is maintained;
- (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;
- (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
- (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.

9. PROVISION OF INFORMATION

- 9.1 News shall furnish promptly to the Secretary of State such information as the Secretary of State 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.

10. REMOVAL OR VARIATION

- 10.1 News may apply at any time to the Secretary of State for the removal or variation of any or all of the obligations contained in these undertakings, as provided for in Schedule 3, paragraph 3(9) of the Order.

11. INTERPRETATION

- 11.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 11.2 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.
- 11.3 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.
- 11.4 For the purposes of these undertakings:

"the 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;

"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;
- 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;

"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: (i) involves or could reasonably involve the payment or receipt by Newco or its subsidiaries of amounts of £5 million or more but not exceeding £12.5 million; or (ii) involves the payment or receipt by Newco or its subsidiaries of amounts of £12.5 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 would be deemed to be a material transaction for the purposes of this definition;

"**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;

"**the 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.