Letters and reports published 30 June 2011

OFFICE OF FAIR TRADING

RESTRICTED – COMMERCIAL AND MARKET SENSITIVE

The Rt. Hon Jeremy Hunt, MP
Secretary of State for Culture, Olympics, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

Your ref		Direct line	
Our ref		Fax	
Date	22 June 2011	Email	

Dear Secretary of State

Advice from the Office of Fair Trading on undertakings in lieu offered by News Corporation relating to the anticipated acquisition by News Corporation of British Sky Broadcasting Group plc

1. I refer to your letter of 18 March 2011 following our report to you of 11 February 2011 (the February Report) and our advice to you of 1 March 2011 (the March Advice).

2. In your letter, you asked us to review our advice on the practical and financial viability of the undertakings in lieu (UIL) offered by News Corporation (News) in light of the representations that you had received from certain respondents[1] to the consultation on the UIL proposed by News on 1 March 2011 and published for consultation on 3 March 2011 (the 1 March UIL). You asked us to let you know whether, having considered these representations, it would be appropriate for the 1 March UIL to be amended in any respect.

3. You also asked us to engage with News in relation to drafts of the carriage agreement and brand licensing agreement[2] contemplated by the 1 March UIL

[1] [✂]
[2] Your letter in fact refers also to 'certain operational agreements which are referred to in the proposed UILs'. However, none of the operational agreements detailed in paragraph 5 of the UIL are required to be approved prior to the Effective Date and hence have not been submitted by News for approval or

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with a view to advising you whether these agreements, once finalised, are consistent with the 1 March UIL (as subsequently amended in the light of the consultation) and the OFT's previous advice with regard to their practical and financial viability.

4. Your letter asked that we continue to work closely with Ofcom in respect of the above.

5. Since receiving your letter of 18 March, the OFT – alongside Ofcom – has engaged with News extensively in relation to both the proposed UIL of 1 March and the draft carriage agreement and brand licensing agreement. This process has led to a revised set of UIL submitted by News on 14 June 2011 (the Revised UIL), and revised forms of the carriage agreement submitted by News on 15 June 2011 (the Revised Carriage Agreement) and brand licensing agreement submitted by News on 16 June 2011 (the Revised Brand Licensing Agreement), copies of which are attached as Annexes 3, 4 and 5 respectively to this letter.

6. I note that your assessment of the Revised UIL will be in the context of their ability to resolve media plurality concerns. The advice and recommendations that I provide in this letter are based on the remit to the OFT originally set out in your letter of 27 January 2011. The OFT is advising on whether the Revised UIL are practically and financially viable and has considered if there are any practical issues which could undermine the operation of the Revised UIL and whether they would be effective over the medium and long term. To the extent that the OFT has been concerned with 'effectiveness' of the Revised UIL, this relates to their mechanical and operational effectiveness.

7. I set out first below advice in relation to the key changes that have been made from the 1 March UIL to the Revised UIL in light of the Reviewed Responses. I then discuss the Revised Carriage Agreement and Revised Brand Licensing Agreement.

Advice in relation to the Revised UIL as a result of the Reviewed Responses

8. The OFT advised in its March Advice that '*the [1 March] UIL are likely to be practically and financially viable in the short and medium term (that is, no more than 10 years).*' It also advised that '... *it would be appropriate for you to test*

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for review by the OFT at this point. (Note: certain operational agreements do require the approval of the Secretary of State prior to the Spin-off of Newco.)

further the viability and robustness of the commitments offered during the statutory public consultation process.'

9. The OFT has carefully assessed the Reviewed Responses with a view to determining whether they cast doubt on the fundamental practical and financial viability of the proposed UIL or whether they provide suggestions that would improve the practical and financial viability of the proposed UIL.

10. The Reviewed Responses do not, individually or collectively, provide reasons for the OFT to change the fundamental tenor of its March Advice.

11. However, the Reviewed Responses do provide suggestions as to how the 1 March UIL could be improved so as to improve the practical and financial viability of the proposed UIL. The OFT has discussed these improvements with News, and News has been willing – ultimately – to accept all of the amendments which the OFT regards as material and desirable. The most significant of these amendments in terms of practical and financial viability are that the Revised UIL provide that:

- the Articles of Association of Newco now be subject to approval by the Secretary of State prior to the Effective Date; this change reflects the importance of the Articles of Association of Newco in ensuring the effectiveness of the proposed UIL and provides the Secretary of State with a greater degree of comfort in this regard; the OFT has reviewed draft Articles of Association of Newco provided by News on 10 May 2011 (attached as Annex 6 to this letter) and confirms that these are consistent with the Revised UIL and the OFT's previous advice with regard to their practical and financial viability;

- in effecting the spin-off of the Sky News business in accordance with its obligations in paragraph 2.2 of the UIL, 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*'; this principle, amongst other things, provides guidance for the Monitoring Trustee in relation to his / her monitoring of the spin-off and his / her review of the operational agreements; and

- a Monitoring Trustee be appointed prior to the Closing Date to review News' compliance with the Revised UIL; this provides a greater degree of comfort that the provisions of the Revised UIL will be adhered to, and is designed to ensure that the main cost of monitoring of the Revised UIL is borne by News.

12. A full list of the amendments made to the 1 March UIL so as to result in the Revised UIL are detailed in Annex 1 to this letter, complete with reasons for their inclusion.[3]

13. There were a number of other suggestions or comments in the Reviewed Responses potentially related to the practical and financial viability of the 1 March UIL that the OFT has not elected to take forward with News. The reasons for not taking forward those suggestions are variously that:

- the issue raised has already been covered in the OFT's February Report or March Advice; or
- the OFT does not believe that the concern that a suggestion seeks to remedy is in fact present or justified on the basis of its review; or
- the concern that a particular suggestion seeks to remedy has been remedied by an alternative mechanism in the Revised UIL.

14. The OFT advises the Secretary of State that the Revised UIL are likely to be practically and financially viable in the short and medium term (that is, no more than 10 years).

15. The OFT also advises the Secretary of State that none of the amendments made to the Revised UIL in light of the Reviewed Responses addresses the essential structural limitation identified in the Report, that the UIL offered are unlikely to be practically and financially viable over the long term.

Advice in relation to the Revised Carriage Agreement and Revised Brand Licensing Agreement

16. News provided first drafts of the carriage agreement and brand licensing agreement to you on 21 March 2011, which were passed to the OFT for review. The OFT understands that you have also taken advice from external legal advisers on the draft carriage agreement and brand licensing agreement.

[3] A limited number of drafting changes relate to requests by News to amend the 1 March UIL. These changes are not considered material and do not impact on the OFT's advice. In addition, a limited number of changes relate to requests by DCMS and its external advisers to amend the 1 March UIL.

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17. The OFT has reviewed and discussed the draft carriage agreement and brand licensing agreement with News with a view to ensuring that the provisions of the agreements are compliant with the letter and spirit of the Revised UIL, in particular – from OFT's perspective – that the terms of the carriage agreement and brand licensing agreement are such that Newco will be practically and financially viable for the lifetime of the carriage agreement.

18. The discussions with News have resulted in a number of changes to the initial drafts of the carriage agreement and brand licensing agreement of 21 March 2011 such as to result in the Revised Carriage Agreement and Revised Brand Licensing Agreement. The most significant of these amendments in terms of practical and financial viability are that:

- the Revised Carriage Agreement will be a full-form agreement, and not merely a 'heads of terms'; this should provide a greater degree of comfort and is arguably required by paragraph 4.4 of the 1 March UIL (and the Revised UIL); and

- the Revised Carriage Agreement provides for both Newco's revenue (in relation to SD and HD subscriptions) and its costs (that are attributable to News / Sky) to be CPI index-linked, subject to a stepped, symmetric upper cap in both cases;[4] this provides an enhanced degree of financial security for Newco than the drafts of 21 March 2011, as set out in more detail in Annex 2.

19. In light of the changes made, the OFT advises that the Revised Carriage Agreement and Revised Brand Licensing Agreement are consistent with the Revised UIL and the OFT's previous advice with regard to their practical and financial viability.

Yours sincerely,

Clive Maxwell
Executive Director, OFT

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[4] The upper cap is reflected in the revision to paragraph 5.3(iii) of the Revised UIL.

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Colette Bowe, Chairman, Ofcom
Ed Richards, Chief Executive, Ofcom

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Annex 1 – Changes made from the 1 March UIL to the Revised UIL

Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
2.1	Amendment to require that in effecting the spin-off of the Sky News business in accordance with paragraph 2.2 of the UIL, 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	To provide context for the Monitoring Trustee's assessment of News' fulfilment of its obligations in relation to the spin-off of Newco
2.1	Amendment that shares in Newco shall be distributed or otherwise issued or transferred to the shareholders of Sky	News' amendment to provide News with the flexibility to ensure that the spin-off of Newco is conducted in a tax efficient manner for the benefit of both News / Sky and Newco
2.2(i)	Amendment to delete the word 'public' from the requirement for the formation of Newco	To allow News, for practical reasons, initially to form Newco as a private company to be registered as a public company prior to spin-off
3.1(ii)	Requirement that the Articles of Association be in a form to be approved by the Secretary of State prior to the Effective Date	Importance of the Articles of Association to Newco justifies upfront approval, prior to acceptance of UIL, by the Secretary of State
3.1(iii)	New requirement that the meetings of the board of Newco shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present	See Ofcom advice of 22 June 2011

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
3.1(ix)(E)	New requirement that the meetings of the corporate governance and editorial committee shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present	See Ofcom advice of 22 June 2011
3.3	New requirement that News shall not attempt to cause Newco to act in breach of its Articles of Association	Inserted to provide additional comfort that News will not seek, or attempt to seek, to cause Newco to act in breach of its Articles of Association (which includes a commitment to abide by the principles of editorial independence and with the Ofcom Broadcasting Code) See also Ofcom advice of 22 June 2011
4.2	Extension of the non-solicitation period to begin on the Closing Date and end 24 months after the date of spin-off	Extension on non-solicitation provision to cover the period between Closing Date and spin-off
4.5(iii)	Amendment that the Carriage Agreement shall be terminable (apart from in the event of material breach that has not been cured) in the event that the Brand Licensing Agreement expires or terminates (rather than if Newco ceases to provide output which is branded "Sky News")	Clarification sought by DCMS
4.6	Change from 'an initial seven year term, with an automatic renewal for a further seven years' to 'a fourteen year term'	To simplify the drafting and avoid any ambiguity about the initial term of the Brand Licensing Agreement

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
4.7(iii)	Insertion that the Brand Licensing Agreement shall be terminable (apart from in the event of a material breach that has not been cured and/or in the event of a change in Control of Newco) in the event that Newco ceases to provide output which is branded "Sky News"	Clarification sought by DCMS
4.8	Replacement of 'News' with 'Newco'	Correction of a typographical error in 1 March UIL
4.9	New obligation on News to continue, through Sky, to cross promote Sky News for the duration of the Carriage Agreement	See Ofcom advice of 22 June 2011
5.1	Insertion of requirement that the operational agreements referred to in paragraph 5.1 be on terms that are fair and reasonable	To provide context for the Monitoring Trustee's assessment of News' fulfilment of its obligations in relation to the terms of the operational agreements
5.3(iii)	Insertion of a cap (of six per cent plus 50 per cent of the incremental increase in CPI between 6 per cent and 10 per cent) on the rate at which charges to Newco in relation to the agreements at 5.1(iii), 5.1(iv) and 5.1(v) may be annually increased by CPI	Capping of the CPI-related charges payable by Newco to News provides an enhanced degree of financial security for Newco than having costs uncapped
5.3	Insertion of audit rights for Newco in relation to usage levels, savings or cost increases	The provision of audit rights for Newco with respect to the operational agreements

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
5.4	Extension of the dispute resolution mechanism in paragraph 4.8 to cover the lease agreement in paragraph 5.1(ii) and the agreements in relation to services described at paragraphs 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C)	Insertion of dispute resolution principles in relation to the key operational agreements (that is, those requiring prior approval by the Secretary of State) analogous to those already provided for in the Carriage Agreement and Brand Licensing Agreement
6-10	Insertion of clauses regarding the appointment, functioning, remuneration and reporting of a Monitoring Trustee	Monitoring Trustee will help ensure that News is complying with its obligations under the UIL and will provide advice to the Secretary of State in relation to his review of the key operational agreements requiring his prior approval
13.1(i)	Clarification that the Sky News business refers to the business as at the Closing Date	Clarification that the Sky News Business means the business assessed at the Closing Date
13.1(iii)	Extension of the interim obligation regarding maintenance and preservation of the Sky News business to cover its facilities and goodwill	Clarification provides additional comfort in relation to the maintenance and preservation of the Sky News business
13.1(iv)	Insertion of an interim obligation requiring that News shall not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off	New interim obligation to ensure that News will not attempt to influence Sky News in editorial matters whilst News is preparing to spin-off Sky News See also Ofcom advice of 22 June 2011
13.2	Insertion of information obligation on News in relation to monitoring of compliance with the UIL	Information obligation provision on News

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Revised UIL paragraph reference	Change from UIL of 1 March	Effect and rationale for change
Definition of Material Transaction	Clarification that any renewal of or material amendment to the lease agreement described in paragraph 5.1(ii) or the agreement(s) in relation to services described at paragraph 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) would be deemed to be a material transaction	Extension of the definition of Material Transaction to cover the key operational agreements (that is, those requiring prior approval by the Secretary of State)
Definition of Monitoring Trustee and Monitoring Trustee Functions	Insertion of new definitions relating to the Monitoring Trustee (see above)	Required for the operation of the provisions relating to the Monitoring Trustee
Definition of Working Day	Insertion of a definition of Working Day	Required for time periods in relation to the appointment of a Monitoring Trustee

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Annex 2 – Financial analysis of Newco in the light of the Revised Carriage Agreement and Revised Brand Licensing Agreement

1. Following receipt of the draft carriage agreement and brand licensing agreement from News, the OFT has been able to review the financial position of Newco in greater detail than it was able to do in the February Report and the March Advice. The OFT has been able to address some concerns that it initially identified on receipt of the draft carriage agreement and brand licensing agreement from News, notably:

- the effect of higher inflation on Newco's financial viability; and
- indexing of costs relating to services provided by Sky to Newco.

2. The OFT summarises below the changes that have been made since the February Report, which should be considered alongside that analysis (and in particular the 'Analysis of Revenue and Cost Projections' set out in the Annexe).

Carriage agreement payments

3. The original proposal made by News, as commented upon in the February Report, envisaged payments to Newco per subscriber per month (pspm) related to total Sky subscribers (index linked); plus an additional payment for HD subscribers (increasing at two per cent fixed per annum) and a fixed HD exclusivity premium.

4. Those original proposals have since been slightly modified, such that the pspm payments have been uplifted to meet in full some additional costs that were identified. Indexation of the payments is now based on full indexation for each element up to six per cent growth in CPI and 50 per cent compensation for inflation between six per cent and 10 per cent (the ceiling).

Costs and indexation of costs

5. Following review of the draft carriage agreement and brand licensing agreement from News, a limited number of additional technical costs were identified that relate to Newco and a more accurate estimate of equipment and fixed assets to be transferred was carried out, impacting on depreciation charges. The relevant tax rate was also reassessed. These effects are

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included in the latest projections and the pspm payments were adjusted, as commented above.

6. To provide some symmetry between Newco's costs and revenue payments under the carriage agreement, the same formula for price indexation has been applied to Sky-related costs in the Revised Carriage Agreement. This would ensure that such core costs would be covered by the revenue stream. This has been reflected in paragraph 5.3(iii) of the Revised UIL relating to the permitted cost increases for the agreements listed at paragraphs 5.1(iii), 5.1(iv) and 5.1(v) of the Revised UIL.

7. [✂]To provide a similar symmetry to the indexation for revenue, an index-related element of the calculation also uses the same formula for price indexation as for subscription payments.

8. Overall, by way of summary, the changes to the additional technical costs and reassessed tax costs referred to above have been fully compensated for in the Revised Carriage Agreement by an increase in the subscription payments. A similar basis for inflation has now been used for Sky-related costs, for [✂] and for subscription payments.

Sensitivity of the latest projections

9. A comparison has been made for profit and cash flow under different inflation assumptions, comparing the projection used for the February Report with the proposal under the Revised Carriage Agreement. Under the base case assumptions, with annual CPI at three per cent, six per cent, eight per cent and 10 per cent, both profit and cash flow are higher under the Revised Carriage Agreement than under the proposals modelled for the February Report. The improvement in these scenarios relative to the projection used for the February Report is more marked for the higher inflation situations than for the lower inflation situations.

10. To check Newco's sensitivity to risk of unfavourable events, [✂].

11. This scenario was also explored under higher inflation assumptions, while making an adjustment for advertising revenues. [✂].

12. The latest proposals in the Revised Carriage Agreement appear to be more resilient to the effects of inflation, up to CPI inflation of 10 per cent, than the original proposals.

Assessment

13. As the OFT previously assessed, while it is possible to imagine a combination of unfavourable events that could cause the financial viability of Newco to be threatened, this is not considered to be very likely. The assumptions made in the projections for Newco continue to appear to be reasonable and there is some flexibility to handle unforeseen problems. The benefit of the assured income from the Revised Carriage Agreement strengthens the financial position of Newco and while this agreement operates, and based on the evidence seen, the OFT continues to have no reason to expect that Newco would not be financially viable.

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Annex 3 – The Revised UIL submitted by News on 14 June 2011

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Annex 4 –
The Revised Carriage Agreement submitted by News on 15 June 2011

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Annex 5 –
The Revised Brand Licensing Agreement submitted by News on 16 June 2011

Annex 6 –
Articles of Association of Newco submitted by News on 10 May 2011

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Ofcom

22 June 2011

The Rt. Hon Jeremy Hunt, MP
Secretary of State for Culture, Olympics, Media and Sport
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Colette Bowe
Chairman

Ed Richards
Chief Executive

Dear Jeremy,

News Corporation / BSkyB proposed merger: further advice on proposed undertakings in lieu

We are writing in response to your letter of 18 March 2011 following on from our report of 31 December 2010 and our previous letters of advice to you of 11 February and 1 March 2011.

You requested Ofcom to advise you on the extent to which proposed undertakings in lieu of a reference to the Competition Commission ("UILs") address the potential impact on plurality identified in our 31 December report[1] as arising from the proposed acquisition by News Corporation of the shares in Sky it does not already own.

Background

In the light of our 31 December 2010 report, you announced that you intended to refer the merger to the Competition Commission, subject to considering UILs offered by News Corporation.

We advised on an initial draft of the proposed UILs on 11 February 2011 and then on a revised version on 1 March 2011. We advised that the revised version would, with reference to the points set out in our letter, address the plurality concerns identified in our report of 31 December 2010.

You held a public consultation seeking views on those revised UILs. In your letter of 18 March 2011, you asked us to review our earlier advice in the light of some of the representations you had received in response to the consultation. In view of those representations, we have agreed with News Corporation a number of changes to the proposed UILs dated 14 June 2011, attached.

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[1] A non-confidential version of this is publicly available at: http://www.culture.gov.uk/images/publications/OfcomPITReport_NewsCorp-BSkyB_31DEC2010.pdf.

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You also asked us to engage with News Corporation as necessary in relation to the drafts of the carriage and brand licence agreements contemplated by the proposed UILs of 1 March, with a view to advising you whether these agreements, once finalised, were consistent with the UILs as they have now been amended and Ofcom's previous advice with regard to media plurality

In parallel, the OFT has similarly been reviewing its advice to you on the practicality and financial viability of the UILs including the carriage and brand licence agreements and we have seen a copy of its advice to you. We are aware that you have taken independent legal advice on the terms of the draft carriage and brand licence agreements.

For the reasons set out below and in our previous letters, our advice is that the revised proposed undertakings would address the plurality concerns identified in our report of 31 December 2010.

Consultation responses

1. We have reviewed all of the submissions received from your officials[2]. Overall, we do not consider that the points raised in the submissions require us to change our previous advice. The consultation responses provided a number of comments on the proposed UILs. We address these below.

Changes in the UILs

2. In the light of the consultation responses, we have agreed with News Corporation a number of amendments to the UILs.

3. The proposed UILs require News Corporation to establish Newco with Articles of Association which provide that Newco's Sky News, TV and any closely related services will abide by the principle of editorial independence and integrity in news reporting. News Corporation now offers an additional undertaking not to attempt to cause Newco to act in breach of its Articles of Association (UIL 3.3).

4. The proposed UILs require News Corporation to establish Newco with Articles of Association which require it to have an independent director with senior editorial and/or journalistic experience. News Corporation now offers an additional undertaking that the Articles will provide that when considering editorial or journalistic matters, meetings of each of the Board and the corporate governance and editorial committee are only

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[2] BECTU, BT, [✂],Virgin Media, Slaughter and May (representing an alliance of media groups), DLA Piper (representing Avaaz), DMOL, Jewish Funds for Justice, Media Matters for America, National Union of Journalists, [✂], Patricia Holland, [✂], TUC, UK Coalition for Cultural Diversity and the Campaign for Press and Broadcasting Freedom.

considered quorate if an independent Board member with senior editorial and/or journalistic experience is present (UIL 3.1 (iii)(C) and (ix)(E)).

5. Consultation responses expressed concerns about the level of protection for Sky News from editorial influence by News Corporation in the interim period between News Corporation's acquisition of shares in Sky and the spin off of Newco. A number of additions to the UILs have been included in the light of these comments:
   - The UILs now provide for a monitoring trustee to be appointed, to monitor News Corporation's compliance with the undertakings during this interim period (UIL sections 6 to 10).
   - An additional undertaking requires that in effecting the spin off of Newco, News Corporation will take no 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 before the transaction (UIL 2.1).
   - An additional undertaking requires that the arm's length terms of the operational agreements to be entered into between News Corporation and Newco be fair and reasonable (UIL 5.1).
   - An additional undertaking requires News Corporation not to attempt to influence the editorial decisions of the Sky News business prior to spin off (UIL 13.1(iv)).
6. Today, Sky News benefits from cross promotion and marketing of its services on other Sky channels. News Corporation has agreed to include a commitment in the UILs to provide continued cross promotion of the Sky News service for as long as Newco and Sky are party to the carriage agreement to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the date of your acceptance of the UILs (UIL 4.9).
7. Consultation responses identified a risk that News Corporation might establish Newco with Articles of Association which limited its ability to operate (e.g. to borrow) such that it would not be sufficiently independent to contribute to plurality. The proposed UILs now provide for the Secretary of State to approve the Articles prior to acceptance (UIL 3.1(ii)).
8. We can also confirm that we are satisfied that the draft Articles of Association provided to us on 10 May 2011 (attached) are consistent with the UILs and our previous advice.

Duration

9. Some consultation respondents considered that the UILs were insufficient in that both the duration of the carriage agreement and the prohibition on acquisition by News Corporation of further shares in Newco last for 10 years. In particular, the argument was made that plurality may decline over the next 10 years and that as a matter of principle

UILs relating to a proposed merger should not be accepted in circumstances where they do not remove permanently the risk the merger poses to plurality.

10. As we have previously advised, we agree that the proposed UILs are not a permanent solution and that their effectiveness may start to diminish in the run up to the end of the 10 year period. We consider that a carriage agreement of a 10-year term in the context of industry dynamics in this sector is long term. This is because we consider there is likely to be significant evolution of the market and consumers' use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time.

11. As set out above, at the end of the 10 year period, the prohibition on acquisition and the carriage agreement come to an end. If News Corporation wished to acquire the remainder of the shares in Newco after the end of the 10 year period, a media public interest test may be triggered if the threshold criteria in the Enterprise Act 2002 are met.

12. In order for the Secretary of State to have sufficient flexibility for dealing with plurality issues we would, however, refer to our previous advice that the Government should consider undertaking a wider review of the statutory framework to ensure plurality in the public interest in the longer term. We believe that the current system is deficient in failing to provide for intervention to be considered where plurality concerns arise in the absence of a relevant corporate transaction involving media enterprises, for example as a result of organic growth.

Governance arrangements

13. There were a number of further comments in the consultation responses, in the light of which we did not consider it necessary to make further amendments to the UILs. In particular, while we have made the changes set out above in relation to monitoring of the UILs, we did not reflect every comment made in this area.

14. In addition, a number of consultation respondents raised concerns about the ongoing relationship between News Corporation and Newco under the proposed UILs. They noted Newco would be dependent on News Corporation for a substantial proportion of its revenues. It was argued that Newco's independent shareholders and directors may perceive it to be in Newco's best interests to fall in with News Corporation's wishes and that individuals may consider their own job security to be dependent on their conduct as regards News Corporation. Some consultation respondents suggested changes to the UILs, for example, to reduce News Corporation's voting rights.

15. We consider that the UILs must be assessed against the fact that the plurality concerns we identified arose out of a change in the degree of control News Corporation has over Sky. We do not consider it necessary to establish Sky News in a position where News Corporation has no relationship with it at all, because today News Corporation controls 37.19% of Sky.

16. We consider that the proposed UILs and associated contracts provide for Newco to be able to take independent decisions for the long term. Key to this is the carriage agreement, which in our view provides for sufficient certainty over Newco revenues and overall profitability for 10 years.

17. The UILs provide for structural separation of Newco from News Corporation and for the formation of an independent Board. The Directors will have to abide by the principle of editorial independence and integrity in news reporting required in the Articles of Association. The Chairman of the Newco Board will be an independent director. The UILs provide for a corporate governance and editorial committee comprising a majority of independent directors to oversee Newco's compliance with the provisions relating to the principle of editorial independence and integrity in news reporting. The committee will consider any representations made by the Sky News Editor relating to compliance with these provisions. Newco's annual report will include a statement on the committee's activities and oversight functions.

Perceptions of the credibility of past undertakings

18. A number of consultation respondents expressed the view, by reference to commitments previously given by News Corporation or related persons in relation to The Times and the Wall Street Journal, that the UILs may be ineffective or that News Corporation may breach them.

19. For the reasons set out in our advice, we consider that the terms of the UILs address the potential impact on media plurality we have identified. In this context we note in particular that Newco will be a separate company, in which News Corporation controls only 37.19% of the total votes. The Chairman of the Newco Board will be an independent director. Newco will have a majority of independent shareholders and directors. We are not in a position to take a view on the reasons for the effectiveness or otherwise of commitments given in other circumstances.

Obligation to distribute required

20. Consultation responses expressed a concern that the UILs do not specifically require News Corporation to distribute Sky News. We do not believe it is necessary to place this obligation on News Corporation.

21. Under the operational agreements identified in section 5.1(iv) of the UILs, (play-out , uplink, satellite capacity, Digital Terrestrial Television ("DTT") capacity, online distribution, mobile distribution), Newco will be able to secure the transmission of its service via DTT, satellite, mobile and internet. News Corporation has committed to providing Newco with an Electronic Programme Guide listing on its satellite platform no worse than Sky News' today (UILs section 4.5(iv)). In addition, in the carriage agreement, Sky is under an obligation to distribute any encrypted high definition version of the service (carriage agreement section H.1), and unencrypted (standard or high definition) services will

necessarily be available to all customers of the Sky platform as a free to air service. In addition, we believe News Corporation will have a significant incentive to continue to distribute the Sky News service in order to realise value from its carriage agreement with Newco.

22. News Corporation has also committed within the UILs to use all reasonable endeavours to procure that the carriage agreement between Sky and third parties (including Virgin Media) for the distribution of Sky News on cable will be transferred to Newco (UIL 4.3 (i)). How this commitment may be realised is a matter of commercial negotiation between the relevant parties. In any event, we do not believe that such distribution is of critical importance to the ongoing viability of Newco, or that the loss of distribution on cable would have a significant effect on plurality given the availability of Sky News on satellite, DTT, mobile and the internet.

Competition issues

23. Within the consultation, a number of wider concerns were raised by respondents relating to News Corporation or Sky. These wider concerns generally related to potential competition issues, either current or as a result of the transaction. The UILs, and associated agreements, are concerned only with addressing the potential impact on media plurality identified in Ofcom's report of 31 December 2010. We have not considered any competition-related concerns within our engagement with News Corporation, refinement of the UILs or review of the carriage agreement or brand licence.

Review of the carriage agreement and brand licence in respect of our potential plurality concerns

24. We have reviewed and discussed the draft carriage agreement and brand licence with News Corporation in relation to plurality. As set out above, the OFT in parallel considered the draft agreements in relation to their advice on the practical and financial viability of the UILs. We understand that you have taken independent legal advice on the draft agreements.

25. The versions of the draft carriage agreement and brand licence provided to us on 21 March 2011 were incomplete and did not reflect the UILs in all respects. We believe the revised drafts of the carriage agreement (dated 15 June 2011) and the brand licence (dated 16 June 2011) are consistent with the proposed UILs as amended, and our previous advice with regard to media plurality.

Opportunities for diversification by Newco

26. It is important to note that diversification, while desirable, is not in our view necessary to ensure Newco continues to contribute to plurality as it did prior to the transaction. We believe it is unlikely that any of the diversification opportunities below are likely to replace the carriage agreement as Newco's main revenue source.

27. However, we note that the carriage agreement and brand licence include provisions which limit Newco's ability to diversify in some respects. In particular:

- they create a right for Sky to take any new Sky News branded services made available by Newco, without additional payment. We believe this to be a reasonable position in the light of the terms and value of the carriage agreement being offered; and
- they create a right for Sky to take any new service offered by Newco in future, on terms which are no less favourable to Sky than those offered to any third party. We understand News Corporation's position to be that Newco's ability to invest in new products and services results from the carriage agreement. We believe this is a reasonable position, but that News Corporation should be required to pay for such access on terms no less favourable than those offered to third parties.

28. In this context we note News Corporation has identified the diversification opportunities for Newco as including:

- non-Sky News branded news channels, programming blocks, apps or websites, including national and local news services, using substantially new content;
- syndicated content on a non-packaged basis of raw content broadcast or distributed by Sky News;
- a service similar to the Channel 5 service to other third parties (e.g. ITV, Channel 4); and
- syndication of Sky News branded content to other websites within agreed fair use limitations.

29. Internationally, Newco would also have opportunities for diversification, including [✄]

Advice

For all the reasons set out above and in our previous letters of advice, we consider that the revised proposed undertakings offered by News Corporation would address the plurality concerns identified in our report of 31 December 2010.

Yours ever,

Colette Bowe

Ed Richards

cc Clive Maxwell, Executive Director, OFT

Draft: 29 June 2011

ARTICLES OF ASSOCIATION

of

[NEWCO]

PUBLIC LIMITED COMPANY

(effective as from [●])

PRELIMINARY

1. (1) In these articles the following words bear the following meanings:

"the Acts" the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the Company;

"Audit Committee" the audit committee of the Company referred to in Article 141;

"these articles" the articles of association for the time being of the Company;

"Broadcasting Act 1990" the Broadcasting Act 1990 (as amended by the Communications Act) including any supplementary legislation, Orders or Statutory Instruments enacted pursuant thereto;

"Broadcasting Act 1996" the Broadcasting Act 1996 (as amended by the Communications Act) including any supplementary legislation, Orders or Statutory Instruments enacted pursuant thereto;

"Broadcasting Acts" the Broadcasting Act 1990 and the Broadcasting Act 1996;

"Chapter 11" Chapter 11 of the Listing Rules (*Related party transactions: Premium listing*) (as varied or amended from time to time) or any such other rules contained in the Listing Rules which relate to related party transactions from time to time;

"clear days" in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect;

"the Code" the UK Corporate Governance Code published by the Financial Reporting Council (or any relevant successor body) (as amended from time to time);

"Communications Act" the Communications Act 2003 including any supplementary legislation, Orders or Statutory Instruments enacted pursuant thereto;

"the Company" [Newco] plc;

"connected person" (i) in relation to a person, his spouse, civil partner, child or remoter issue or the trustee of a family trust acting in that capacity and (ii) in relation to a body corporate, any holding company of which it is a wholly owned subsidiary and any other wholly owned subsidiaries of that holding company (including any wholly owned subsidiary of the body corporate);

"Daily Official List" the daily official list of the London Stock Exchange;

"director" a director of the Company, from time to time, including an Independent Director;

"electronic address" any number or address used for the purposes of sending or receiving notices, documents or information by electronic means;

"electronic form" has the same meaning as in the Companies Act 2006;

"electronic means" has the same meaning as in the Companies Act 2006;

"Excess Shares" the Specified Shares (or any interest therein) which are required to be disposed of under a Mandated Disposal;

"executed" any mode of execution;

"financial institution" a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange who is designated within the meaning of section 778(2) of the Companies Act 2006;

"FSA" the Financial Services Authority;

"FSMA" the Financial Services and Markets Act 2000 (as amended from time to time);

"Governance and Editorial Committee" the corporate governance and editorial committee referred to in articles 137 to 140;

"Governance and Editorial Committee Matters" shall mean oversight of the Company's compliance with articles 89 to 91;

"Group of Interconnected Bodies Corporate" has the same meaning ascribed to it in section 129(2) of the Enterprise Act 2002; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Head of Sky News" the chief editor of Sky News from time to time;

"holder" in relation to shares, the member whose name is entered in the register of members as the holder of the shares;

"Independent Director" a member of the Company's board of directors who:

(i) has not been an employee of the Company, News Corporation or any member of the same Group of Interconnected Bodies Corporate as News Corporation within the last five years;

(ii) does not have, and has not had within the three years preceding the date of their first election to the Company's board of directors, a material business relationship with the Company or News Corporation either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship, other than to the extent that such person has previously served as a director of Sky;

(iii) has not received and does not receive additional remuneration from the Company or News Corporation apart from a director's fee, does not participate in the Company's or News Corporation's share option or performance-related pay scheme, and is not a member of the Company's or News Corporation's pension scheme;

(iv) does not have close family ties with any of the Company's or News Corporation's advisers, directors or senior employees;

(v) does not hold cross-directorships and does not have significant links with other directors of the Company through involvement in other companies or bodies;

(vi) does not represent a significant shareholder of the Company or News Corporation; and

(vii) has not served on the Company's board of directors or the board of directors of News Corporation within the nine years preceding the date of their first election to the Company's board of directors;

"Independent IB" the investment bank appointed by the Company and approved by a majority of the Independent Directors to advise the Company in respect of its compliance with Chapter 11 to the extent applicable to the Company;

"Licence" a licence to provide a television licensable content service, a digital television programme service or any other service under the Broadcasting Acts;

"Licence Holder" a person who has been:-

(i) granted a Licence by Ofcom which Licence (including any renewal or extension thereof) has not been terminated or revoked; or

(ii) awarded, but not yet granted a Licence by Ofcom and such award has not been revoked;

"Listing Rules" the Listing Rules of the FSA made under Part VI of FSMA (as amended from time to time);

"London Stock Exchange" the London Stock Exchange plc;

"Main Principles" the Main Principles of the Code;

"Mandated Disposal" the sale or other transfer of Specified Shares (or any interest therein) pursuant to article 43;

"Nominated Advisor" the Company's nominated advisor as required by the AIM Rules for Companies published by the London Stock Exchange (as amended from time to time);

"Ofcom" the Office of Communications established pursuant to section 1 of the Office of Communications Act 2002 or such other successor body as may be appointed from time to time to exercise all or any of the powers of such body under the Broadcasting Acts and/or Communications Act;

"the Ofcom Broadcasting Code" the broadcasting code published by Ofcom (as amended from time to time);

"Office" the registered office of the Company from time to time;

"Official List" the Official List maintained by the FSA;

"Operational Agreements" the carriage agreement, the brand licensing agreement, the site support service agreement, the lease agreement and the broadcast and technical services agreements, each dated ● 2011 and entered into between the Company and Sky;

"Premium Listing" a listing where the issuer is required to comply with those requirements in Listing Rule 6 (*Additional requirements for premium listing (commercial company)*) (as amended from time to time) and the other requirements in the Listing Rules that are expressed to apply to securities admitted to the Official List with a premium listing;

"Relevant Interest" any interest (which either alone or when taken with any other interest or interests) in shares in the Company (including any interest attributed by the directors pursuant to the definition of "Relevant Investor" below) as a result of which (a) the Company or any subsidiary would become a disqualified person in relation to any Licence held by it (or awarded, but not yet granted, to it) by virtue of Part II of Schedule 2 to the Broadcasting Act 1990, (b) there would be a breach of, or failure to comply with, any requirements or conditions imposed by or under section 5 of the Broadcasting Act 1990 and/or Schedule 14 of the Communications Act, in relation to any Licence of the Company or any subsidiary to which those requirements apply, by the Company or any subsidiary or any other person, (c) Ofcom may refuse to grant or may revoke a Licence to the Company or any subsidiary under the Broadcasting Acts or (d) the Company or any subsidiary would otherwise be materially affected in relation to any Licence held by (or awarded, but not yet granted, to) it;

"Relevant Investor" any person who, as a result of the transfer to him of any shares, (a) has a Relevant Interest unless, in any such case, Ofcom has given its consent in writing to the Company or any subsidiary to the existence or continuance of the circumstance or circumstances which cause (or would have caused if such consent had not been given) the person to be or to become a Relevant Investor and (i) such consent has not been withdrawn and (ii) there has not been any change in any circumstance which would be relevant to Ofcom in considering whether to withdraw its consent or (b) is determined by the directors, following consultation with Ofcom, to have an interest in shares in the Company which may cause Ofcom to vary, revoke, determine or refuse to award, grant, renew or extend a Licence to or of the Company or any subsidiary. Without prejudice to the generality of the foregoing, for the purpose of determining whether any person is a Relevant Investor as a result of the transfer to him of any shares, the directors may attribute to such person and aggregate with the interests in issued shares of such person (a) any interest which the Company may require a person to disclose pursuant to section 793 of the Companies Act 2006 (b) any shares which are, in the opinion of the directors, the subject of an agreement or arrangement (whether legally enforceable or not) whereby such shares are to be voted in accordance with that person's instructions (whether. given by him directly or through any other person) and (c) any interest of any associate of such person or any person controlled by or connected with such person;

"seal" the common seal (if any) of the Company and an official seal (if any) kept by the Company by virtue of section 50 of the Companies Act 2006 or either of them as the case may require;

"secretary" the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;

"Sky" British Sky Broadcasting Group plc;

"Sky News" the business of news gathering and production, and creating and offering (whether on a free to air or subscription basis) the broadcast news channels 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;

"Specified Shares" shares in the issued capital of the Company which have been transferred to a member and which are comprised in the interest of a Relevant Investor;

"Uncertificated Securities Regulations" the Uncertificated Securities Regulations 2001; and

"undertaking" includes a body corporate or partnership or an unincorporated association carrying on a trade or business with or without a view to profit (and, in relation to an undertaking which is not a company, expressions in these articles appropriate to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to undertakings of that description).

(2) In these articles references to a share being in uncertificated form are references to that share being an uncertificated unit of a security, and references to a share being in certificated form are references to that share being a certificated unit of a security, provided that any reference to a share in uncertificated form applies only to a share of a class which is, for the time being, a participating security, and only for so long as it remains a participating security.

(3) Save as aforesaid and unless the context otherwise requires, words or expressions contained in these articles bear the same meanings as in the Companies Act 2006 or the Uncertificated Securities Regulations (as the case may be).

(4) Except where otherwise expressly stated, a reference in these articles to any primary or delegated legislation or legislative provision includes a reference to any modification or re-enactment of it for the time being in force.

(5) In these articles, unless the context otherwise requires:

(a) words in the singular include the plural, and vice versa;

(b) words importing any gender include all genders; and

(c) a reference to a person includes a reference to a body corporate (wherever resident or domiciled) and to an unincorporated body of persons.

(6) In these articles:

(a) references to writing include references to typewriting, printing, lithography, photography and any other modes of representing or reproducing words in a legible and non-transitory form, whether sent or supplied in electronic form or made available on a website or otherwise;

(b) references to "other" and "otherwise" shall not be construed ejusdem generis where a wider construction is possible;

(c) references to a power are to a power of any kind, whether administrative, discretionary or otherwise; and

(d) references to a committee of the directors are to a committee established in accordance with these articles, whether or not comprised wholly of directors.

(7) The headings are inserted for convenience only and do not affect the construction of these articles.

2. Neither the regulations contained in Table A in the Companies (Tables A to F) Regulations 1985 nor the regulations contained in the Companies (Model Articles) Regulations 2008 apply to the Company.

LIABILITY OF MEMBERS

3. The liability of the members of the Company is limited to the amount, if any, unpaid on the shares held by them.

SHARE CAPITAL

4. Subject to the provisions of the Acts, and without prejudice to any rights attached to any existing shares, any share may be issued with such rights or restrictions as the Company may by ordinary resolution determine (or, if the Company has not so determined, as the directors may determine).

5. Subject to the provisions of the Acts, any share may be issued which is or is to be liable to be redeemed at the option of the Company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such share.

6. The Company may exercise the powers of paying commissions or brokerage conferred or permitted by the Acts. Subject to the provisions of the Acts, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other and may be in respect of a conditional or an absolute subscription.

7. Except as required by law, no person shall be recognised by the Company as holding any share upon any trust. Except as otherwise provided by these articles or by law, the Company shall not be bound by or recognise (even if having notice of it) any equitable, contingent, future, partial or other claim or any interest in any share other than the holder's absolute ownership of it and all the rights attaching to it.

8. Without prejudice to any powers which the Company or the directors may have to issue, allot, dispose of, convert, or otherwise deal with or make arrangements in relation to, shares and other securities in any form:

   (a) the holding of shares in uncertificated form and the transfer of title to such shares by means of a relevant system shall be permitted; and

   (b) the Company may issue shares in uncertificated form and may convert shares from certificated form to uncertificated form and vice versa.

   If and to the extent that any provision of these articles is inconsistent with such holding or transfer as is referred to in paragraph (a) of this article above or with any provision of the Uncertificated Securities Regulations, it shall not apply to any share in uncertificated form.

9. Notwithstanding anything else contained in these articles, where any class of shares is, for the time being, a participating security, unless the directors otherwise determine, shares of any such class held by the same holder or joint holder in certificated form and uncertificated form shall be treated as separate holdings.

VARIATION OF RIGHTS

10. Subject to the provisions of the Acts, if at any time the capital of the Company is divided into different classes of shares, the rights attached to any class may be varied, either while the Company is a going concern or during or in contemplation of a winding up:

    (a) in such manner (if any) as may be provided by those rights; or

    (b) in the absence of any such provision, with the consent of the holders of three-quarters in nominal value of the issued shares of that class, (which consent shall be given in writing) or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class,

    but not otherwise. To every such separate meeting the provisions of these articles relating to general meetings shall apply, except that a poll may be demanded by any one holder of shares of the class whether present in person or by proxy and the necessary quorum at any such meeting other than an adjourned meeting shall be at least two persons together holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question and at an adjourned meeting shall be one person holding shares of the class in question or his proxy.

11. Unless otherwise expressly provided by the rights attached to any class of shares, those rights:

(a) shall be deemed to be varied by the reduction of the capital paid up on those shares and by the issue of a further class of shares ranking in priority for payment of a dividend or in respect of capital;

(b) shall otherwise be deemed not to be varied by the issue of further shares ranking pari passu with or subsequent to the first-mentioned shares; and

(c) shall be deemed not to be varied by the purchase or redemption by the Company of any of its own shares.

SHARE CERTIFICATES

12. (1) On becoming the holder of any share other than a share in uncertificated form, every person (other than a financial institution in respect of whom the Company is not required by law to complete and have ready a certificate) shall be entitled, without payment, to have issued to him within two months after allotment or lodgement of a transfer (unless the terms of issue of the shares provide otherwise) one certificate for all the shares of each class held by him (and, upon transferring a part of his holding of shares of any class, to a certificate for the balance of that holding) or, upon payment for every certificate after the first of such reasonable sum as the directors may determine, to several certificates each for one or more of his shares.

(2) Every certificate shall be issued under the seal, or under such other form of authentication as the directors may determine (which may include manual or facsimile signatures by one or more directors), and shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up on them.

(3) The Company shall not be bound to issue more than one certificate for shares held jointly by several persons and delivery of a certificate to one joint holder shall be sufficient delivery to all of them, and seniority shall be determined in the manner described in article 77.

(4) If a share certificate is damaged or defaced or said to be lost, stolen or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of any exceptional expenses incurred by the Company in investigating evidence as the directors may determine but otherwise free of charge, and (in the case of damage or defacement) on delivery up of the old certificate.

LIEN

13. The Company shall have a first and paramount lien on every share (not being a fully paid share) for all amounts (whether presently payable or not) payable at a fixed time or called in respect of that share. The directors may declare any share to be wholly or in part exempt from the provisions of this article. The Company's lien on a share shall extend to all amounts (including dividends) payable in respect of it.

14. The Company may sell, in such manner as the directors determine, any share on which the Company has a lien if an amount in respect of which the lien exists is presently payable and is not paid within 14 clear days after notice has been given to the holder of the share, or the person entitled to it in consequence of the death or bankruptcy of the holder or otherwise by operation of law, demanding payment and stating that if the notice is not complied with the shares may be sold.

15. To give effect to the sale the directors may, in the case of a share in certificated form, authorise some person to execute an instrument of transfer of the share sold to, or in accordance with the directions of, the purchaser; and in the case of a share in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form and after such conversion may authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer. The title of the transferee to the share shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale and the transferee shall not be bound to see to the application of the purchase money.

16. The net proceeds of the sale, after payment of the costs, shall be applied in payment of so much of the amount for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the share sold, in the case of a share in certificated form, and subject to a like lien for any amount not presently payable as existed upon the share before the sale) be paid to the person entitled to the share at the date of the sale.

CALLS ON SHARES, FORFEITURE AND SURRENDER

17. Subject to the terms of allotment, the directors may make calls upon the members in respect of any amounts unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least 14 clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares. A call may be required to be paid by instalments. A call may, before receipt by the Company of an amount due under it, be revoked in whole or in part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.

18. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed.

19. The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.

20. If a call or an instalment of a call remains unpaid in whole or in part after it has become due and payable the person from whom it is due shall pay interest on the amount unpaid, from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the shares in question or in the notice of the call or, if no rate is fixed, at the appropriate rate (as defined by the Acts) but the directors may waive payment of the interest wholly or in part.

21. An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call and if it is not paid these articles shall apply as if that sum had become due and payable by virtue of a call duly made and notified.

22. Subject to the terms of allotment, the directors may differentiate between the holders in the amounts and times of payment of calls on their shares.

23. The directors may receive from any member willing to advance it all or any part of the amount unpaid on the shares held by him (beyond the sums actually called up) as a payment in advance of calls, and such payment shall, to the extent of it, extinguish the liability on the shares in respect of which it is advanced. The Company may pay interest on the amount so received, or so much of it as exceeds the sums called up on the shares in respect of which it has been received, at such rate (if any) as the member and the directors agree.

24. If a call or an instalment of a call remains unpaid, in whole or in part, after it has become due and payable, the directors may give to the person from whom it is due not less than 14 clear days' notice requiring payment of the amount unpaid together with any interest which may have accrued and any costs, charges and expenses incurred by the Company by reason of such non-payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited. If the notice is not complied with, any shares in respect of which it was given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors and the forfeiture shall include all dividends and other amounts payable in respect of the forfeited shares and not paid before the forfeiture.

25. Subject to the provisions of the Acts, a forfeited share shall be deemed to belong to the Company and may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the directors determine either to the person who was before the forfeiture the holder or to any other person and, at any time before the disposition, the forfeiture may be cancelled on such terms as the directors determine. Where for the purposes of its disposal a forfeited share is to be transferred to any person, the directors may, in the case of a share in certificated form, authorise someone to execute an instrument of transfer and, in the case of a share in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form and after such conversion may authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer of the share to that person. The Company may receive the consideration given for the share on its disposal and register the transferee as the holder of the share.

26. A person any of whose shares have been forfeited shall cease to be a member in respect of them and shall surrender to the Company for cancellation the certificate for the shares forfeited but shall remain liable to the Company for all amounts which at the date of forfeiture were presently payable by him to the Company in respect of those shares with interest at the rate at which interest was payable on those amounts before the forfeiture or, if no interest was so payable, at the appropriate rate (as

defined in the Acts) from the date of forfeiture until payment, but the directors may waive payment wholly or in part or enforce payment without any allowance for the value of the shares at the time of forfeiture or for any consideration received on their disposal.

27. The board may accept the surrender of any share which it is in a position to forfeit upon such terms and conditions as may be agreed and, subject to any such terms and conditions, a surrendered share shall be treated as if it had been forfeited.

28. The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the person whose share is forfeited and the Company, except only such of those rights and liabilities as are by these articles expressly saved, or are by the Acts given or imposed in the case of past members.

29. A statutory declaration by a director or the secretary that a share has been forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share and the declaration shall (subject to the execution of an instrument of transfer if necessary, in the case of a share in certificated form) constitute a good title to the share and the person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings relating to the forfeiture or disposal of the share.

TRANSFER OF SHARES

30. The instrument of transfer of a share in certificated form may be in any usual form or in any other form which the directors approve and shall be executed by or on behalf of the transferor and, where the share is not fully paid, by or on behalf of the transferee.

31. Where any class of shares is, for the time being, a participating security, title to shares of that class which are recorded on an Operator register of members as being held in uncertificated form may be transferred by means of the relevant system concerned. The transfer may not be in favour of more than four transferees.

32. (1) The directors may refuse to register any transfer of a share in certificated form if it is their opinion that such transfer would or might (a) prejudice the right of the Company or any subsidiary to hold, be awarded or granted or have renewed or extended, any Licence or (b) give rise to or cause, directly or indirectly, a variation to be made to any such Licence (being a variation which would, in the opinion of the directors, have a material adverse effect on the ability of the Company or the relevant subsidiary to operate its broadcasting business as operated by it at the relevant time) or a revocation or determination of any such Licence by Ofcom provided that the provisions of articles 42 to 48 will apply in relation to the shares which are the subject of any such transfer.

(2) The directors may, in their absolute discretion, refuse to register the transfer of a share in certificated form which is not fully paid. They may also refuse to register a transfer of a share in certificated form (whether fully paid or not) unless the instrument of transfer:

(a) is lodged, duly stamped, at the Office or at such other place as the directors may appoint and (except in the case of a transfer by a financial institution where a certificate has not been issued in respect of the share) is accompanied by the certificate for the share to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;

(b) is in respect of only one class of share; and

(c) is in favour of not more than four transferees jointly.

(3) The directors may refuse to register a transfer of a share in uncertificated form to a person who is to hold it thereafter in certificated form in any case where the Company is entitled to refuse (or is excepted from the requirement) under the Uncertificated Securities Regulations to register the transfer.

33. If the directors refuse to register a transfer of a share, they shall as soon as practicable and in any event within two months after the date on which the transfer was lodged with the Company (in the case of a transfer of a share in certificated form) or the date on which the Operator-instruction was received by the Company (in the case of a transfer of a share in uncertificated form to a person who is to hold it thereafter in certificated form) send to the transferee notice of the refusal together with reasons for the refusal. The directors shall send to the transferee such further information about the reasons for the refusal as the transferee may reasonably request.

34. No fee shall be charged for the registration of any instrument of transfer or other document or instruction relating to or affecting the title to any share.

35. The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the directors refuse to register shall (except in the case of fraud) be returned to the person lodging it when notice of the refusal is given.

36. Nothing in these articles shall preclude the directors from recognising a renunciation of the allotment of any share by the allottee in favour of some other person.

TRANSMISSION OF SHARES

37. If a member dies the survivor or survivors where he was a joint holder, or his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest; but nothing in this article shall release the estate of a deceased member from any liability in respect of any share which had been solely or jointly held by him.

38. A person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such evidence being produced as the directors may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the Company to that effect. If he elects to have another person registered he shall execute an instrument of transfer of the share to that person. All the provisions of these articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer signed by the member and the death or bankruptcy of the member had not occurred.

39. A person becoming entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law shall, upon such evidence being produced as the directors may reasonably require as to his entitlement, have the rights to which he would be entitled if he were the holder of the share, and may give discharge for all dividends and other moneys payable in respect of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to attend or vote at any general meeting or at any separate meeting of the holders of any class of shares.

SHARE WARRANTS

40. (1) The Company with respect to fully paid shares may issue share warrants stating that the bearer is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of future dividends or other moneys on or in respect of the shares included in such share warrants.

(2) A share warrant shall entitle the bearer thereof to the shares included in it, and the shares may be transferred by the delivery of the share warrant, and the provisions of these articles with respect to share certificates, liens, calls on shares and forfeiture and surrender, disclosure of interest, transfer of shares and transmission of shares shall not apply in relation to share warrants or the holders thereof. Each share warrant shall be issued under the seal.

(3) The directors shall be at liberty to accept a certificate (in such form and from such person as the directors may approve) to the effect that a specified person is shown in the records of the person issuing such certificate as being entitled to the shares comprised in a specified share warrant as sufficient evidence of the facts stated in such certificate, and may treat the deposit of such certificate at the Office (or any other place specified from time to time by the directors) as equivalent to the deposit there of the share warrant, and may (inter alia) allot to the person named in such certificate any shares to which the bearer of the share warrant referred to in such certificate may be entitled and the rights of the allottee to the allotment shall not, after allotment, be questioned by any person.

(4) The directors may determine and from time to time vary the conditions upon which share warrants shall be issued, and in particular (but without limitation) upon which a new share warrant or coupon will be issued in the place of one worn out, defaced, lost or destroyed (provided that no new share warrant may be issued to replace one that has been lost unless the directors are satisfied beyond reasonable doubt that the original share warrant has been destroyed), upon which (subject as hereinafter provided) the bearer of a share warrant shall be entitled to attend and vote at general meetings, and upon which a share warrant may be surrendered and the name of the holder entered in the register of members in respect of the shares therein specified. Subject to such conditions and to these articles, the bearer of a share warrant shall be subject to the conditions for the time being in force relating to share warrants, whether made before or after the issue of such share warrant.

(5) Subject to any conditions for the time being in force relating to share warrants and as otherwise expressly provided in these articles, the bearer of a share warrant may at any time deposit the share warrant at the Office (or at such

other place as the directors may from time to time appoint) and, so long as the share warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the Company, of giving notice of intention to submit a resolution to a meeting and of attending and voting, giving a proxy and exercising the other privileges of a member at any meeting held after the expiration of 48 hours from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited share warrant. Not more than one person shall be recognised as a depositor of any share warrant. Every share warrant which shall have been so deposited as aforesaid shall remain so deposited until after the closing of the meeting at which the depositor desires to attend or to be represented.

(6) Subject as otherwise expressly provided in these articles or in any conditions for the time being in force relating to share warrants, no person shall, as bearer of a share warrant, be entitled to sign a requisition for calling a meeting of the Company or give notice of intention to submit a resolution to a meeting or attend or vote or give a proxy or exercise any other privilege of a member at a meeting of the Company, or be entitled to receive any notices or any documents pursuant to these articles from the Company, but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the share warrant, and he shall be deemed to be a member of the Company.

(7) Without prejudice to any powers which the Company or the directors may have to issue, dispose of, convert, or otherwise deal with or make arrangements in relation to, share warrants and other securities in any form:

(a) the holding of share warrants in uncertificated form and the transfer of title to such share warrants by means of a relevant system shall be permitted; and

(b) the Company may issue share warrants in uncertificated form and may convert share warrants from certificated form to uncertificated form and vice versa.

If and to the extent that any provision of these articles is inconsistent with such holding or transfer as is referred to in sub-paragraph (7)(a) of this article above or with any provision of the Uncertificated Securities Regulations, it shall not apply to any share warrant in uncertificated form.

DISCLOSURE OF INTERESTS

41. (1) If a member, or any other person appearing to be interested in shares held by that member, has been given a notice under section 793 of the Companies Act 2006 and has failed in relation to any shares (the "default shares") to give the Company the information thereby required within 14 days from the date of giving the notice, the following sanctions shall apply, unless the directors otherwise determine:

(a) the member shall not be entitled in respect of the default shares to be present or to vote (either in person or by representative or proxy) at any general meeting or at any separate meeting of the holders of any class of shares or on any poll; and

(b) where the default shares represent at least 0.25 per cent of their class:

(i) any dividend payable in respect of the shares shall be withheld by the Company, which shall not have any obligation to pay interest on it, and the member shall not be entitled to elect, pursuant to these articles, to receive shares instead of that dividend; and

(ii) no transfer, other than an excepted transfer, of any shares held by the member in certificated form shall be registered unless:

(A) the member is not himself in default as regards supplying the information required; and

(B) the member proves to the satisfaction of the directors that no person in default as regards supplying such information is interested in any of the shares the subject of the transfer.

(iii) for the purposes of sub-paragraph (1)(b)(ii) of this article, in the case of shares held by the member in uncertificated form, the directors may, to enable the Company to deal with the shares in accordance with the provisions of this article, require the Operator of a relevant system to convert the shares into certificated form.

(2) Where the sanctions under paragraph (1) of this article apply in relation to any shares, they shall cease to have effect at the end of the period of seven days (or such shorter period as the directors may determine) following the earlier of:

(a) receipt by the Company of the information required by the notice mentioned in that paragraph; and

(b) receipt by the Company of notice that the shares have been transferred by means of an excepted transfer,

and the directors may suspend or cancel any of the sanctions at any time in relation to any shares.

(3) Any new shares in the Company issued in right of default shares shall be subject to the same sanctions as apply to the default shares, and the directors may make any right to an allotment of the new shares subject to sanctions corresponding to those which will apply to those shares on issue: provided that any sanctions applying to, or to a right to, new shares by virtue of this paragraph shall cease to have effect when the sanctions applying to the related default shares cease to have effect (and shall be suspended or cancelled if and to the extent that the sanctions applying to the related default shares are suspended or cancelled); and provided further that paragraph (1) of this article shall apply to the exclusion of this paragraph if the Company gives a separate

notice under section 793 of the Companies Act 2006 in relation to the new shares.

(4) Where, on the basis of information obtained from a member in respect of any share held by him, the Company gives a notice under section 793 of the Companies Act 2006 to any other person, it shall at the same time send a copy of the notice to the member, but the accidental omission to do so, or the non-receipt by the member of the copy, shall not invalidate or otherwise affect the application of paragraph (1) of this article.

(5) For the purposes of this article:

(a) a person, other than the member holding a share, shall be treated as appearing to be interested in that share if the member has informed the Company that the person is, or may be, so interested, or if the Company (after taking account of any information obtained from the member or, pursuant to a notice under section 793 of the Companies Act 2006, from anyone else) knows or has reasonable cause to believe that the person is, or may be, so interested;

(b) "interested" shall be construed as it is for the purpose of section 793 of the Companies Act 2006;

(c) reference to a person having failed to give the Company the information required by a notice, or being in default as regards supplying such information, includes (i) reference to his having failed or refused to give all or any part of it and (ii) reference to his having given information which he knows to be false in a material respect or having recklessly given information which is false in a material respect;

(d) an "excepted transfer" means, in relation to any shares held by a member:

(i) a transfer pursuant to acceptance of a takeover offer (within the meaning in section 974 of the Companies Act 2006) in respect of shares in the Company; or

(ii) a transfer in consequence of a sale made through a recognised investment exchange (as defined in the Financial Services and Markets Act 2000) or any other stock exchange outside the United Kingdom on which the Company's shares are normally traded; or

(iii) a transfer which is shown to the satisfaction of the directors to be made in consequence of a sale of the whole of the beneficial interest in the shares to a person who is unconnected with the member and with any other person appearing to be interested in the shares.

(6) Nothing in this article shall limit the powers of the Company under section 794 of the Companies Act 2006 or any other powers of the Company whatsoever.

RELEVANT INVESTORS

42. The directors may at any time serve a notice upon any member, who has had shares transferred to him pursuant to a share transfer, requiring him to furnish the directors with information (in the case of (2) below, to the extent that such paragraph applies to any person other than the member, so far as such information lies within the knowledge of or can be obtained by such member), supported by a declaration and by such other evidence (if any) in support thereof as the directors may require, for the purpose of determining:

    (1) whether such member is or is likely to be a party to an agreement or arrangement (whether legally enforceable or not) whereby any of the shares held by him are to be voted in accordance with some other person's instructions (whether given by that other person directly or through any other person); or

    (2) whether such member and/or any other person who has an interest in any shares held by such member is a Relevant Investor.

    If such information and evidence is not furnished within a reasonable period (not being less than 14 days) from the date of service of such notice or the information and evidence provided is, in the opinion of the directors, unsatisfactory for the purposes of so determining, the directors may serve upon such member a further notice calling upon him, within 14 days after the service of such further notice, to furnish the directors with such information and evidence or further information or evidence as shall (in their opinion) enable them so to determine.

43. (1) If any person (to the knowledge of the directors) becomes or is deemed in accordance with article 44 to be a Relevant Investor by reason of the transfer of any shares to him, the directors may serve a written notice (a "Disposal Notice") on all those who (to the knowledge of the directors) have an interest in, and, if different, on the holder or holders of, the Specified Shares. The Disposal Notice shall refer to the voting restrictions as set out in article 46 and shall call for a Mandated Disposal to be made and shall state the number of Excess Shares in respect of which the Mandated Disposal is to be made and shall call for reasonable evidence that such Mandated Disposal has been effected to be supplied to the Company within 21 days from the date of such Notice or such other period as the directors may consider reasonable and which they may extend. The directors may withdraw a Disposal Notice (whether before or after the expiration of the period referred to) if it appears to them that there is no Relevant Investor in relation to such Excess Shares.

    (2) If a Disposal Notice served under this article is not complied with to the satisfaction of the directors and has not been withdrawn, the holder or holders on whom such notice shall have been served shall be deemed to have constituted the directors their agents and the directors may, so far as they are able, make a Mandated Disposal of the number of Excess Shares stated in the relevant Disposal Notice, at the best price reasonably obtainable and shall give written notice of such disposal to those persons on whom the Disposal Notice was served. Except as hereinafter provided, such a Mandated Disposal shall be completed as soon as reasonably practicable after expiry of the Disposal Notice as may in the opinion of the directors be consistent with obtaining the

best price reasonably obtainable and in any event within 30 days of expiry of such Disposal Notice provided that a Mandated Disposal may be suspended during the period when dealings by the directors in the shares are not permitted either by law or by regulations of the competent authority (designated as such for the purposes of Part VI of the Financial Services and Markets Act 2000), but any Mandated Disposal suspended as aforesaid shall be completed within 30 days after expiry of the period of such suspension and provided further that neither the Company nor the directors shall be liable to any holder for failing to obtain the best price so long as the directors act in good faith within the period specified above. If on a Mandated Disposal being made by the directors, Excess Shares are held by more than one holder (treating joint holders of any relevant shares as a single holder) the directors shall cause the same proportion of each holding as is known to them to be sold.

(3) For the purpose of effecting any Mandated Disposal, the directors may authorise in writing any officer or employee of the Company to execute, complete and deliver any necessary transfer in the name and on behalf of any holder and may issue a new certificate to the purchaser. The net proceeds of such disposal shall be received by the Company, whose receipt shall be a good discharge for the purchase money, and shall be paid (without any interest being payable thereon) to the former holder upon surrender by him of the certificate in respect of the shares sold and formerly held by him. After the name of the purchaser (or his nominee) has been entered in the register of members, the validity of the proceedings shall not be questioned by any person.

44. (1) The directors may assume without enquiry that a person is not a Relevant Investor. The directors may determine that any person is a Relevant Investor if there are reasonable grounds for believing that that person is a Relevant Investor (notwithstanding that the Company has not been supplied with a declaration or other evidence establishing to its satisfaction that such person is or may become a Relevant Investor) until such time as they are satisfied that such is not the case.

(2) If in accordance with this article the directors shall have assumed that any person is not a Relevant Investor, the exercise by that person of any right attaching to any share in which he is interested shall not be challenged or invalidated by any subsequent determination by the directors that such person is a Relevant Investor.

45. The directors shall not be obliged to serve any Disposal Notice under article 43(1) upon any person if they do not know his identity or his address and the absence of service of such a notice in such circumstances as aforesaid and any accidental error in giving, or failure to give, any notice to any person upon whom notice is served under the foregoing articles shall not prevent the implementation of or invalidate any procedure thereunder. Any notice to be served under article 43(1) upon a person who is not a holder shall be deemed validly served if sent through the post to that person at the address, if any, at which the directors believe him to be resident or carrying on business. Any such notice shall be deemed served on the day following any day on which it was put in the post and, in proving service, it shall be sufficient to prove that

the notice was properly addressed, stamped and put in the post. Any determination of the directors under the provisions of articles 42 to 44 shall be final and conclusive, but without prejudice to the power of the directors subsequently to vary or revoke such determination.

46. The holder or holders of the Excess Shares who has pursuant to article 43(1) been served with a Disposal Notice by the directors shall not, with effect from the expiration of such period as the directors shall specify in such notice (not being longer than 30 days from the date of service of the notice), be entitled to receive notice of, or to attend or vote at, any general meeting of the Company or any meeting of the holders of shares of the relevant class in respect of the shares referred to in that article as Excess Shares.

47. Any member who has pursuant to article 42 been served with a further notice by the directors requiring him to furnish the directors with information and evidence or further information or evidence within 14 days after the service of such further notice shall not, with effect from the expiration of such period and until information or evidence is furnished to the satisfaction of the directors, be entitled to receive notice of, or to attend or vote at, any general meeting of the Company or meeting of the holders of shares of any class other than in respect of such of the shares held by such member as are shares in respect of which it shall have been established to the satisfaction of the directors that they are not Excess Shares.

48. (1) The provisions of articles 43 to 47 shall not apply to the Company during any Non-Licence Period.

(2) A Non-Licence Period shall be any period during which none of the following conditions are fulfilled:

(a) the Company or any of its subsidiaries shall be or shall have at any time during the three months previously been a Licence Holder;

(b) Ofcom shall have notified the Company or any of its subsidiaries of its intention to award or grant the Company or any of its subsidiaries a Licence (and shall not have yet awarded or granted a licence or given notice of withdrawal of such intention);

(c) the Company or any of its subsidiaries shall have made (and not withdrawn) an application to Ofcom for the award or grant or extension or renewal of a Licence and Ofcom shall not have notified the Company or such subsidiary that such application has been unsuccessful or rejected or refused; and

(d) the directors shall have passed a resolution that it is the intention of the Company or any of its subsidiaries to apply to Ofcom for the award or grant or extension or renewal of a Licence within one year of the date of such resolution provided that if such resolution has been passed more than six months prior to the relevant date the provisions of this paragraph (d) shall not apply unless a further resolution has been passed in terms mutatis mutandis nor if such an application has been made and has been unsuccessful or withdrawn or rejected or refused.

(3) For the purposes of articles 42 to 47 the directors may, to enable the Company to deal with shares in uncertificated form in accordance with the provisions of such articles, require the Operator of a relevant system to convert the shares into certificated form.

UNTRACED MEMBERS

49. (1) The Company shall be entitled to sell at the best price reasonably obtainable any share held by a member, or any share to which a person is entitled by transmission, if:

(a) for a period of 12 years no cheque or warrant or other method of payment for amounts payable in respect of the share sent and payable in a manner authorised by these articles has been cashed or been successful and no communication has been received by the Company from the member or person concerned;

(b) during that period at least three dividends in respect of the share have become payable;

(c) the Company has, after the expiration of that period, by advertisement in a leading national daily newspaper published in the United Kingdom and in a newspaper circulating in the area of the registered address or last known address of the member or person concerned, given notice of its intention to sell such share; and

(d) the Company has not during the further period of three months after the date of the advertisement and prior to the sale of the share received any communication from the member or person concerned.

(2) The Company shall also be entitled to sell at the best price reasonably obtainable any additional share issued during the said period of 12 years in right of any share to which paragraph (1) of this article applies (or in right of any share so issued), if the criteria in sub-paragraphs (a), (c) and (d) of that paragraph are satisfied in relation to the additional share (but as if the words "for a period of 12 years" were omitted from sub-paragraph (a) and the words ", after the expiration of that period," were omitted from sub-paragraph (c)).

(3) To give effect to the sale of any share pursuant to this article the Company may, in the case of a share in certificated form, appoint any person to execute an instrument of transfer of the share, and the instrument shall be as effective as if it had been executed by the registered holder of, or person entitled by transmission to, the share; and in the case of a share in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form and after such conversion may authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as it thinks fit to effect the transfer. The purchaser shall not be bound to see to the application of the proceeds of sale, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings relating to the sale. The Company shall be indebted to the

member or other person entitled to the share for an amount equal to the net proceeds of the sale, but no trust or duty to account shall arise and no interest shall be payable in respect of the proceeds of sale, which may be employed in the business of the Company or invested in such investments as the directors may think fit.

STOCK

50. The Company may by ordinary resolution convert any paid up shares into stock and re-convert any stock into paid up shares of any denomination.

51. A holder of stock may transfer it or any part of it in the same manner, and subject to the same provisions of these articles as would have applied to the shares from which the stock arose if they had not been converted, or as near thereto as circumstances admit, but the directors may fix the minimum amount of stock transferable at an amount not exceeding the nominal amount of any of the shares from which the stock arose.

52. A holder of stock shall, according to the amount of the stock held by him, have the same rights as if he held the shares from which the stock arose provided that no such right (except participation in dividends and in the assets of the Company) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that right.

53. All the provisions of these articles applicable to paid up shares shall apply to stock, and the words "share" and "member" shall include "stock" and "stockholder" respectively.

ALTERATION OF CAPITAL

54. The Company may by ordinary resolution:

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

(b) sub-divide its shares, or any of them, into shares of smaller amount than its existing shares; and

(c) determine that, as between the shares resulting from such a sub-division, any of them may have any preference or advantage as compared with the others,

and where any difficulty arises in regard to any consolidation or division, the directors may settle such difficulty as they see fit. In particular, without limitation, whenever any members would become entitled to fractions of a share, the directors may sell to any person (including the Company) the shares representing the fractions for the best price reasonably obtainable and distribute the net proceeds of sale in due proportion among those members or retain such net proceeds for the benefit of the Company and:

(i) in the case of shares in certificated form, authorise some person to execute an instrument of transfer of the shares to or in accordance with the directions of the purchaser; and

(ii) in the case of shares in uncertificated form, the directors may, to enable the Company to deal with the share in accordance with the provisions of this article, require the Operator of a relevant system to convert the share into certificated form; and after such conversion, authorise any person to execute an instrument of transfer and/or take such other steps (including the giving of directions to or on behalf of the holder, who shall be bound by them) as they think fit to effect the transfer. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

NOTICE OF GENERAL MEETINGS

55. The directors may call general meetings whenever and at such time and places as they shall determine. If there are not sufficient directors to form a quorum in order to call a general meeting, any director or, if there is no director within the United Kingdom, any member of the Company may call a general meeting.

56. Subject to the provisions of the Acts, an annual general meeting and all other general meetings of the Company shall be called by at least such minimum period of notice as is prescribed or permitted under the Acts. The notice shall specify the place, the date and the time of meeting and the general nature of the business to be transacted, and in the case of an annual general meeting shall specify the meeting as such. Where the Company has given an electronic address in any notice of meeting, any document or information relating to proceedings at the meeting may be sent by electronic means to that address, subject to any conditions or limitations specified in the relevant notice of meeting. Subject to the provisions of these articles and to any rights or restrictions attached to any shares, notices shall be given to all members, to all persons entitled to a share in consequence of the death or bankruptcy of a member or operation of law and to the directors and auditors of the Company.

57. The accidental omission to give notice of a meeting to, or the failure to give notice due to circumstances beyond the Company's control to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

58. No business shall be transacted at any meeting unless a quorum is present. Two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation which is a member (including for this purpose two persons who are proxies or corporate representatives of the same member), shall be a quorum.

59. If a quorum is not present within half an hour after the time appointed for holding the meeting, or if during a meeting a quorum ceases to be present, the meeting shall stand adjourned to such date, time and place as the directors may, subject to the provisions of the Acts, determine. If at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for holding the meeting, the meeting shall be dissolved.

60. The chairman (if any) of the board of directors, or in his absence the vice-chairman, or in the absence of both of them some other director nominated prior to the meeting by the directors, shall preside as chairman of the meeting, but if neither the chairman nor the vice-chairman nor such other director (if any) is present within 15 minutes

after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number present and willing to act to be chairman of the meeting, and if there is only one director present, he shall be chairman of the meeting.

61. If no director is present within 15 minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman of the meeting.

62. The directors or the chairman of the meeting may direct that any person wishing to attend any general meeting should submit to such searches or other security arrangements (including without limitation, requiring evidence of identity to be produced before entering the meeting and placing restrictions on the items of personal property which may be taken into the meeting) as they or he consider appropriate in the circumstances. The directors or the chairman of the meeting may in their or his absolute discretion refuse entry to, or eject from, any general meeting any person who refuses to submit to a search or otherwise comply with such security arrangements.

63. The directors or the chairman of the meeting may take such action, give such direction or put in place such arrangements as they or he consider appropriate to secure the safety of the people attending the meeting and to promote the orderly conduct of the business of the meeting. Any decision of the chairman of the meeting on matters of procedure or matters arising incidentally from the business of the meeting, and any determination by the chairman of the meeting as to whether a matter is of such a nature, shall be final.

64. Directors may attend and speak at general meetings and at any separate meeting of the holders of any class of shares, whether or not they are members. The chairman of the meeting may permit other persons who are not members of the Company or otherwise entitled to exercise the rights of members in relation to general meetings to attend and, at the chairman of the meeting's discretion, speak at a general meeting or at any separate class meeting.

65. In the case of any general meeting, the directors may, notwithstanding the specification in the notice convening the general meeting of the place at which the chairman of the meeting shall preside (the "Principal Place"), make arrangements for simultaneous attendance and participation at satellite meeting places, or by way of any other electronic means, allowing persons not present together at the same place to attend, speak and vote at the meeting. The arrangements for simultaneous attendance and participation at satellite meeting places, or other places at which persons are participating via electronic means, may include arrangements for controlling or regulating the level of attendance at any particular venue provided that such arrangements shall operate so that all members and proxies wishing to attend the meeting are able to attend at one or other of the venues. The members or proxies at the satellite meeting places, or other places at which persons are participating via electronic means, shall be counted in the quorum for, and be entitled to vote at, the general meeting in question, and that meeting shall be duly constituted and its proceedings valid if the chairman of the meeting is satisfied that adequate facilities are available throughout the meeting to ensure that the members or proxies attending at the satellite meeting places, or other places at which persons are participating via electronic means, are able to:-

(a) participate in the business for which the meeting has been convened; and

(b) see and hear all persons who speak (whether through the use of microphones, loud speakers, audiovisual communication equipment or otherwise) in the Principal Place and any other such place.

For the purposes of all other provisions of these articles (unless the context requires otherwise), the members shall be treated as meeting at the Principal Place. If it appears to the chairman of the meeting that the facilities at the Principal Place or any satellite meeting place, or other places at which persons are participating via electronic means, have become inadequate for the purposes set out in sub-paragraphs (a) and (b) above, the chairman of the meeting may, without the consent of the meeting, interrupt or adjourn the general meeting. All business conducted at the general meeting up to the point of the adjournment shall be valid. The provisions of article 66(2) shall apply to that adjournment.

66. (1) Without prejudice to any other power of adjournment he may have under these articles or at common law:-

(a) the chairman of the meeting may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place; and

(b) the chairman of the meeting may, without the consent of the meeting, adjourn the meeting before or after it has commenced, to another date, time or place which the chairman of the meeting may decide, if the chairman of the meeting considers that:-

(i) there is not enough room for the number of members and proxies who wish to attend the meeting;

(ii) the behaviour of anyone present prevents, or is likely to prevent, the orderly conduct of the business of the meeting;

(iii) an adjournment is necessary to protect the safety of any person attending the meeting; or

(iv) an adjournment is otherwise necessary in order for the business of the meeting to be properly carried out.

(2) Subject to the provisions of the Acts, it shall not be necessary to give notice of an adjourned meeting, except that when a meeting is adjourned for 14 days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

AMENDMENTS TO RESOLUTIONS

67. (1) A special resolution to be proposed at a general meeting may be amended by ordinary resolution if: -

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and

(b) the amendment does not go beyond what is necessary to correct a clear error in the resolution.

(2) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if: -

(a) written notice of the terms of the proposed amendment and of the intention to move the amendment have been delivered to the Company at the Office at least 48 hours before the time for holding the meeting or the adjourned meeting at which the ordinary resolution in question is proposed and the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the substance of the resolution; or

(b) the chairman of the meeting, in his absolute discretion, decides that the proposed amendment may be considered or voted on.

68. With the consent of the chairman of the meeting, an amendment may be withdrawn by its proposer before it is voted on. If an amendment proposed to any resolution under consideration is ruled out of order by the chairman of the meeting, the proceedings on the resolution shall not be invalidated by any error in the ruling.

POLLS

69. A poll on a resolution may be demanded at a general meeting either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared. A poll on a resolution may be demanded by:-

(a) the chairman of the meeting; or

(b) a majority of the directors present at the meeting; or

(c) not less than five members having the right to vote at the meeting; or

(d) a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting (excluding any voting rights attached to any shares in the Company held as treasury shares); or

(e) a member or members holding shares conferring a right to vote at the meeting on the resolution on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right (excluding any shares in the Company conferring a right to vote at the meeting which are held as treasury shares).

70. Unless a poll is duly demanded and the demand is not subsequently withdrawn, a declaration by the chairman of the meeting that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority, and an entry in respect of such declaration in the minutes of the meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

71. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman of the meeting, and a demand so withdrawn shall not be taken

to have invalidated the result of a show of hands declared before the demand was made. If the demand for a poll is withdrawn, the chairman or any other member entitled may demand a poll.

PROCEDURE ON A POLL

72. Polls at general meetings shall, subject to articles 73 and 74 below, be taken as and when the chairman of the meeting directs. The chairman of the meeting may appoint scrutineers (who need not be members) and decide how and when the result of the poll is to be declared. The result of a poll shall be the decision of the meeting in respect of the resolution on which the poll was demanded.

73. A poll on:-

(a) the election of the chairman of the meeting; or

(b) a question of adjournment,

must be taken immediately.

Other polls must be taken either immediately or within 30 days of their being demanded. A demand for a poll does not prevent a general meeting from continuing, except as regards the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.

74. No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case, at least seven clear days' notice must be given specifying the time and place at which the poll is to be taken.

VOTES OF MEMBERS

75. Subject to any rights or restrictions attached to any shares:-

(a) on a show of hands:

(i) every member who is present in person has one vote;

(ii) every proxy present who has been duly appointed by one or more members entitled to vote on the resolution has one vote, except that if the proxy has been duly appointed by more than one member entitled to vote on the resolution and is instructed by one or more of those members to vote for the resolution and by one or more others to vote against it, or is instructed by one or more of those members to vote in one way and is given discretion as to how to vote by one or more others (and wishes to use that discretion to vote in the other way) he has one vote for and one vote against the resolution; and

(iii) every corporate representative present who has been duly authorised by a corporation has the same voting rights as the corporation would be entitled to; and

(b) on a poll every member present in person or by duly appointed proxy or corporate representative has one vote for every share of which he is the holder or in respect of which his appointment of proxy or corporate representative has been made.

A member, proxy or corporate representative entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses the same way.

76. For the purposes of determining which persons are entitled to attend or vote at a general meeting and how many votes such person may cast, the Company may specify in the notice convening the meeting a time, being not more than 48 hours before the time fixed for the meeting (and for this purpose no account shall be taken of any part of a day that is not a working day), by which a person must be entered on the register in order to have the right to attend or vote at the meeting.

77. In the case of joint holders the vote of the senior who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the register of members.

78. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, on a show of hands or on a poll, by any person authorised in that behalf by that court. Evidence to the satisfaction of the directors of the authority of the person claiming the right to vote shall be delivered to the Office, or such other place as is specified in accordance with these articles for the delivery or receipt of appointments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised, and in default the right to vote shall not be exercisable.

79. No member shall have the right to vote at any general meeting or at any separate meeting of the holders of any class of shares, either in person or by representative or proxy, in respect of any share held by him unless all amounts presently payable by him in respect of that share have been paid.

80. (1) Any objection to the qualification of any person voting at a general meeting or on a poll or to the counting of, or failure to count, any vote, must be made at the meeting or adjourned meeting or at the time the poll is taken (if not taken at the meeting or adjourned meeting) at which the vote objected to is tendered. Any objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive. If a vote is not disallowed by the chairman of the meeting it is valid for all purposes.

(2) The Company shall not be bound to enquire whether any proxy or corporate representative votes in accordance with the instructions given to him by the member he represents and if a proxy or corporate representative does not vote in accordance with the instructions of the member he represents the vote or votes cast shall nevertheless be valid for all purposes.

PROXIES AND CORPORATE REPRESENTATIVES

81. A member is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the Company. The

appointment of a proxy shall be deemed also to confer authority (in accordance with section 329 of the Companies Act 2006) to demand or join in demanding a poll. Delivery of an appointment of proxy shall not preclude a member from attending and voting at the meeting or at any adjournment of it. A proxy need not be a member. A member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him. References in these articles to an appointment of proxy include references to an appointment of multiple proxies.

82. Where two or more valid appointments of proxy are received in respect of the same share in relation to the same meeting, the one which is last sent shall, unless otherwise specified in the notice convening the meeting, be treated as replacing and revoking the other or others. If the Company is unable to determine which is last sent, the one which is last received shall be so treated. If the Company is unable to determine either which is last sent or which is last received, none of such appointments shall be treated as valid in respect of that share.

83. (1) Subject to article 84 below, an appointment of a proxy shall be in writing in any usual form or in any other form which the directors may approve and shall be executed by or on behalf of the appointor which in the case of a corporation may be either under its common seal or under the hand of a duly authorised officer or other person duly authorised for that purpose.

(2) Where the appointment of a proxy is expressed to have been or purports to have been executed by a duly authorised person on behalf of a member:

(i) the Company may treat the appointment as sufficient evidence of that person's authority to execute the appointment of proxy on behalf of that member; and

(ii) the member shall, if requested by or on behalf of the Company, send or procure the sending of any authority under which the appointment of proxy has been executed, or a certified copy of any such authority, to such address and by such time as is required for the submission of appointments of proxy under article 85 and, if the request is not complied with in any respect, the appointment of proxy may be treated as invalid.

84. The directors may (and shall if and to the extent that the Company is required to do so by the Acts) allow an appointment of proxy to be sent or supplied in electronic form subject to any conditions or limitations as the directors may specify, and where the Company has given an electronic address in any instrument of proxy or invitation to appoint a proxy, any document or information relating to proxies for the meeting (including any document necessary to show the validity of, or otherwise relating to, an appointment of proxy, or notice of the termination of the authority of a proxy) may be sent by electronic means to that address, subject to any conditions or limitations specified in the relevant notice of meeting.

85. An appointment of proxy may:-

(a) in the case of an appointment of proxy in hard copy form, be received at the Office or such other place in the United Kingdom as is specified in the notice convening the meeting, or in any appointment of proxy or any invitation to appoint a proxy sent out or made available by the Company in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment of proxy proposes to vote; or

(b) in the case of an appointment of proxy in electronic form, be received at the electronic address specified in the notice convening the meeting, or in any appointment of proxy or any invitation to appoint a proxy sent out or made available by the Company in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment of proxy proposes to vote; or

(c) in the case of a poll taken subsequently to the date of the meeting or adjourned meeting, be received as aforesaid not less than 24 hours (or such shorter time as the directors may determine) before the time appointed for the taking of the poll.

An appointment of proxy which is not received or delivered in a manner so permitted shall be invalid. The directors may specify in the notice convening the meeting that, in determining the time for delivery of proxies pursuant to this article, no account shall be taken of any part of a day that is not a working day.

86. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous termination of the authority of the person voting or demanding a poll, unless notice of the termination was delivered in writing to the Company at the Office, or at such other place or address at which an appointment of proxy may be duly received or delivered under article 85, not later than the last time at which an appointment of proxy should have been received under article 85 in order for it to be valid for use at the meeting at which the vote was given or the poll demanded or for use on the holding of the poll at which the vote was given.

87. The directors may at the expense of the Company send or make available appointments of proxy or invitations to appoint a proxy to the members by post or by electronic means or otherwise (with or without provision for their return prepaid) for use at any general meeting or at any separate meeting of the holders of any class of shares, either in blank or nominating in the alternative any one or more of the directors or any other person. If for the purpose of any meeting appointments of proxy or invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company's expense, they shall be issued to all (and not to some only) of the members entitled to be sent a notice of the meeting and to vote at it. The accidental omission or the failure due to circumstances beyond the Company's control, to send or make available such an appointment of proxy or give such an invitation to, or the non-receipt thereof by, any member entitled to attend and vote, at a meeting shall not invalidate the proceedings at that meeting.

88. Subject to the provisions of the Acts, any corporation (other than the Company itself) which is a member of the Company may, by resolution of its directors or other governing body, authorise a person or persons to act as its representative or representatives at any meeting of the Company, or at any separate meeting of the holders of any class of shares, and the corporation shall for the purposes of these articles be deemed to be present in person at any such meeting if a person or persons

so authorised is or are present at it. The Company may require such person or persons to produce a certified copy of the resolution before permitting such person or persons to exercise his or their powers.

UK CORPORATE GOVERNANCE CODE

89. The Company shall comply with the provisions of Listing Rules 9.8.6(5) and (6) (or such other provisions of the Listing Rules as may from time to time be applicable) in relation to the principles and provisions of the Code as if it is a company with a Premium Listing.

EDITORIAL INDEPENDENCE AND INTEGRITY IN NEWS REPORTING

90. The Company shall abide by the principle of editorial independence and integrity of news reporting by Sky News in respect of television, radio and any other closely related services (irrespective of the platform on which such news is distributed) and shall, where appropriate, comply with the Ofcom Broadcasting Code.

91. In relation to the Head of Sky News, the following matters must be approved by resolution of the directors of the Company:

(1) his appointment and removal from office;

(2) any material changes to the terms and conditions of his employment which could give rise to a claim by him or her for constructive dismissal; and

(3) any material changes to his authority or reporting relationship.

MATERIAL TRANSACTIONS WITH NEWS CORPORATION

92. Transactions between the Company and News Corporation or Sky and/or any of their respective subsidiaries which involve or could reasonably involve the payment or receipt by the Company or its subsidiaries of amounts of £5,000,000 or more shall require the prior approval of the Audit Committee.

93. The following transactions will require the prior approval of the Audit Committee and the Company's board of directors:

(1) transactions between the Company and News Corporation or Sky and/or any of their respective subsidiaries which involve the payment or receipt by the Company or its subsidiaries of amounts of £12,500,000 or more; and

(2) any renewal of or material amendment to any of the Operational Agreements.

RELATED PARTY TRANSACTIONS

94. Subject to articles 95 to 97 below, the Company will comply with the provisions of Chapter 11 as if it is a company which has a Premium Listing.

95. For the purposes of interpreting article 94 above:

(1) if the Company is proposing to enter into a transaction that could be a related party transaction (as defined in Chapter 11) it is required to obtain the guidance of the Nominated Advisor and not a sponsor to assess the potential application of Listing Rule 11; and

(2) a related party circular must include a statement by the board that the transaction or arrangement is fair and reasonable as far as the shareholders of the company are concerned and that the directors have been so advised by the Nominated Advisor and not a sponsor.

96. To the extent that there is any question of interpretation of the Company's compliance with or the application of the Listing Rules, including Chapter 11, the Independent IB shall act as independent arbiter as to whether any relevant Listing Rule has been complied with by the Company. Any decision of the Independent IB as to the Company's compliance with the Chapter 11 shall be final and binding on the Company.

97. All references to the FSA in Chapter 11 and annexes to Chapter 11 shall be deemed to be references to the Independent IB and the FSA shall not have jurisdiction to decide whether the Company has complied with, or approve any documentation required by, the Listing Rules for the purposes of Chapter 11.

DIRECTORS

98. Unless otherwise determined by the Company by ordinary resolution the number of directors (other than alternate directors) shall not be subject to any maximum but shall not be less than three.

99. For so long as News Corporation in combination with any member(s) of the same Group of Interconnected Bodies Corporate as News Corporation does not control more than 50% of the votes capable of being cast at a general meeting of the Company, the majority of the Company's board of directors shall comprise Independent Directors.

100. The Company's board of directors and its committees shall have the appropriate balance of skills, experience, independence and knowledge of the Company and its business to enable the directors to discharge their respective duties and responsibilities effectively. At least one of the Independent Directors shall have senior editorial and/or journalistic experience.

101. (1) Until otherwise determined by the Company by ordinary resolution, there shall be paid to the directors (other than alternate directors and directors employed by the Company in an executive capacity) such fees for their services in the office of director as the directors may from time to time determine (not exceeding in the aggregate an annual sum of £[●] or such larger amount as the Company may by ordinary resolution decide) divided between the directors as they agree, or, failing agreement, equally except that any director who shall hold office for part only of the period in respect of which such fees are payable shall be entitled only to rank in such division for a proportion of such fees related to the period during which he has held office. The fees shall be deemed to accrue from day to day and shall be distinct from and additional to any remuneration or other benefits which may be paid or provided to any director pursuant to any other provision of these articles.

(2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of the directors or of committees of the directors or general meetings or separate

meetings of the holders of any class of shares or otherwise in connection with the discharge of their duties as directors.

(3) Any director who holds any executive office or who serves on any committee of the directors or who performs services which the directors consider go beyond the ordinary duties of a director may be paid such special remuneration (whether by way of bonus, commission, participation in profits or otherwise) as the directors may determine.

ALTERNATE DIRECTORS

102. (1) Subject to article 102(2), any director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the directors and willing to act and permitted by law to do so, to be an alternate director and may remove an alternate director appointed by him from his appointment as alternate director. Subject to the foregoing, a director may appoint more than one alternate and a person may act as alternate for more than one director.

(2) An Independent Director may only appoint another director or other person to be his alternate director if the proposed alternate director would also qualify as an Independent Director if that person had been a director of the Company.

103. An alternate director shall be entitled to receive notices of meetings of the directors and of committees of the directors of which his appointor is a member, to attend and vote at any such meeting at which the director appointing him is not present but at which meeting such director would be entitled to vote, and generally to perform all the functions of his appointor as a director in his absence, but shall not (unless the Company by ordinary resolution otherwise determines) be entitled to any fees for his services as an alternate director.

104. An alternate director shall cease to be an alternate director if his appointor ceases to be a director; but, if a director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his reappointment.

105. An alternate director shall cease to be an alternate director on the occurrence in relation to the alternate director of any event which, if it occurred in relation to his appointor, would result in the termination of the appointor's appointment as director.

106. An appointment or removal of an alternate director shall be by notice in writing to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors.

107. Save as otherwise provided in these articles, an alternate director

(i) shall be deemed for all purposes to be a director;

(ii) shall alone be responsible for his own acts and omissions;

(iii) shall, in addition to any restrictions which may apply to him personally, be subject to the same restrictions as his appointor; and

(iv) shall not be deemed to be the agent of the director appointing him.

POWERS OF DIRECTORS

108. Save as otherwise provided in these articles, the business of the Company shall be managed by the directors who, subject to the provisions of the Acts these articles and to any directions given by special resolution to take or refrain from taking, specified action, may exercise all the powers of the Company. No alteration of these articles and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this article shall not be limited by any special power given to the directors by these articles and a meeting of the directors at which a quorum is present may exercise all powers exercisable by the directors.

109. (1) The directors shall restrict the borrowings of the Company and exercise all powers of control exercisable by the Company in relation to its subsidiary undertakings so as to secure (as regards subsidiary undertakings so far as by such exercise they can secure) that, unless authorised by the Company in general meeting, no money shall be borrowed if the aggregate principal amount (including any premium payable on final repayment) outstanding of all money borrowed by the Group (excluding amounts borrowed by any member of the Group from any other member of the Group, other than amounts to be taken into account under paragraph (3)(c) and (d) of this article) then exceeds or would, as a result of such borrowing exceed an amount equal to the higher of, from time to time (i) £150,000,000; and (ii) an amount equal to four times the aggregate turnover of the Group as shown in the then latest audited consolidated profit and loss account of the Group.

(2) In this article:

(a) "the Group" means the Company and its subsidiary undertakings (if any); and

(b) "subsidiary undertaking" has the same meaning as in the Acts.

(3) For the purposes of this article, but without prejudice to the generality of the terms "borrowing" and "borrowed"

(a) amounts borrowed for the purpose of repaying the whole or any part of any amounts previously borrowed and then outstanding (including any premium payable on final repayment) and to be applied for that purpose within six months of the borrowing shall not, pending such application, be taken into account as money borrowed;

(b) the principal amount (including any premium payable on final repayment) of any debentures issued in whole or in part for a consideration other than cash shall be taken into account as money borrowed by the member of the Group issuing them;

(c) money borrowed by a partly-owned subsidiary undertaking and not owing to another member of the Group shall (notwithstanding sub-paragraph (b) of this paragraph) be taken into account subject to the exclusion of a proportion of it equal to the minority proportion, and money borrowed and owing to a partly-owned subsidiary undertaking by another member of the Group shall (subject to sub-paragraph (d) of this paragraph) be taken into account to the extent of a proportion of it equal to the minority proportion (and for the purpose of this sub-paragraph "minority proportion" means the proportion of the issued equity share capital of the partly-owned subsidiary undertaking which is not attributable, directly or indirectly, to the Company); and

(d) in the case of money borrowed and owing to a partly-owned subsidiary undertaking by another partly-owned subsidiary undertaking the proportion which would otherwise be taken into account under sub-paragraph (c) of this paragraph shall be reduced by excluding such part of it as is equal to the proportion of the issued equity share capital of the borrowing subsidiary undertaking which is not attributable, directly or indirectly, to the Company.

(4) In calculating the aggregate amount of borrowings for the purpose of this article, money borrowed by any member of the Group which is denominated or repayable in a currency other than sterling shall be treated as converted into sterling:

(a) at the rate of exchange used for the conversion of that currency in the latest audited balance sheet of that member; or

(b) if no rate was so used, at the middle market rate of exchange prevailing in London at the close of business on the date of that balance sheet,

but if the amount in sterling resulting from conversion at that rate would be greater than that resulting from conversion at the middle market rate prevailing in London at the close of business on the business day immediately preceding the day on which the calculation falls to be made, the latter rate shall apply instead.

(5) No debt incurred or security given in respect of money borrowed or to be taken into account as money borrowed in excess of the above limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded, but no lender or other person dealing with the Company shall be concerned to see or enquire whether such limit is observed.

(6) In this article references to a consolidated profit and loss account of the Group is to be taken:

(a) in a case where the Company had no subsidiary undertakings at the relevant time, as references to the profit and loss account of the Company;

(b) in a case where the Company had subsidiary undertakings at the relevant time but there are no consolidated accounts of the Group, as references to the respective profit and loss accounts of the companies comprising the Group; and

(c) in a case where the Company had subsidiary undertakings at the relevant time, one or more of which has, in accordance with the Acts, been excluded from consolidation as references to the consolidated profit and loss account of the Company and those of its subsidiary undertakings included in the consolidation.

110. The directors may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that subsidiary.

DELEGATION OF DIRECTORS' POWERS

111. (1) Subject to the provisions of these articles (including article 100), the directors may delegate any of the powers which are conferred on them under these articles:

(a) to a committee consisting of one or more directors and (if thought fit) one or more other persons, provided that a majority of the members of the committee shall be directors and no resolution of the committee shall be effective unless a majority of those present when it is passed are directors; or

(b) to such person;

(c) by such means (including by power of attorney);

(d) to such an extent; and

(e) on such terms and conditions,

as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) Subject to the provisions of these articles, the directors may revoke any delegation in whole or part, or alter its terms and conditions, save that the delegation to the Audit Committee set out in articles 92 and 93 and/or the delegation to the Governance and Editorial Committee set out in article 139 may not be revoked.

(4) The power to delegate under this article includes power to delegate the determination of any fee, remuneration or other benefit which may be paid or provided to any director.

(5) Subject to paragraph (6) of this article, the proceedings of any committee appointed under paragraph (1)(a) of this article with two or more members shall be governed by such of these articles as regulate the proceedings of directors so far as they are capable of applying, and the quorum at a meeting of any such committee shall be two.

(6) Subject to the provisions of these articles, the directors may make rules regulating the proceedings of such committees, which shall prevail over any

rules derived from these articles pursuant to paragraph (5) of this article if, and to the extent that, they are not consistent with them, save that the directors may not make rules which relate to the Audit Committee and/or the Governance and Editorial Committee under this article 111(6) which are inconsistent with any of the other provisions of these articles.

112. Subject to the provisions of these articles (including article 100), the directors may, by power of attorney or otherwise, appoint any person, whether nominated directly or indirectly by the directors, to be the agent of the Company for such purposes and subject to such conditions as they think fit, and may delegate any of their powers to such an agent. Subject to the provisions of these articles, the directors may revoke or vary any such appointment or delegation and may also authorise the agent to sub-delegate all or any of the powers vested in him.

APPOINTMENT AND RETIREMENT OF DIRECTORS

113. (1) At the annual general meeting in every year there shall retire from office by rotation:

(a) all directors who held office and were subject to retirement by rotation at the time of the two preceding annual general meetings and who did not retire by rotation at either of them; and

(b) such additional number of directors as shall, when aggregated with the number of directors retiring under paragraph (a) above, equal the Relevant Proportion, provided that:

(i) the provisions of this paragraph (b) shall only apply if the number of directors retiring under paragraph (a) above is less than the Relevant Proportion; and

(ii) subject to the provisions of the Acts and to the following provisions of these articles, the directors to retire under this paragraph (b) shall be those who have been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

(2) In this article 113 "Relevant Proportion" shall mean:

(a) one-third of the number of directors, in circumstances where the number of directors is three or a multiple of three; or

(b) in all other circumstances, the whole number which is nearest to but does not exceed one-third of the number of directors.

114. Subject to the provisions of the Acts and subject to the following provisions of these articles, the directors to retire by rotation shall include (so far as is necessary to obtain the number required) any director who wishes to retire and not to offer himself for re-election and otherwise shall be those who, at the date of the notice of meeting, have

been longest in office since their last appointment or reappointment, but as between persons who became or were last reappointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

115. If the Company, at the meeting at which a director retires by rotation, does not fill the vacancy the retiring director shall, if willing to act, be deemed to have been reappointed unless at the meeting it is resolved not to fill the vacancy or a resolution for the reappointment of the director is put to the meeting and lost.

116. No person other than a director retiring at the meeting shall be appointed or reappointed a director at any general meeting unless:

(a) he is recommended by the directors; or

(b) not less than seven nor more than 42 days before the date appointed for holding the meeting, notice executed by a member qualified to vote on the appointment or reappointment has been given to the Company of the intention to propose that person for appointment or reappointment, stating the particulars which would, if he were appointed or reappointed, be required to be included in the Company's register of directors, together with notice executed by that person of his willingness to be appointed or reappointed.

117. At a general meeting a motion for the appointment of two or more persons as directors by a single resolution shall not be made, unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it, and for the purposes of this article a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

118. Subject to the provisions of these articles, the Company may by ordinary resolution appoint a person who is willing to act as a director, and is permitted by law to do so, to be a director, either to fill a vacancy or as an additional director, and may also determine the rotation in which any additional directors are to retire.

119. Without prejudice to article 99, the directors may appoint a person who is willing to act to be a director, either to fill a vacancy or as an additional director, provided that the appointment does not cause the number of directors to exceed any number fixed as the maximum number of directors. A director so appointed shall retire at the next following annual general meeting and shall then be eligible for reappointment and shall not be taken into account in determining the directors who are to retire by rotation at the meeting.

120. A director who retires at an annual general meeting may be reappointed. If he is not reappointed or deemed to have been reappointed, he shall retain office until the meeting appoints someone in his place or, if it does not do so, until the end of the meeting.

DISQUALIFICATION AND REMOVAL OF DIRECTORS

121. In addition to any power of removal under the Acts, the Company may, by special resolution, remove a director before the expiration of his period of office and, subject to these articles, may, by ordinary resolution, appoint another person who is willing to act as a director and is permitted by law to do so, to be a director instead of him. A

person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed or reappointed a director.

122. The office of a director shall be vacated if:

(a) he ceases to be a director by virtue of any provision of the Acts or he becomes prohibited by law from being a director; or

(b) he becomes bankrupt or makes any arrangement or composition with his creditors generally; or

(c) by reason of his mental health a court makes an order which wholly or partly prevents him from personally exercising any powers or rights he would otherwise have; or

(d) he resigns his office by notice in writing to the Company; or

(e) in the case of a director who holds any executive office, his appointment as such is terminated or expires and the directors resolve that he should cease to be a director; or

(f) he is absent for more than six consecutive months without permission of the directors from meetings of the directors held during that period and the directors resolve that he should cease to be a director; or

(g) he is requested in writing or using electronic communications by all the other directors to resign.

DIRECTORS' APPOINTMENTS AND INTERESTS

123. The directors may appoint one or more of their number to the office of chief executive or to any other executive office of the Company and, subject to the provisions of the Acts, any such appointment may be made for such term, at such remuneration and on such other conditions as the directors think fit. A chief executive shall be subject to retirement by rotation. Any appointment of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim for damages for breach of any contract of service between the director and the Company.

124. (1) Subject to the provisions of the Acts, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

(a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;

(b) may (or any firm of which he is a member may) act in a professional capacity for the Company or any other body in which the Company is otherwise interested; and

(c) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is interested, and (i) he shall not by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate; (ii) he shall not infringe his duty to avoid a situation in which he has, or can have a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company as a result of any such office or employment or any such transaction or arrangement or any interest in any such body corporate; (iii) he shall not be required to disclose to the Company, or use in performing his duties as a director of the Company, any confidential information relating to such office, employment or interest if to make such a disclosure or use would result in a breach of duty or obligation of confidence owed by him in relation to or in connection with such office, employment or interest; (iv) he may absent himself from discussions, whether in meetings of the directors or otherwise, and exclude himself from information, which will or may relate to such office, employment, transaction, arrangement or interest; and (v) no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

(2) For the purposes of this article:

(a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified;

(b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and

(c) a director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a director, officer or employee of any body corporate in which the Company is interested.

125. (1) The directors may (subject to such terms and conditions, if any, as they may think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation) authorise, to the fullest extent permitted by law:

(a) any matter which would otherwise result in a director infringing his duty to avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company and which may reasonably be regarded as likely to give rise to a conflict of interest (including a conflict of interest and duty or conflict of duties); and

(b) a director to accept or continue in any office, employment or position in addition to his office as a director of the Company and without prejudice to the generality of paragraph (1)(a) of this article may authorise the manner in which a conflict of interest arising out of such office, employment or position may be dealt with, either before or at the time that such a conflict of interest arises,

provided that the authorisation is effective only if (i) any requirement as to the quorum at the meeting at which the matter is considered is met without counting the director in question or any other interested director; and (ii) the matter was agreed to without their voting or would have been agreed to if their votes had not been counted.

(2) If a matter, or office, employment or position, has been authorised by the directors in accordance with this article then (subject to such terms and conditions, if any, as the directors may think fit to impose from time to time, and subject always to their right to vary or terminate such authorisation or the permissions set out below) -

(a) the director shall not be required to disclose to the Company, or use in performing his duties as a director of the Company, any confidential information relating to such matter, or such office, employment or position if to make such a disclosure or use would result in a breach of a duty or obligation of confidence owed by him in relation to or in connection with that matter, or that office, employment or position;

(b) the director may absent himself from discussions, whether in meetings of the directors or otherwise, and exclude himself from information, which will or may relate to that matter, or that office, employment or position; and

(c) a director shall not, by reason of his office as a director of the Company, be accountable to the Company for any benefit which he derives from any such matter, or from any such office, employment or position.

DIRECTORS' GRATUITIES AND BENEFITS

126. The directors may (by the establishment of, or maintenance of, schemes or otherwise) provide benefits, whether by the payment of allowances, gratuities or pensions, or by insurance or death, sickness or disability benefits or otherwise, for any director or any former director of the Company or of any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse or civil partner and a former spouse or former civil partner) or any person who is or was dependent on him and may (before as well as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

PROCEEDINGS OF DIRECTORS

127. (1) Subject to the provisions of these articles, the directors may regulate their proceedings as they think fit.

(2) A director may, and the secretary at the request of a director shall, call a meeting of the directors by notice. A notice of a meeting of the directors shall

be deemed to be properly given to a director if given to him personally or sent to him at his last known address or any other address given by him to the Company for this purpose.

(3) Questions arising at a meeting shall be decided by a majority of votes. A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote; and an alternate director who is appointed by two or more directors shall be entitled to a separate vote on behalf of each of his appointors in the appointor's absence.

128. No business shall be transacted at any meeting of the directors unless a quorum is present. The quorum at a meeting of the board of directors shall be three directors, which, to the extent that the business of a meeting involves the consideration of editorial or journalistic matters, must include an Independent Director with senior editorial and/or journalistic expertise. A director shall not be counted in the quorum present in relation to a matter or resolution on which he is not entitled to vote (or when his vote cannot be counted) but shall be counted in the quorum present in relation to all other matters or resolutions considered or voted on at the meeting. An alternate director who is not himself a director shall, if his appointor is not present but is entitled to be counted in the quorum, be counted in the quorum.

129. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.

130. The directors shall at any time elect from their number, and may remove, a chairman of the board of directors, who shall be an Independent Director. The chairman shall preside at all meetings of the directors, but if there is no chairman, or if at the meeting the chairman is not present within five minutes after the time appointed for the meeting, or if the chairman is not willing to act as chairman, the directors present may choose another Independent Director to be chairman of the meeting.

131. All acts done by a meeting of the directors, or of a committee of the directors, or by a person acting as a director, shall notwithstanding that it may afterwards be discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, or that the meeting was not quorate (provided that the directors present at the inquorate meeting believed, in good faith, that the meeting was quorate and made all such enquiries as were reasonable in the circumstances to establish that the meeting was quorate), be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote and that the meeting was quorate.

132. A resolution in writing agreed to by all the directors entitled to receive notice of a meeting of the directors or of a committee of the directors and who would be entitled to vote (and whose vote would have been counted) on the resolution at a meeting of the directors shall (if that number is sufficient to constitute a quorum) be as valid and effectual as if it had been passed at a meeting of the directors or (as the case may be) of that committee, duly convened and held. A resolution in writing is adopted when all such directors have signed one or more copies of it or have otherwise indicated

their agreement to it in writing. A resolution agreed to by an alternate director need not also be agreed to by his appointor and, if it is agreed to by a director who has appointed an alternate director, it need not also be agreed to by the alternate director in that capacity.

133. Without prejudice to paragraph (1) of article 127, a meeting of the directors or of a committee of the directors may consist of a conference between directors who are not all in one place, but each of whom is able (whether directly or by conference telephone or by any other form of communication equipment) to hear each of the other participating directors, and to speak to and be heard by each of the others simultaneously. A director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in the quorum accordingly and the word "meeting" in these articles shall be construed accordingly.

134. (1) Subject to any other provision of these articles, a director shall not vote at a meeting of the directors (or at a meeting of a committee consisting of one or more directors) on any resolution concerning a material matter in which he has, directly or indirectly, a material interest (other than an interest in shares, debentures or other securities of, or otherwise in or through, the Company), unless his interest arises only because the case falls within one or more of the following sub-paragraphs:

(a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him at the request of, or for the benefit of, the Company or any of its subsidiaries;

(b) the resolution relates to the giving to a third party of a guarantee, security, or indemnity in respect of a debt or obligation of the Company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;

(c) the resolution relates to the giving to him of any other indemnity which is on substantially the same terms as indemnities given or to be given to all of the other directors and/or to the funding by the Company of his expenditure on defending proceedings or the doing by the Company of anything to enable him to avoid incurring such expenditure where all other directors have been given or are to be given substantially the same arrangements;

(d) his interest arises by virtue of his being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any shares in or debentures or other securities of the Company for subscription, purchase or exchange;

(e) the resolution relates to an arrangement for the benefit of the employees and directors and/or former employees and directors of the Company or any of its subsidiaries, and/or the members of their families (including a spouse or civil partner or a former spouse or former civil partner) or any person who is or was dependent on such persons, including but without being limited to a retirement benefits scheme and an employees' share scheme, which does not accord to any director any privilege or advantage not generally accorded to the employees and/or former employees to whom the arrangement relates; and

(f) the resolution relates to the purchase or maintenance for any director or directors of insurance against any liability.

(2) For the purposes of paragraph (1) of this article,

(a) an interest of any person who is a connected person of a director within the meaning of section 252 of the Companies Act 2006 shall be taken to be the interest of that director and, in relation to an alternate director, an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise; and

(b) without prejudice to the generality of paragraph (1) of this article, a director shall be considered to be interested in a matter if it relates to a transaction or arrangement with a person or body corporate of or in which he is an officer, employee, shareholder, consultant, adviser or representative or in which he is otherwise interested.

(3) Where proposals are under consideration concerning the appointment (including the fixing or varying of terms of appointment) of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested, the proposals may be divided and considered in relation to each director separately and (provided he is not for any reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.

135. The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these articles prohibiting a director from voting at a meeting of the directors or of a committee of the directors or ratify any transaction not duly authorised by reason of contravention of any such provision.

136. If a question arises at a meeting of the directors, or a meeting of a committee of the directors, as to the right of a director to vote, including whether a director has a material interest and/or whether a matter is material for the purposes of article 134, the question may, before the conclusion of the meeting, be decided by a resolution of a majority of directors present at the meeting (other than the director concerned and any other director having a like interest as such director) and such resolution shall be final and conclusive.

GOVERNANCE AND EDITORIAL COMMITTEE

137. For so long as News Corporation in combination with any member(s) of the same Group of Interconnected Bodies Corporate as News Corporation does not control more than 50% of the votes capable of being cast at a general meeting of the

Company, the Company shall establish and maintain a Governance and Editorial Committee.

138. The Governance and Editorial Committee shall be chaired by an Independent Director and shall consist of directors of the Company provided that a majority of the Governance and Editorial Committee shall consist of Independent Directors. At least one of the Independent Directors sitting on the Governance and Editorial Committee shall be a person with senior editorial and/or journalistic experience.

139. The Governance and Editorial Committee shall:

(1) oversee compliance by the Company with the Governance and Editorial Committee Matters;

(2) operate under terms of reference which shall stipulate that the Governance and Editorial Committee will:

(a) be adequately resourced and have powers to review and investigate all areas within the remit of the Governance and Editorial Committee;

(b) meet at least four times a year;

(c) report on a regular basis to the Company's board of directors;

(d) cause a statement to be included in the Company's annual report on its activities including its oversight functions relating to the Governance and Editorial Committee Matters;

(e) consider any representation made by the Head of Sky News as to the Company's compliance with articles 90 and 91 and report any such representations to the board of the Company; and

(f) advise the Company's board of directors on any issues within its remit, including any approvals specified in article 91; and

(3) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic experience is present.

140. Subject to the provisions of these articles, the terms of reference of the Governance and Editorial Committee shall be determined by the Company's board of directors.

AUDIT COMMITTEE

141. The Company shall establish and maintain an Audit Committee, which shall consist exclusively of Independent Directors and will have the power to approve the transactions referred to in articles 92 and 93.

142. Subject to the provisions of these articles, the terms of reference of the Audit Committee shall be determined by the Company's board of directors.

MINUTES

143. The directors shall cause minutes to be made in books kept for the purpose:

(a) of all appointments of officers made by the directors; and

(b) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company, and of the directors, and of committees of the directors, including the names of the directors present at each such meeting.

Minutes shall be retained for at least ten years from the date of the appointment or meeting and shall be kept available for inspection in accordance with the Acts.

144. Any such minutes, if purporting to be signed by the chairman of the meeting to which they relate or of the meeting at which they are read, shall be sufficient evidence without any further proof of the facts therein stated.

SECRETARY

145. Subject to the provisions of the Acts, the secretary shall be appointed by the directors for such term, at such remuneration and on such other conditions as they think fit; and any secretary so appointed may be removed by them.

THE SEAL

146. The seal shall be used only by the authority of a resolution of the directors or of a committee of the directors. The directors may determine whether any instrument to which the seal is affixed, shall be signed and, if it is to be signed, who shall sign it. Unless otherwise determined by the directors:

(a) share certificates and, subject to the provisions of any instrument constituting the same, certificates issued under the seal in respect of any debentures or other securities, need not be signed and any signature may be applied to any such certificate by any mechanical or other means or may be printed on it; and

(b) every other instrument to which the seal is affixed shall be signed by two authorised persons or by a director in the presence of a witness who attests the signature and for this purpose an authorised person is any director or the secretary of the Company.

147. Subject to the provisions of the Acts, the Company may have an official seal for use in any place.

DIVIDENDS

148. Subject to the provisions of the Acts, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the directors.

149. Subject to the provisions of the Acts, the directors may pay interim dividends of such amounts and on such dates and in respect of such periods as they may think fit if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the directors may pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if at the time of payment, any preferential dividend is in arrear. The directors may also pay at intervals settled by them any dividend payable at a

fixed rate if it appears to them that the profits available for distribution justify the payment. If the directors act in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights.

150. Subject to the provisions of the Acts and except as otherwise provided by these articles or the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. If any share is issued on terms that it ranks for dividend as from a particular date, it shall rank for dividend accordingly. In any other case (and except as aforesaid), dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. For the purpose of this article, an amount paid up on a share in advance of a call shall be treated, in relation to any dividend declared after the payment but before the call, as not paid up on the share.

151. A general meeting declaring a dividend may, upon the recommendation of the directors, by ordinary resolution direct that it shall be satisfied wholly or partly by the distribution of assets and, where any difficulty arises in regard to the distribution, the directors may settle the same as they think fit and in particular (but without limitation) may issue fractional certificates (or ignore fractions) and fix the value for distribution of any assets, and may determine that cash shall be paid to any member on the basis of the value so fixed in order to adjust the rights of members, and may vest any assets in trustees.

152. (1) Any dividend or other money payable in respect of a share may be paid by cheque or warrant sent by post to the registered address of the person entitled or, if two or more persons are the holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder, to the registered address of that one of those persons who is first named in the register of members or to such person and to such address as the person or persons entitled may by notice direct. Every cheque or warrant shall be made payable to the order of or to the person or persons entitled or to such other person as the person or persons entitled may by notice direct and payment of the cheque or warrant shall be a good discharge to the Company. Any such dividend or other money may also be paid by any other method (including direct debit and bank transfer or, in respect of shares in uncertificated form, where the Company is authorised to do so by or on behalf of the holder or joint holders, in such manner as the directors may from time to time consider sufficient, by means of a relevant system) which the directors consider appropriate. Any joint holder or other person jointly entitled to a share as aforesaid may give receipts for any dividend or other money payable in respect of the share.

(2) The Company may cease to send any cheque or warrant (or to use any other method of payment) for any dividend payable in respect of a share if:

(a) in respect of at least two consecutive dividends payable on that share the cheque or warrant has been returned undelivered or remains uncashed (or that other method of payment has failed); or

(b) following one such occasion, reasonable enquiries have failed to establish any new address of the holder, but, subject to the provisions of these articles, shall recommence sending cheques or warrants (or using another method of payment) for dividends payable on that share if the person or persons entitled so request and have supplied in writing a new address or account to be used for that purpose.

153. No dividend or other money payable in respect of a share shall bear interest against the Company, unless otherwise provided by the rights attached to the share.

154. Any dividend which has remained unclaimed for 12 years from the date when it became due for payment shall, if the directors so resolve, be forfeited and cease to remain owing by the Company.

155. The directors may, with the authority of an ordinary resolution of the Company, offer any holders of ordinary shares the right to elect to receive ordinary shares, credited as fully paid, instead of cash in respect of the whole (or some part, to be determined by the directors) of any dividend specified by the ordinary resolution. The following provisions shall apply:

(a) The said resolution may specify a particular dividend (whether or not declared), or may specify all or any dividends declared or payable within a specified period, but such period may not end later than the beginning of the fifth annual general meeting next following the date of the meeting at which the ordinary resolution is passed.

(b) The entitlement of each holder of ordinary shares to new ordinary shares shall be such that the relevant value of the entitlement shall be as nearly as possible equal to (but not greater than) the cash amount (disregarding any tax credit) that such holder would have received by way of dividend. For this purpose "relevant value" shall be calculated by reference to the average of the middle market quotations for the Company's ordinary shares on the London Stock Exchange as derived from the Daily Official List, for the day on which the ordinary shares are first quoted "ex" the relevant dividend and the four subsequent dealing days, or in such other manner as may be determined by or in accordance with the ordinary resolution. A certificate or report by the auditors as to the amount of the relevant value in respect of any dividend shall be conclusive evidence of that amount.

(c) No fraction of a share shall be allotted and the directors may deal with any fractions which arise as they think fit.

(d) The directors shall, after determining the basis of allotment, notify the holders of ordinary shares in writing of the right of election offered to them, and specify the procedure to be followed and place at which, and the latest time by which, elections must be received in order to be effective.

(e) The directors may exclude from any offer any holders of ordinary shares where the directors believe that the making of the offer to them would or might involve the contravention of the laws of any territory or that for any other reason the offer should not be made to them.

(f) The dividend (or that part of the dividend in respect of which a right of election has been given) shall not be payable on ordinary shares in respect of which an election has been duly made ("the elected ordinary shares") and instead additional ordinary shares shall be allotted to the holders of the elected ordinary shares on the basis of allotment determined as aforesaid. For such purpose the directors shall capitalise out of any amount for the time being standing to the credit of any reserve or fund (including any share premium account or capital redemption reserve) or any of the profits which could otherwise have been applied in paying dividends in cash, as the directors may determine, a sum equal to the aggregate nominal amount of the additional ordinary shares to be allotted on that basis and apply it in paying up in full the appropriate number of unissued ordinary shares for allotment and distribution to the holders of the elected ordinary shares on that basis.

(g) The directors shall not proceed with any election unless the Company has sufficient reserves or funds that may be capitalised to give effect to it after the basis of allotment is determined.

(h) The additional ordinary shares when allotted shall rank pari passu in all respects with the fully paid ordinary shares then in issue except that they will not be entitled to participation in the dividend in lieu of which they were allotted.

(i) The directors may do all acts and things which they consider necessary or expedient to give effect to any such capitalisation, and may authorise any person to enter on behalf of all the members interested into an agreement with the Company providing for such capitalisation and incidental matters and any agreement so made shall be binding on all concerned.

CAPITALISATION OF PROFITS

156. (1) The directors may with the authority of an ordinary resolution of the Company:

(a) subject as hereinafter provided, resolve to capitalise any undivided profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of any reserve or fund of the Company (including any share premium account or capital redemption reserve);

(b) appropriate the sum resolved to be capitalised to the members in proportion to the nominal amounts of the shares (whether or not fully paid) held by them respectively which would entitle them to participate in a distribution of that sum if the shares were fully paid and the sum were then distributable and were distributed by way of dividend and apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full shares or debentures of the Company of a nominal amount equal to that sum, and allot such shares or debentures credited as fully paid to those members or as they may direct, in those proportions, or partly in one way and partly in the other, but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this article, only be applied in paying up shares to be allotted to members credited as fully paid;

(c) resolve that any shares so allotted to any member in respect of a holding by him of any partly paid shares shall so long as such shares remain partly paid rank for dividend only to the extent that the latter shares rank for dividend;

(d) make such provision by the issue of fractional certificates (or by ignoring fractions) or by payment in cash or otherwise as they determine in the case of shares or debentures becoming distributable in fractions;

(e) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for the allotment to them respectively, credited as fully paid, of any further shares to which they are entitled upon such capitalisation, any agreement made under such authority being binding on all such members; and

(f) generally do all acts and things required to give effect to such resolution as aforesaid.

(2) Where, pursuant to an employees' share scheme (within the meaning of section 1166 of the Companies Act 2006) the Company has granted options to subscribe for shares on terms which provide (inter alia) for adjustments to the subscription price payable on the exercise of such options or to the number of shares to be allotted upon such exercise in the event of any increase or reduction in or other reorganisation of the Company's issued share capital and an otherwise appropriate adjustment would result in the subscription price for any share being less than its nominal value, then, subject to the provisions of the Acts, the directors may, on the exercise of any of the options concerned and payment of the subscription price which would have applied had such adjustment been made, capitalise any such profits or other sum as is mentioned in paragraph (1)(a) above to the extent necessary to pay up the unpaid balance of the nominal value of the shares which fall to be allotted on the exercise of such options and apply such amount in paying up such balance and allot shares fully paid accordingly. The provisions of paragraphs (1)(a) to (f) above shall apply mutatis mutandis to this paragraph (but as if the authority of an ordinary resolution of the Company were not required).

RECORD DATES

157. Notwithstanding any other provision of these articles, but without prejudice to the rights attached to any shares, the Company or the directors may fix a date as the record date by reference to which a dividend will be declared or paid or a distribution, allotment or issue made, and that date may be before, on or after the date on which the dividend, distribution, allotment or issue is declared, paid or made (as the case may be). Where such a record date is fixed, references in these articles to a holder of shares or member to whom a dividend is to be paid or a distribution, allotment or issue is to be made shall be construed accordingly.

ACCOUNTS

158. No member (other than a director) shall have any right of inspecting any accounting record or other document of the Company, unless he is authorised to do so by statute, by order of the court, by the directors or by ordinary resolution of the Company.

NOTICES AND OTHER COMMUNICATIONS

159. Any notice to be given to or by any person pursuant to these articles shall be in writing other than a notice calling a meeting of the directors which need not be in writing.

160. (1) Any notice, document or information may (without prejudice to articles 163and 164) be given, sent or supplied by the Company to any member either:-

(a) personally; or

(b) by sending it by post in a prepaid envelope addressed to the member at his registered address or postal address given pursuant to article 160(4), or by leaving it at that address; or

(c) by sending it in electronic form to a person who has agreed (generally or specifically) that the notice, document or information may be sent or supplied in that form (and has not revoked that agreement); or

(d) subject to the provisions of the Acts, by making it available on a website, provided that the requirements in article 160(2) are satisfied.

(2) The requirements referred to in article 160(1)(d) are that: -

(a) the member has agreed (generally or specifically) that the notice, document or information may be sent or supplied to him by being made available on a website (and has not revoked that agreement), or the member has been asked by the Company to agree that the Company may send or supply notices, documents and information generally, or the notice, document or information in question, to him by making it available on a website and the Company has not received a response within the period of 28 days beginning on the date on which the Company's request was sent and the member is therefore taken to have so agreed (and has not revoked that agreement);

(b) the member is sent a notification of the presence of the notice, document or information on a website, the address of that website, the place on that website where it may be accessed, and how it may be accessed ("notification of availability");

(c) in the case of a notice of meeting, the notification of availability states that it concerns a notice of a company meeting, specifies the place, time and date of the meeting, and states whether it will be an annual general meeting; and

(d) the notice, document or information continues to be published on that website, in the case of a notice of meeting, throughout the period beginning with the date of the notification of availability and ending with the conclusion of the meeting and in all other cases throughout the period specified by any applicable provision of the Acts, or, if no such period is specified, throughout the period of 28 days beginning with the date on which the notification of availability is sent to the member, save that if the notice, document or information is made available for part only of that period then failure to make it available throughout that period shall be disregarded where such failure is wholly attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid.

(3) In the case of joint holders of a share:-

(a) it shall be sufficient for all notices, documents and other information to be given, sent or supplied to the joint holder whose name stands first in the register of members in respect of the joint holding (the "first named holder") only; and

(b) the agreement of the first named holder that notices, documents and information may be given, sent or supplied in electronic form or by being made available on a website shall be binding on all the joint holders.

(4) A member whose registered address is not within the United Kingdom shall not be entitled to receive any notice, document or information from the Company unless he gives to the Company an address (not being an electronic address) within the United Kingdom at which notices, documents or information may be given to him.

(5) For the avoidance of doubt, the provisions of this article 160 are subject to article 57.

(6) The Company may at any time and at its sole discretion choose to give, send or supply notices, documents and information only in hard copy form to some or all members.

161. A member present either in person or by proxy, or in the case of a corporate member by a duly authorised representative, at any meeting of the Company or of the holders of any class of shares shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

162. (1) Any notice to be given to a member may be given by reference to the register of members as it stands at any time within the period of 15 days before the notice is given; and no change in the register after that time shall invalidate the giving of the notice.

(2) Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register of members, has been given to the person from whom he derives his title; but this paragraph does not apply to a notice given under section 793 of the Companies Act 2006.

163. Subject to the Acts, where by reason of the suspension or curtailment of postal services within the United Kingdom, the Company is unable effectively to give notice

of a general meeting, the general meeting may be convened by a notice advertised in two national daily newspapers published in the United Kingdom. The Company shall send a copy of the notice to members in the same manner as it sends notices under article 160 if at least seven clear days before the meeting the posting of notices to addresses throughout the United Kingdom again becomes practicable.

164. Subject to the Acts, any notice, document or information to be given, sent or supplied by the Company to the members or any of them, not being a notice to which article 163 applies, shall be sufficiently given, sent or supplied if given by advertisement in at least one leading national daily newspaper published in the United Kingdom.

165. Any notice, document or information given, sent or supplied by the Company to the members or any of them:-

(a) by post, shall be deemed to have been received 24 hours after the time at which the envelope containing the notice, document or information was posted unless it was sent by second class post or there is only one class of post, or it was sent by air mail to an address outside the United Kingdom, in which case it shall be deemed to have been received 48 hours after it was posted. Proof that the envelope was properly addressed, prepaid and posted shall be conclusive evidence that the notice, document or information was sent;

(b) by advertisement, shall be deemed to have been received on the day on which the advertisement appears;

(c) by electronic means, shall be deemed to have been received 24 hours after it was sent. Proof that a notice, document or information in electronic form was addressed to the electronic address provided by the member for the purpose of receiving communications from the Company shall be conclusive evidence that the notice, document or information was sent;

(d) by making it available on a website, shall be deemed to have been received on the date on which notification of availability on the website is deemed to have been received in accordance with this article or, if later, the date on which it is first made available on the website;

(e) by means of a relevant system, shall be deemed to have been received 24 hours after the Company, or any sponsoring system participant acting on the Company's behalf, sends the issuer-instruction relating to the notice, document or information.

166. Any notice document or information may be given, sent or supplied by the Company to the person entitled to a share in consequence of the death or bankruptcy of a member by sending or delivering it in any manner authorised by these articles for the giving of notice to a member addressed to that person by name, or by the title of representative of the deceased or trustee of the bankrupt or by any like description, at the address, if any, within the United Kingdom supplied for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy had not occurred.

167. If on three consecutive occasions notices, documents or information sent or supplied to a member have been returned undelivered, the member shall not be entitled to receive any subsequent notice, document or information until he has supplied to the Company (or its agent) a new registered address or a postal address within the United Kingdom, or (without prejudice to article 160(4)) shall have informed the Company, in such a manner as may be specified by the Company, of an electronic address. For the purposes of this article, references to notices, documents or information include references to a cheque or other instrument of payment; but nothing in this article shall entitle the Company to cease sending any cheque or other instrument of payment for any dividend, unless it is otherwise so entitled under these articles.

168. Where a document is required under these articles to be signed by a member or any other person, if the document is in electronic form, then in order to be valid the document must either:

(a) incorporate the electronic signature, or personal identification details (which may be details previously allocated by the Company), of that member or other person, in such form as the directors may approve, or

(b) be accompanied by such other evidence as the directors may require in order to be satisfied that the document is genuine.

The Company may designate mechanisms for validating any such document and a document not validated by the use of any such mechanisms shall be deemed as having not been received by the Company. In the case of any document or information relating to a meeting, an instrument of proxy or invitation to appoint a proxy, any validation requirements shall be specified in the relevant notice of meeting in accordance with articles 56 and 84.

DESTRUCTION OF DOCUMENTS

169. (1) The Company may destroy:

(a) any instrument of transfer, after six years from the date on which it is registered;

(b) any dividend mandate or notification of change of name or address, after two years from the date on which it is recorded;

(c) any share certificate, after one year from the date on which it is cancelled; and

(d) any other document on the basis of which an entry in the register of members is made, after six years from the date on which it is made.

(2) Any document referred to in paragraph (1) of this article may be destroyed earlier than the relevant date authorised by that paragraph, provided that a permanent record of the document is made which is not destroyed before that date.

(3) It shall be conclusively presumed in favour of the Company that every entry in the register of members purporting to have been made on the basis of a document destroyed in accordance with this article was duly and properly

made, that every instrument of transfer so destroyed was duly registered, that every share certificate so destroyed was duly cancelled, and that every other document so destroyed was valid and effective in accordance with the particulars in the records of the Company, provided that:

(a) this article shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties to it) to which the document might be relevant;

(b) nothing in this article shall be construed as imposing upon the Company any liability in respect of the destruction of any such document otherwise than in accordance with this article which would not attach to the Company in the absence of this article; and

(c) references in this article to the destruction of any document include references to the disposal of it in any manner.

WINDING UP

170. If the Company commences liquidation, the liquidator may, with the sanction of a special resolution and any other sanction required by law, subject to the provisions of the Acts divide among the members in specie the whole or any part of the assets, whether they shall consist of property of the same kind or not, of the Company and may, for that purpose, value any assets as he deems fair and determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he may with the like sanction determine, but no member shall be compelled to accept any assets upon which there is a liability.

INDEMNITY

171. Subject to the provisions of the Acts, the Company may:

(a) indemnify to any extent any person who is or was a director, or a director of any associated company, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company; and/or

(b) indemnify to any extent any person who is or was a director of an associated company that is a trustee of an occupational pension scheme, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any liability incurred by him in connection with the company's activities as trustee of an occupational pension scheme; and/or

(c) purchase and maintain insurance for any person who is or was a director, or a director of any associated company, against any loss or liability or any expenditure he may incur, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company.

14 June 2011

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. 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.

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 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 4.4, 4.6 and 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, radio and any closely related services (irrespective of the platform on which such service is distributed) will abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code. The articles of association of Newco shall be in a form to be approved by the Secretary of State prior to the Effective Date;

(iii) The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares:

(A) the majority of the board of Newco shall comprise Independent Directors;

(B) one of those Independent Directors shall be chairman of the board of Newco; and

(C) meetings of the board of Newco shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.

(iv) The definition of Independent Director contained in these undertakings shall be included in the articles of association of Newco;

(v) 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 also 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);

(vi) 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 senior editorial and/or journalistic experience;

(vii) The articles of association of Newco shall provide that the appointment or removal (including any material changes in terms and conditions which could give rise to constructive dismissal) and any material changes to the authority or reporting relationship of the head of Sky News must be approved by the board of Newco;

(viii) 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

(ix) The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares, Newco shall establish a corporate governance and editorial committee which will:

(A) comprise a majority of members who are Independent Directors (including an Independent Director with senior editorial and/or journalistic experience);

(B) be chaired by an Independent Director;

(C) be entrusted with oversight of Newco's compliance with the corporate governance provisions, 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; and

(D) operate under terms of reference which will stipulate that the corporate governance and editorial committee will:

I. be adequately resourced and have powers to review and investigate all areas within the remit of the committee;

II. meet at least four times a year;

III. report on a regular basis to the board of Newco;

IV. cause a statement to be included in the Newco annual report on its activities including its oversight functions specified in section 3.1(ix)(C) above;

V. consider any representations made by the head of Sky News as to Newco's compliance with the provisions relating to editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above and report any such representations to the board of Newco; and

VI. advise the Newco board on any issues within its remit including any approval specified at 3.1(vii) above.

(E) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.

3.2 For so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of the voting 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 (ix) above.

3.3 News shall not attempt to cause Newco to act in breach of its Articles of Association.

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, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

(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 (subject to customary limitations) not solicit staff transferred to Newco for a period beginning on the Closing Date and ending 24 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 Any Carriage Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.4 above shall:

(i) be for a term of 10 years;

(ii) 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 be terminable by Sky only in the event of material breach that has not been cured or in the event that the Brand Licensing Agreement expires or terminates;

(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") oblige 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) contain 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 a fourteen year term which may 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 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.6 above shall:

(i) permit Newco to use the Sky News brand in connection with its news output;

(ii) 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 be terminable by Sky only in the event of a material breach that has not been cured, in the event that Newco ceases to provide output which is branded "Sky News" and/or in the event of a change in Control of Newco; and

(iv) contain 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 Newco and Sky as to the validity of that proposed 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).

4.9 News shall ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the Effective Date, for as long as Newco and Sky are party to the Carriage Agreement entered into pursuant to section 4.4 above, and only to the extent that such cross-promotion is not classified as "television advertising" under Ofcom's Code on the Scheduling of Television Advertising.

5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

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:

(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;

(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 and which shall be in a form to be approved by the Secretary of State prior to spin-off;

(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) one or more agreements in relation to broadcast and technical services under which Sky will offer to Newco:

(A) satellite capacity;

(B) playout;

(C) uplink;

(D) DTT transmission;

(E) online transmission; and

(F) mobile distribution,

in each case for a term of up to 10 years (or such shorter time as required by Newco) except for the service set out at (D) which will be provided until [□✂] (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, in the case of the agreement(s) relating to the services set out at (A), (B) and (C) in a form to be approved by the Secretary of State prior to spin-off; and

(v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off- screen design services) agreements.

5.2 Each of the agreements set out at 5.1 (i) to (v) above will be terminable by Newco on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.

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

(i) 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); and

(ii) 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); and

(iii) the percentage increase in the total amount charged to Newco on a like-for-like basis (i.e. assuming the same levels on consumption for those costs which are variable in nature based on usage levels) will be subject to an aggregate cap on the increase in the total amount charged to Newco of 6% plus 50% of the incremental increase in CPI between 6% and 10%, and to the extent that this is exceeded the CPI adjustment applied to the charge for each agreement will be reduced.

News shall grant Newco reasonable audit rights in relation to such actual usage levels, savings or cost increases in each case to the extent that Newco reasonably requires such an audit, in the event that Sky fails to provide any relevant information within a reasonable period of time following a written request for such information from Newco, such right not to be exercised more frequently than once per year. In the event that any audit identifies any discrepancy, appropriate adjustments to charges will be made.

5.4 News shall ensure that any agreements entered into under sections 5.1(i) to 5.1(v) above will contain a dispute resolution mechanism. In the case of the lease agreement described in section 5.1(ii) above and the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) above, News will ensure that the dispute resolution mechanism contains similar provisions to those described at 4.8 above.

6. APPOINTMENT OF MONITORING TRUSTEE

6.1 Within 20 Working Days of the Effective Date, News shall nominate a Monitoring Trustee to be approved by the Secretary of State in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by News. The Monitoring Trustee so approved shall be appointed by News within 7 Working Days.

6.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.

6.3 The Monitoring Trustee shall be independent of News, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.

6.4 If the person nominated by News pursuant to section 6.1 above is not approved by the Secretary of State, News shall nominate an alternative person within 7 Working Days to be approved in accordance with the procedure set out in 6.1 above.

6.5 In the event that:

(i) News fails to nominate any person or persons in accordance with the provisions of section 6.1 above or 6.4 above; or

(ii) none of the persons nominated by News pursuant to section 6.1 above or 6.4 above is approved by the Secretary of State; or

(iii) News is unable for any reason to conclude within the time limit stipulated in section 6.1 above the appointment of any such person following approval by the Secretary of State,

News shall appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. News shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State and in any event within 15 Working Days.

6.6 News shall secure that a Monitoring Trustee is appointed in accordance with sections 6.1 to 6.5 above prior to the Closing Date.

6.7 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), News shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, propose a replacement within 7 Working Days to be appointed in accordance with sections 6.1 to 6.4 above. If no replacement Monitoring Trustee is appointed within 30 Working Days of this section being triggered, News shall appoint a Monitoring Trustee in accordance with section 6.5 above. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

6.8 The Monitoring Trustee shall remain in place until the spin-off of the Sky News business in accordance with section 2 or until all of the operational agreements detailed in section 5.1 above become effective, whichever is the later.

6.9 News shall not vary the terms upon which a Monitoring Trustee is appointed save with the consent of the Secretary of State.

7. FUNCTIONS OF MONITORING TRUSTEE

7.1 The Monitoring Trustee shall act on behalf of the Secretary of State and shall be under an obligation to the Secretary of State to carry out its functions to the best of its abilities.

7.2 The Monitoring Trustee shall monitor News' compliance with all and any part of these undertakings prior to the operational agreements detailed in section 5.1 above becoming effective and shall provide to the Secretary of State any advice that he may reasonably require in relation to his review of the key operational agreements in section 5.1 above which require his prior approval.

7.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require.

7.4 The Monitoring Trustee shall promptly report in writing to the Secretary of State and to the OFT if the Monitoring Trustee concludes on reasonable grounds that the undertakings have been breached, or if it considers that it is not in a position to effectively carry out its functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach any relevant supporting evidence available to it (unless doing so would infringe its obligations referred to in section 10.2 below). If the Monitoring Trustee sends a report to the to the Secretary of State or to the OFT under this section 7.4, the Monitoring Trustee shall, at the same time, inform News of such a report being sent.

7.5 The Monitoring Trustee shall ensure that:

(i) no arrangements are put in place or completed that affect the ability of News to comply with its obligations under these undertakings; and

(ii) News takes no action or makes no omission that might adversely affect News' compliance with its obligations under these undertakings.

7.6 The Monitoring Trustee shall:

(i) facilitate the provision of information by News to the Secretary of State in accordance with section 9 of these undertakings; and

(ii) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested (unless doing so would infringe its obligations referred to in section 10.2 below).

7.7 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of News, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions.

7.8 In order to provide advice to the Secretary of State in relation to his review of the operational agreements as set out in section 7.2 above, the Monitoring Trustee shall be permitted to call on the advice of any third party that the Monitoring Trustee reasonably considers to be expert in this area and independent of News and Newco. News will bear all reasonable costs incurred by the Monitoring Trustee under this section 7.8.

8. REMUNERATION OF MONITORING TRUSTEE

8.1 News shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

9. OBLIGATIONS OF NEWS FOLLOWING APPOINTMENT OF MONITORING TRUSTEE

9.1 News shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.

9.2 News shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions and shall cooperate fully with the Monitoring Trustee, including but not limited to:

(i) complying promptly and securing that its officers and staff comply promptly with such written directions as the Monitoring Trustee may from time to time give pursuant to section 7.7 above; and

(ii) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions including the provision of full and complete access to all personnel, books, records, documents and facilities of News, Sky and Newco as the Monitoring Trustee may reasonably require access to.

9.3 If News has any reason to suspect that these undertakings might have been breached, it should notify the Monitoring Trustee and the OFT immediately.

10. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE

10.1 Starting four weeks after Closing Date the Monitoring Trustee shall provide every four weeks to the Secretary of State and the OFT a statement certifying whether or not, in his view, News has complied with these undertakings in the preceding four weeks.

10.2 When providing its reports to the Secretary of State and the OFT the Monitoring Trustee must ensure that it does not disclose any information or documents to the Secretary of State or the OFT which News would be entitled to withhold from the Secretary of State or the OFT (as applicable) on the grounds of legal privilege.

10.3 All communications between the Monitoring Trustee and the Secretary of State and the OFT shall be confidential and should not be disclosed to News, save with the express written permission of the Secretary of State and/or the OFT. For the avoidance of doubt, nothing in this section 10.3 shall restrict the Monitoring Trustee from informing News of any report sent to the Secretary of State or to the OFT under section 7.4 above. In relation to the possibility of disclosure of such communications to third parties, the Secretary of State shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The Monitoring Trustee shall not disclose such communications to third parties.

11. CONTINUED SEPARATION

11.1 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 in combination with any member of the same Group of Interconnected Bodies Corporate as News holding more than 39.14% of the shares in Newco.

12. COMPLIANCE

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

12.2 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.

12.3 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.

13. INTERIM ACTION

13.1 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 (as at the Closing Date) 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, including its facilities and goodwill, is maintained and preserved and is run in the ordinary course;

(iv) News shall not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off;

(v) the nature, description, range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;

(vi) the separate brand identity of the Sky News business is maintained;

(vii) 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;

(viii) 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

(ix) 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.

13.2 News shall provide to the Secretary of State such information as the Secretary of State may from time to time reasonably require for the purposes of monitoring compliance by News with these undertakings.

14. PROVISION OF INFORMATION

14.1 News shall furnish promptly to the Secretary of State or the OFT such information as the Secretary of State or the OFT 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.

15. INTERPRETATION

15.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

15.2 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.

15.3 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.

15.4 For the purposes of these undertakings:

"**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;

"**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;

"**CPI**" means the consumer prices index, as published from time to time by the Office for National Statistics;

"**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 (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board);
- 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;

"**Interest**" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"**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 involves or could reasonably involve the payment or receipt by Newco or its subsidiaries of amounts of £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, the Brand Licensing Agreement, the lease agreement described in section 5.1(ii) above or the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) above would be deemed to be a material transaction for the purposes of this definition;

"**Monitoring Trustee**" means the person appointed pursuant to section 6 above to carry out the Monitoring Trustee Functions;

"**Monitoring Trustee Functions**" means the functions set out in section 7 above;

"**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;

"**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;

"**Transaction**" means the proposed acquisition by News of some or all of those shares in Sky that it does not already own; and

"**Working Day**" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

~~DRAFT: 1 March~~14 June 2011

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. 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.

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 4.4, 4.6 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, radio and any closely related services (irrespective of the platform on which such service is distributed) will abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code. The articles of association of Newco shall be in a form to be approved by the Secretary of State prior to the Effective Date;

(iii) The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own 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;~~:

(A) the majority of the board of Newco shall comprise Independent Directors;

(B) one of those Independent Directors shall be chairman of the board of Newco; and

(C) meetings of the board of Newco shall be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.

(iv) The definition of Independent Director contained in these undertakings shall be included in the articles of association of Newco;

(v) ~~(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 also 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);

(vi) ~~(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 senior editorial and/or journalistic experience;

(vii) ~~(vi)~~ The articles of association of Newco shall provide that the appointment or removal (including any material changes in terms and conditions which could give rise to constructive dismissal) and any material changes to the authority or reporting relationship of the head of Sky News must be approved by the board of Newco;

(viii) ~~(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

(ix) ~~(viii)~~ The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares, Newco shall establish a corporate governance and editorial committee which will:

(A) comprise a majority of members who are Independent Directors (including an Independent Director with senior editorial and/or journalistic experience);

(B) be chaired by an Independent Director;

(C) be entrusted with oversight of Newco's compliance with the corporate governance provisions, 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; and

(D) operate under terms of reference which will stipulate that the corporate governance and editorial committee will:

I. be adequately resourced and have powers to review and investigate all areas within the remit of the committee;

II. meet at least four times a year;

III. report on a regular basis to the board of Newco;

IV. cause a statement to be included in the Newco annual report on its activities including its oversight functions specified in section 3.1(~~viii~~ix)(C) above;

V. consider any representations made by the head of Sky News as to Newco's compliance with the provisions relating to editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above and report any such representations to the board of Newco; and

VI. advise the Newco board on any issues within its remit including any approval specified at 3.1(~~vi~~vii) above.

(E) be quorate in respect of the consideration of editorial or journalistic matters only if an Independent Director with senior editorial and/or journalistic expertise is present.

3.2 For so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of the voting 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~~ix) above.

3.3 News shall not attempt to cause Newco to act in breach of its Articles of Association.

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, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

(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~~beginning on the Closing Date and ending 24 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 Any Carriage Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.4 above shall:

(i) be for a term of 10 years;

(ii) 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 be 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"~~the Brand Licensing Agreement expires or terminates;

(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") oblige 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) contain 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~~a fourteen 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 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.6 above shall:

(i) permit Newco to use the Sky News brand in connection with its news output;

(ii) 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 be terminable by Sky only in the event of a material breach that has not been cured, in the event that Newco ceases to provide output which is branded "Sky News" and/or in the event of a change in Control of Newco; and

(iv) contain 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~~Newco and Sky as to the validity of that proposed 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).

4.9 News shall ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the Effective Date, for as long as Newco and Sky are party to the Carriage Agreement entered into pursuant to section 4.4 above, and only to the extent that such cross-promotion is not classified as "television advertising" under Ofcom's Code on the Scheduling of Television Advertising.

5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

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:

(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;

(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 and which shall be in a form to be approved by the Secretary of State prior to spin-off;

(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) one or more agreements in relation to broadcast and technical services under which Sky will offer to Newco:

(A) satellite capacity;

(B) playout;

(C) uplink;

(D) DTT transmission;

(E) online transmission; and

(F) mobile distribution,

in each case for a term of up to 10 years (or such shorter time as required by Newco) except for the service set out at (D) which will be provided until [✂] (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, in the case of the agreement(s) relating to the services set out at (A), (B) and (C) in a form to be approved by the Secretary of State prior to spin-off; and

(v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off- screen design services) agreements.

5.2 Each of the agreements set out at 5.1 (i) to (v) above will be terminable by Newco on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.

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

(i) 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); and

(ii) 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)~~.~~

; and

(iii) the percentage increase in the total amount charged to Newco on a like-for-like basis (i.e. assuming the same levels on consumption for those costs which are variable in nature based on usage levels) will be subject to an aggregate cap on the increase in the total amount charged to Newco of 6% plus 50% of the incremental increase in CPI between 6% and 10%, and to the extent that this is exceeded the CPI adjustment applied to the charge for each agreement will be reduced.

News shall grant Newco reasonable audit rights in relation to such actual usage levels, savings or cost increases in each case to the extent that Newco reasonably requires such an audit, in the event that Sky fails to provide any relevant information within a reasonable period of time following a written request for such information from Newco, such right not to be exercised more frequently than once per year. In the event that any audit identifies any discrepancy, appropriate adjustments to charges will be made.

5.4 News shall ensure that any agreements entered into under sections 5.1(i) to 5.1(v) above will contain a dispute resolution mechanism. In the case of the lease agreement described in section 5.1(ii) above and the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) above. News will ensure that the dispute resolution mechanism contains similar provisions to those described at 4.8 above.

6. APPOINTMENT OF MONITORING TRUSTEE

6.1 Within 20 Working Days of the Effective Date, News shall nominate a Monitoring Trustee to be approved by the Secretary of State in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by News. The Monitoring Trustee so approved shall be appointed by News within 7 Working Days.

6.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.

6.3 The Monitoring Trustee shall be independent of News, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.

6.4 If the person nominated by News pursuant to section 6.1 above is not approved by the Secretary of State, News shall nominate an alternative person within 7 Working Days to be approved in accordance with the procedure set out in 6.1 above.

6.5 In the event that:

(i) News fails to nominate any person or persons in accordance with the provisions of section 6.1 above or 6.4 above; or

(ii) none of the persons nominated by News pursuant to section 6.1 above or 6.4 above is approved by the Secretary of State; or

(iii) News is unable for any reason to conclude within the time limit stipulated in section 6.1 above the appointment of any such person following approval by the Secretary of State,

News shall appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. News shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State and in any event within 15 Working Days.

6.6 News shall secure that a Monitoring Trustee is appointed in accordance with sections 6.1 to 6.5 above prior to the Closing Date.

6.7 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), News shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, propose a replacement within 7 Working Days to be appointed in accordance with sections 6.1 to 6.4 above. If no replacement Monitoring Trustee is appointed within 30 Working Days of this section being triggered, News shall appoint a Monitoring Trustee in accordance with section 6.5 above. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.

6.8 The Monitoring Trustee shall remain in place until the spin-off of the Sky News business in accordance with section 2 or until all of the operational agreements detailed in section 5.1 above become effective, whichever is the later.

6.9 News shall not vary the terms upon which a Monitoring Trustee is appointed save with the consent of the Secretary of State.

7. FUNCTIONS OF MONITORING TRUSTEE

7.1 The Monitoring Trustee shall act on behalf of the Secretary of State and shall be under an obligation to the Secretary of State to carry out its functions to the best of its abilities.

7.2 The Monitoring Trustee shall monitor News' compliance with all and any part of these undertakings prior to the operational agreements detailed in section 5.1 above becoming effective and shall provide to the Secretary of State any advice that he may reasonably require in relation to his review of the key operational agreements in section 5.1 above which require his prior approval.

7.3 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require.

7.4 The Monitoring Trustee shall promptly report in writing to the Secretary of State and to the OFT if the Monitoring Trustee concludes on reasonable grounds that the undertakings have been breached, or if it considers that it is not in a position to effectively carry out its functions. In that situation, the Monitoring Trustee should set out the reasons for its view and attach any relevant supporting evidence available to it (unless doing so would infringe its obligations referred to in section 10.2 below). If the Monitoring Trustee sends a report to the to the Secretary of State or to the OFT under this section 7.4, the Monitoring Trustee shall, at the same time, inform News of such a report being sent.

7.5 The Monitoring Trustee shall ensure that:

(i) no arrangements are put in place or completed that affect the ability of News to comply with its obligations under these undertakings; and

(ii) News takes no action or makes no omission that might adversely affect News' compliance with its obligations under these undertakings.

7.6 The Monitoring Trustee shall:

(i) facilitate the provision of information by News to the Secretary of State in accordance with section 9 of these undertakings; and

(ii) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested (unless doing so would infringe its obligations referred to in section 10.2 below).

7.7 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of News, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions.

7.8 In order to provide advice to the Secretary of State in relation to his review of the operational agreements as set out in section 7.2 above, the Monitoring Trustee shall be permitted to call on the advice of any third party that the Monitoring Trustee reasonably considers to be expert in this area and independent of News and Newco. News will bear all reasonable costs incurred by the Monitoring Trustee under this section 7.8.

8. REMUNERATION OF MONITORING TRUSTEE

8.1 News shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

9. OBLIGATIONS OF NEWS FOLLOWING APPOINTMENT OF MONITORING TRUSTEE

9.1 News shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.

9.2 News shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions and shall cooperate fully with the Monitoring Trustee, including but not limited to:

(i) complying promptly and securing that its officers and staff comply promptly with such written directions as the Monitoring Trustee may from time to time give pursuant to section 7.7 above; and

(ii) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions including the provision of full and complete access to all personnel, books, records, documents and facilities of News, Sky and Newco as the Monitoring Trustee may reasonably require access to.

9.3 If News has any reason to suspect that these undertakings might have been breached, it should notify the Monitoring Trustee and the OFT immediately.

10. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE

10.1 Starting four weeks after Closing Date the Monitoring Trustee shall provide every four weeks to the Secretary of State and the OFT a statement certifying whether or not, in his view, News has complied with these undertakings in the preceding four weeks.

10.2 When providing its reports to the Secretary of State and the OFT the Monitoring Trustee must ensure that it does not disclose any information or documents to the Secretary of State or the OFT which News would be entitled to withhold from the Secretary of State or the OFT (as applicable) on the grounds of legal privilege.

10.3 All communications between the Monitoring Trustee and the Secretary of State and the OFT shall be confidential and should not be disclosed to News, save with the express written permission of the Secretary of State and/or the OFT. For the avoidance of doubt, nothing in this section 10.3 shall restrict the Monitoring Trustee from informing News of any report sent to the Secretary of State or to the OFT under section 7.4 above. In relation to the possibility of disclosure of such communications to third parties, the Secretary of State shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The Monitoring Trustee shall not disclose such communications to third parties.

11. ~~6.~~ CONTINUED SEPARATION

11.1 ~~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 in combination with any member of the same Group of Interconnected Bodies Corporate as News holding more than 39.14% of the shares in Newco.

12. ~~7.~~ COMPLIANCE

12.1 ~~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 it might be required by these undertakings to do or to refrain from doing.

12.2 ~~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.

12.3 ~~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.

13. ~~8.~~ INTERIM ACTION

13.1 ~~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 (as at the Closing Date) 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, including its facilities and goodwill, is maintained and preserved and is run in the ordinary course;

(iv) News shall not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off;

(v) ~~(iv)~~ the nature, description, range and standard of news gathering and production and broadcast news currently supplied by the Sky News business is maintained;

(vi) ~~(v)~~ the separate brand identity of the Sky News business is maintained;

(vii) ~~(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;

(viii) ~~(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

(ix) ~~(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.

13.2 News shall provide to the Secretary of State such information as the Secretary of State may from time to time reasonably require for the purposes of monitoring compliance by News with these undertakings.

14. ~~9.~~ PROVISION OF INFORMATION

14.1 ~~9.1~~ News shall furnish promptly to the Secretary of State or the OFT such information as the Secretary of State or the OFT 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.

15. ~~10.~~ INTERPRETATION

15.1 ~~10.1~~ The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

15.2 ~~10.2~~ 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.

15.3 ~~10.3~~ 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.

15.4 ~~10.4~~ For the purposes of these undertakings:

"**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;

"**CPI**" means the consumer prices index, as published from time to time by the Office for National Statistics;

"**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 (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board);
- 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;

"**Interest**" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"**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 involves or could reasonably involve the payment or receipt by Newco or its subsidiaries of amounts of £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, the lease agreement described in section 5.1(ii) above or the agreement(s) in relation to services described at section 5.1(iv)(A), 5.1(iv)(B) and 5.1(iv)(C) above would be deemed to be a material transaction for the purposes of this definition;

"**Monitoring Trustee**" means the person appointed pursuant to section 6 above to carry out the Monitoring Trustee Functions;

"**Monitoring Trustee Functions**" means the functions set out in section 7 above;

"**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;

"**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~~.~~; and

"**Working Day**" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.

Legend:
Insertion
~~Deletion~~
~~Moved from~~
Moved to

News Corporation's proposed acquisition of BSkyB

Statement from the Department for Culture, Media and Sport.

dcms
department for culture, media and sport

Jeremy Hunt made a later statement on this subject following the announcement that News Corporationhve withdrawn their undertakings in lieu on 11 July 2011.

The consultation on undertakings in lieu offered by News Corporation in relation to their proposed merger with BSkyB closes at midday today. The Secretary of State has always been clear that he will take as long as is needed to reach a decision.

The Secretary of State will consider carefully all the responses submitted and take advice from Ofcom and the Office of Fair Trading before reaching his decision. Given the volume of responses, we anticipate that this will take some time. He will consider all relevant factors including whether the announcement regarding the News of the World's closure has any impact on the question of media plurality.

Related information

Jeremy Hunt's statement to Parliament following News Corp's withdrawal of their undertakings in lieu (11 July 2011)
Jeremy Hunt's letters to Ofcom and the Office of Fair Trading (11 July 2011)
Timeline of all DCMS reports and letters published relating to BSkyB-News Corp merger

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DEPARTMENT FOR CULTURE, MEDIA AND SPORT
NOTICE OF CONSULTATION ON THE PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9% OF BRITISH SKY BROADCASTING GROUP PLC
UNDERTAKINGS GIVEN BY NEWS CORPORATION PURSUANT TO PARAGRAPH 3 OF SCHEDULE 2 OF THE ENTERPRISE ACT 2002 (PROTECTION OF LEGITIMATE INTERESTS) ORDER 2003

Views are sought by midday on Friday 8 July 2011 as to whether the attached undertakings in lieu are sufficient to remedy, mitigate or prevent the public interest concerns in relation to media plurality raised by this merger. For reasons explained below, the Secretary of State is not consulting on any competition aspects of the proposed merger.

Executive Summary

The Secretary of State has considered the points raised during the consultation period and further reports from OFT and Ofcom. These reports make it clear that nothing raised during the consultation process has led the OFT and Ofcom to reconsider their earlier advice to the Secretary of State. A number of constructive changes have been suggested to strengthen the undertakings which the Secretary of State has accepted and he therefore proposes to consult further for a period ending at midday on Friday 8 July 2011.

In particular a number of changes were suggested that would strengthen the arrangements around the editorial independence of Sky News:

- Sky News' Articles of Association set out the definition of independent directors, mirroring the definition in the undertakings.
- Meetings of the board of Sky News about editorial or journalistic matters will only be quorate if an Independent Director with senior editorial and/or

journalistic expertise is present. Similar arrangements apply to the corporate governance and editorial committee. The change will ensure that Sky News organises its business so as to ensure that there is always appropriate senior editorial and/or journalistic expertise at relevant meetings.

Representations were also made about interim protection for Sky News. As a consequence, the undertakings require the appointment of a Monitoring Trustee whose main role is to ensure that News complies with the undertakings in the run up to Sky News being spun off.

There were also suggestions around operational and financial sustainability. As such the Secretary of State has made the following changes:

- The undertakings have been changed to ensure that Sky continues to cross-promote Sky News on its channels. This means Sky News will continues to enjoy the same promotional support as the current business.
- The Monitoring Trustee will advise the Secretary of State in his review of the key operational agreements requiring his approval to ensure that they are fair and reasonable.

As a number of the safeguards are contained in the Articles of Association, including the requirement that Sky News' services will abide by the principle of editorial independence and integrity in news reporting, the undertakings have been amended so that the Articles have to be approved by the Secretary of State. An additional undertaking has been included to ensure that News shall not to attempt to cause Sky News to act in breach of its Articles of Association. A copy of the Articles of Association is published along with the consultation document and the revised undertakings.

The Secretary of State considers that the changes made to the undertakings strengthen them in a number of areas highlighted in the consultation responses. As such he proposes to accept these changes and have a further consultation period ending at midday on Friday 8 July 2011. Further more detailed explanation of these and other changes are outlined later in this document.

Background

On 3 November last year, News Corporation (News) indicated that it intended to increase its shareholding in British Sky Broadcasting Group Plc (Sky) from 39.1% to 100%. In light of the turnover of the merging companies and the interaction of United Kingdom and European law, any competition concerns arising in relation to the transaction fell to be considered by the European Commission. On 21 December last year, the European Commission concluded that the increased shareholding would not significantly impede effective competition.

However, under UK law, an issue arose as to whether this transaction gave rise to concerns about plurality of persons controlling media enterprises. The Secretary of State for Business, Innovation and Skills issued a European intervention notice raising this public interest. He asked Ofcom to investigate and report to him by 31 December. That report was produced by Ofcom and provided to the Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt (the Secretary of State). In addition, the OFT provided a report on jurisdiction on 30 December [http://www.culture.gov.uk/publications/7737.aspx].

On 25 January, the Secretary of State informed Parliament of his initial decision on the proposed News/BSkyB merger. Having considered the Ofcom report and the concerns raised, he concluded that the relevant statutory test was met and intended to refer the merger to the Competition Commission. However, before doing so he also made it clear that he would consider undertakings in lieu of that reference which had been offered by News and which, in his opinion, had the potential to remedy, mitigate or prevent the potential threats to media plurality identified in the Ofcom report.

The Secretary of State asked for further advice from OFT and Ofcom on the extent to which the undertakings in lieu addressed the plurality concerns raised in the Ofcom report, and whether the undertakings were likely to be financially and practically viable. Further reports were received from both organisations on 11 February and 1 March. [http://www.culture.gov.uk/publications/7880.aspxs]

On 3 March the Secretary of State made a statement to the House explaining that, on the basis of the advice he had received, he believed that the proposed undertakings addressed the plurality concerns that Ofcom had identified in its report of 31 December 2010 and were practically and financially viable for up to 10 years. He therefore announced that he intended to accept undertakings from News on its proposed merger with BSkyB in lieu of a reference to the Competition Commission. However, before he did so he launched a public consultation seeking views on the undertakings. [http://www.culture.gov.uk/consultations/7887.aspx]

The undertakings provide that Sky News be spun-off as an independent public limited company. Shares are to be distributed amongst the existing shareholders of Sky in line with their existing shareholdings. The effect of this would be that, after the proposed News/BSkyB merger was completed, the shareholdings in Sky News would remain as if the merger transaction had not happened. The new company would have a majority of independent non-executive directors and have long-term carriage and brand licensing agreements with the newly-merged News/BSkyB company so as to ensure its financial viability. The undertakings specify that News would not be able to increase its shareholding in the new company without the permission of the Secretary of State for a period of 10 years. After that period, any reacquisition would be subject to the general legislative merger control provisions, including a reference to the Competition Commission on plurality grounds depending on circumstances at that time.

<u>Summary of the Undertakings</u>

The undertakings which were consulted upon are as follows:

- The Board of the new company must have a majority of independent directors who have no other News, or News-associated, interest;
- The Board, including the independent non-executive directors, must have the appropriate balance of skills, experience, independence and knowledge, and at least one must have senior editorial and/or journalistic experience;

- The Chairman must be an independent director;
- Sky News' services must abide by the principle of editorial independence and integrity in news reporting;
- The Board must have a Corporate Governance and Editorial Committee to ensure compliance with the principles of editorial independence and integrity in news reporting;
- A 10 year carriage contract which sets out the future financing arrangements;
- A 7 year brand licensing (with potential to extend for a further 7 years).

<u>Changes to the undertakings following consultation</u>

This consultation on the proposed undertakings closed on 21 March. There were over 40,000 responses, including a very large number of near-identical responses as a result of internet campaigns. Summaries of the main responses[1] are today published on the DCMS website. The Secretary of State met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media, and Slaughter and May on 24 March and met Avaaz on 15 April. Notes of meetings will be published at the end of the process.

These representations have been carefully considered by the Secretary of State and, where appropriate, Ofcom and OFT. The Secretary of State is grateful to Ofcom[2] and the OFT[3] for the written advice they provided him with on 22 June and both these reports are today published on the DCMS website.

Both regulators make it clear that they consider that the points raised in the consultation exercise do not require them to change their previous advice to the Secretary of State. Both they and the Secretary of State do consider, however, that there have been some constructive suggestions for strengthening the undertakings and, as a result, the Secretary of State proposes to consult on amended undertakings. Set out below are the main changes and, where not-self-explanatory, the Secretary of State's reasons for making them. A number of minor drafting

[1] http://www.culture.gov.uk/consultations/8257.aspx
[2] http://www.culture.gov.uk/publications/7880.aspx#1
[3] http://www.culture.gov.uk/publications/7880.aspx#1

changes to the undertakings are not included in this document though they are included in the version of the undertakings published today and a more detailed explanation of the reason for all the changes is included in the OFT's report.

Articles of Association

The Articles of Association of Sky News must be approved by the Secretary of State prior to the undertakings being accepted [3.1]. This reflects the importance of the Articles of Association to Sky News and, in particular, addresses concerns that the Articles might limit Sky News' ability to borrow. The Secretary of State is satisfied that the borrowing arrangements set out in the Articles of Association are reasonable.

The undertakings require that the Articles of Association set out the definition of independent directors [3.1(iv)]. This is consistent with the definition in the undertakings, and is found in Article 1(1).

The original undertakings require News to establish Sky News with Articles of Association which provide that Sky News will abide by the principle of editorial independence and integrity in news reporting. News now offers an additional undertaking not to attempt to cause Sky News to act in breach of its Articles of Association [3.3].

Independent Director with senior editorial and/or journalistic expertise

Article 128 provides that meetings of the board of Sky News about editorial or journalistic matters shall only be quorate if an Independent Director with senior editorial and/or journalistic expertise is present. Similar arrangements apply to the corporate governance and editorial committee (at articles 138 and 139). This is a response to representations that these arrangements could be undermined if this Director was often unavailable for meetings for whatever reason. This will ensure that Sky News organises its business so as to ensure that there is always appropriate senior editorial and/or journalistic expertise at relevant meetings

[3.1(iii)(C); 3.1(ix)(E)].

Solicitation

News shall not solicit staff transferred to Sky News for a period beginning on the Closing Date and ending [words added] 24 months after the date of spin-off. This extends the non-solicitation provision to cover the period between Closing Date and spin-off [4.2].

Carriage and Brand Licensing Agreement

For the avoidance of any confusion, the reference to a 7 year Brand Licensing Agreement which is automatically renewed for a further 7 years has been changed to a reference to a 14 year Brand Licensing Agreement [4.6].

Promotion of Sky News

News shall ensure that Sky continues to cross-promote Sky News on Sky's linear channels to a level and in a manner comparable with such cross-promotion for the period of 12 months prior to the date on which the undertakings are accepted. This is important to ensure that Sky News continues to enjoy the same promotional support as the current business [4.9].

Operational Agreements

News shall ensure that Sky will, prior to or at spin-off, enter into the agreements with Sky News under which Sky will provide facilities and support services to Sky News on arms'-length terms which are fair and reasonable [words added]. This change provides the context for the Monitoring Trustee (see below) to assess News' fulfilment of its obligations in relation to the terms of the operational agreements [5.1].

Charges to Sky News under the main operational agreements are set for the first year at a fixed price equivalent to the cost of Sky providing the relevant services plus a 5% margin. Thereafter charges will be increased by the Consumer Price Index (CPI). The undertakings have been changed to cap this increase. This caps the CPI-related charges payable by Sky News to News and so provides an enhanced degree of financial security for Sky News [5.3(iii)].

The payments will also be adjusted for actual usage where appropriate and savings or cost increases of services which Sky obtains from a third party. The undertakings have been changed to give Sky News audit rights in relation to these adjustments if Sky fails to provide any relevant information [5.3].

News must ensure that operational agreements will contain a dispute resolution mechanism. The undertakings have been amended to provide that, in the case of the agreements requiring the approval of the Secretary of State, they cannot be terminated until any dispute between Sky News and Sky has gone through the dispute resolution process. News will bear all reasonable costs (including Sky News' reasonable costs) of any dispute resolution process originating from a proposed termination by Sky [5.4].

Appointment of Monitoring Trustee

It was suggested that the undertakings should include the requirement for a Monitoring Trustee to ensure that News complies with the undertakings in the period leading up to the spin-off of Sky News. As a consequence there are now five new sections dealing with the appointment, functions and obligations of a Monitoring Trustee [6-10].

The undertakings have been amended so that, in effecting the spin-off, "News shall not take any action that would prevent the new company being placed in an overall position of editorial, governance, commercial and financial independence in which it will contribute to plurality as Sky News did prior to the Transaction" [2.1]. This provides a context for Monitoring Trustee to assess News' fulfilment of its obligations in respect of the spin-off of Sky News.

In addition to ensuring that News is complying with its obligations under the undertakings, the Monitoring Trustee will provide advice to the Secretary of State in relation to the latter's review of the key operational agreements requiring his prior approval. These include agreements on satellite capacity, playout, and uplink.

Within 20 Working Days of the undertakings being agreed, News has to nominate a Monitoring Trustee to be approved by the Secretary of State. Although News has to pay for the Monitoring Trustee, whoever is selected must be independent and have no material conflict of interest. Paragraph 7.1 of the undertakings expressly provides that the Monitoring Trustee acts on behalf of the Secretary of State. The Monitoring Trustee will remain in place until all of the operational agreements detailed become effective.

Interim Protection

In addition to the provisions for a Monitoring Trustee, there are a number of other changes which are designed to ensure that News cannot undermine Sky News in the run up to spin-off. For example, prior to the spin-off of the Sky News business, News must ensure that the Sky News business (as at the Closing Date) [words added] is maintained as a going concern [13.1(i)] and that the Sky News business, including its facilities and goodwill [words added], is maintained and run normally [13.1(iii)]. Similarly, News must not attempt to influence the editorial decisions of the Sky News business prior to the completion of spin-off [13.1(iv)] and must provide information to the Secretary of State to enable him to monitor News' compliance by with these undertakings [13.2].

Definitions

The definition of "Material Transaction" has been extended to cover the lease agreement and the main operational agreements (that is, those *requiring* prior approval by the Secretary of State).

As amended, the Secretary of State now considers that the concerns relating to plurality identified by Ofcom are now prevented, remedied or mitigated by the undertakings.

<u>Carriage and Brand Licensing Agreements</u>

The terms of the undertakings also ensure that the detailed provisions of the Carriage and Brand Licensing Agreements have to be approved by the Secretary of State before the merger can go ahead. The Secretary of State has therefore carefully considered the advice of Ofcom and OFT on these key Agreements. They have concluded that the drafts of the Carriage Agreement and the Brand Licence Agreement are consistent with the proposed undertakings. In addition, OFT conclude that the terms of the Carriage Agreement and Brand Licensing Agreement mean that Sky News will be practically and financially viable for the lifetime of the carriage agreement.

In terms of the length of the Carriage Agreement, OFT has reiterated its advice that the undertakings are likely to be practically and financially viable in the short and medium term. Its earlier reports have expressed concern about whether the undertakings would be viable over the long term, but recognised that the appropriate time-frame in this market was for the Secretary of State to decide, with Ofcom's advice.

Ofcom has reiterated its view that it considers a 10 year carriage agreement in the context of industry dynamics in this sector to be a long-term measure. The Secretary of State agrees with this view and therefore considers that the provision of a 10 year carriage agreement and a 14 year brand licensing agreement are of sufficient length to remedy, mitigate or prevent the concerns in relation to media plurality.

The Secretary of State is satisfied, following the advice from Ofcom and OFT, that the Carriage Agreement and Brand Licensing Agreements will ensure the financial and commercial independence of the new Sky News company over what is a very long period in terms of this sector. He considers the Agreements along with the governance provisions will ensure editorial and operational independence of Sky News.

Other issues raised in the consultation

During the consultation period, a number of other issues were raised that were not material to the issue of media plurality and did not affect the Secretary of State's decision to consult on revised undertakings.

A number of respondents raised competition concerns. In addition to the fact that this could not be considered as part of the media plurality public interest test, these issues have already been fully considered by the European Commission which concluded on 21 December last year that the increased shareholding would not significantly impede effective competition.

Some respondents also argued that News could not be relied upon to abide by the requirements set out in the undertakings, citing previous guarantees and assurances given by News in the past, and the current phone hacking allegations against The News of the World. The Secretary of State takes the view that News have offered serious undertakings and discussed them in good faith. In all the circumstances and given that the implementation of those undertakings will be overseen by the Monitoring Trustee and thereafter monitored and if necessary enforced by the OFT, he takes the view that there are sufficient safeguards to ensure compliance with the undertakings. Furthermore, the various agreements entered into pursuant to the undertakings will each be enforceable contracts. Therefore whilst the phone hacking allegations are very serious they were not material to his consideration.

Conclusion

Having taken into account all relevant considerations, the Secretary of State proposes to accept the amended undertakings in lieu of a reference to the Competition Commission. As required by the Enterprise Act, he will undertake a further consultation period starting today and ending at midday on Friday 8 July 2011. During this time all interested parties will be able to express their views on the undertakings in lieu. Once he has considered representations, he will reach a decision on whether he still considers that the undertakings (as amended) should still be accepted in lieu of a reference to the Competition Commission. If, after the consultation, he remains of the view that the undertakings address the concerns about media plurality, he will accept them and not refer this merger to the Competition Commission.

Representations should be sent to bskyb-newscorp.consultation2@culture.gsi.gov.uk by **midday on Friday 8 July 2011**

Postal representations should be sent to:
BSkyB-News Corporation Consultation
Media Team
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

Summary of responses to the consultation seeking views on the undertakings offered by News Corporation 3 March – 21 March 2011

We received submissions from a range of stakeholders.

1. **Commercial and professional organisations**
   - BT
   - Slaughter and May on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group
   - Virgin Media
   - Trinity Mirror PLC
   - DTT Multiplex Operators Limited

2. **Lobbying groups**
   - DLA Piper on behalf of Avaaz

3. **Academic and industry observers**
   - Steve Barnett
   - Bournemouth Media School, Bournemouth University
   - Communications and Media Research Institute (CAMRI)
   - Jewish Funds for Justice
   - Media Matters for America
   - UK Coalition for Cultural Diversity
   - Campaign for Press and Broadcasting Freedom

4. **Unions**
   - TUC
   - BECTU
   - National Union of Journalists, Parliamentary Group
   - National Union of Journalists

5. **Direct submissions from individuals and MPs**

6. **Over 40,000 individuals** via an online campaign organised by Avaaz

Annex

Analysis of Responses

1. *Responses from commercial and professional organisations*

BT – (redacted version)

- BT expressed concern that News Corp has full control of Sky News for 9 month interim period when it can influence Sky News' future agenda. 3 months normally considered the maximum acceptable period. UILs will not prevent News Corp interfering in Sky News during this time, nor prevent the sharing of confidential information between News Corp and Sky News.
- BT considers that the UILs pave the way for News Corp to make a full bid for Sky News in 10 years' time. The impending expiry of the carriage agreement between BSkyB and Sky News that underpins viability of Newco will make it less attractive to competing bidders. The acquisition of further shares by News Corp in 10 years may not trigger a control review.
- **Not independently viable:** the UILs do not ensure the Newco is independently viable in terms of voting rights, directorships, the web of contracts between News Corp/BSkyB and Sky News and the insufficiency of independent contracts for Sky News.
- **Voting rights may be used by News Corp to undermine the UILs:** BT argues that as News Corp through BSkyB is likely to have a majority of voting rights at general meetings of Newco, it will enable BSkyB to block important resolutions. This could give News Corp control over an important source of funding for Newco and a share issue may be blocked by BSkyB.
- Newco will have no independent way of raising money and all Newco's revenue streams will have to come from third party contracts. BT says that third party contracts are a fragile basis for funding particularly when the principal contract Newco relies on is the carriage agreement. The UILs should ensure that Newco's borrowing powers are enshrined in the Articles.
- **The independence of the board is not guaranteed** since only one independent director has to have senior editorial/journalistic experience, this may result in a majority of industry experts on Sky News Board being BSkyB appointees. The single expert independent director will be the lynchpin for guaranteeing the board's independence and the UILs do not provide enough support; no fellow independent expert board members, no requirement that they should be present at meetings, no provision to cover for any long term absence.
- BT said independent non-experts may not have the experience required to probe some of the more complex board proposals.
- **Contracts can be used to frustrate the undertakings:** All of Newco's contracts will be with BSkyB and that this will give News Corp multiple opportunities to use BSkyB's contractual rights to frustrate the UILs. BT referred to a number of points as examples which are set out below:
  - The 10 year carriage agreement is not long enough to secure Newco's independence.
  - BT was concerned that the Brand Licensing Agreement might be used as a control mechanism by News Corp; the example given was an

obligation not to denigrate the brand could be used to control Newco's activities.
    - BT thought that it was not satisfactory that the Carriage Agreement should end once the Brand Licensing Agreement ceases as they believe this prevents Newco from ending the Brand Licensing Agreement after the initial 7 year term in readiness for the Carriage Agreement elapsing.
    - BT said that BSkyB and Newco being required to share premises and facilities for 15 years is all to BSkyB's advantage as it will bring huge scope for fertilisation and influence. BT said that the UILs should ensure that News Corp provides Newco with the financial means to be physically separate.
    - BT say that the UILs should require advertising to be handled by a third party albeit funded by BskyB, as BSkyB may otherwise try to secure terms that advantage News Corp or BSkyB instead of securing the most attractive financial deal for Sky News.
- **News Corp can reacquire Newco after 10 years:** BT states that the impending expiry of the carriage agreement between BSkyB and Sky News will make Newco less attractive to other bidders, leaving the field open for News Corp. BT's concern is that a bid for Newco would not necessarily trigger the merger control provisions of the Enterprise Act as: gross assets may be below the £70 million threshold and may not increase a share of supply of 25% or more.
- BT believes that the Audit Committees powers are too vague to be effective. The corporate governance and editorial committee's powers are central to the UILs and are insufficiently defined. The UILs should set out Newco's obligations in greater detail including a requirement for breaches to be reported to the Editorial Committee and then reported to OFT or Ofcom who should be given formal responsibility for supervision of the operation of the UILs. UILs should require the head of Sky News to make representations to the Editorial committee on compliance with the principle of editorial independence.
- BT also state that there should be a requirement in the UILs for News Corp and BSkyB not to discriminate against Newco in their commercial deals, and to grant Newco no less favourable terms than a third party.
- BT in conclusion consider that the UILs pave the way for News Corp to make full bid for Sky News in 10 years' time and that the proposal should be referred to the Competition Commission to unpick the complexities of the UIL and ensure future of media plurality.

DTT Multiplex Operators Limited (DMOL) (redacted version)

- DTT Multiplex operators limited noted that New Corporation have undertaken to use all reasonable endeavours to transfer or make available to Newco capacity for one standard definition channel until the expiry of Sky's existing agreement in respect of broadcast of Sky News and ensure that Newco is provided with an EPG slot which is no work than Sky News current slot on Sky Platform.
- DMOL then noted that Sky has refused to enter into a LCN (Logical Channel Numbers) agreement or have discussions with DMOL about them. DMOL are

concerned that News Corporation's endeavours regarding Newco EPG slot are limited to Sky Platform alone and no consideration has been given to the provision of the Newco EPG slot on DTT. DMOL feel that Newco will have a more favourable view and long term commitment to the DTT platform.

- DMOL suggested that Secretary of State makes an LCN agreement by Sky with DMOL for Sky News a requirement of the acquisition and the agreement allows Sky News to take advantage of the DMOL LCN policy.
- DMOL confirmed that if Newco do not sign a DMOL LCN Agreement or receive the benefit of such an agreement via Sky it risks losing security over its current LCN and continued engineering support from DMOL for service information related changes.

Slaughter and May on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group– sent to Hugh Robertson MP and then forwarded.

- A letter was sent on behalf of the alliance of media organisation setting out why they believe the proposed undertaking will be ineffective and not achieve their stated aim of protecting plurality in news media. It also set out arguments why the UILs should not be accepted and the matter referred to the Competition Commission.
- **The letter argued that Newco will be in a state of economic dependency vis a vis News Corporation** as will rely on News Corp for 85% of its revenue and for access to the market via digital satellite BSkyB platform. Newco will also be tied into the royalty bearing brand licensing agreement with News Corp for the Sky News and other associated brands. It is felt that this will provide a means for News Corp to exert influence.
- **The safeguards for editorial independence are weak and of the sort that News Corporation has previously been adept at undermining.** Only one of the independent directors of Newco will be required to have editorial or senior journalistic experience. The remedy relies on an unspecified principle of editorial independence and the safeguards for staff are too legalistic and written in employment terms. They require editorial staff to put themselves into dispute with employers in defence of editorial independence which is regarded as an extreme and risky step. The proposal for a subcommittee of main board of Newco to oversee this is a remedy precisely of the sort that has previously been undermined by the News Corporation.
- **Neither OFCOM or OFT regard this remedy as a sustainable solution.** The Alliance feel that OFCOM's and OFT's advice about the proposed remedy only being effective in the short to medium term does not amount to advice as to the appropriate duration of the remedy.
- **The proposed consultation is insufficient** The alliance do not regard it as practically possible to prepare review and anticipate the complex effects of the proposals in a two week consultation period especially as some of the key elements of the arrangements have not been made public.
- **The remedy puts too much power in the hands of the Culture Secretary rather than independent regulators.** The alliance mention that there are at least seven different ways in which the Culture Secretary can be required to approve or agree to behaviours governed by the undertakings, which make them incredibly susceptible to more or less implicit political interference in

future. The undertakings to protect independence would be extinguished should News Corporation acquire over 50% of Newco. It was mentioned that this would require the consent of and consultation by the Culture Secretary. There were concerns that if it were to fall into economic distress a bid by News Corporation to increase its stake in Newco to 'save Sky News and protect plurality' can readily be envisaged.

- **The law to protect plurality has failed and needs urgent strengthening** The alliance agree with OFCOM that the current laws protecting plurality do not work well and urges a wider review with a view to creating a system that does not require a transaction to take place for issues of plurality to be examined by the regulator. They feel that the need for a review is intensified by the increase in market power that will be exerted by the merged News Corporation/BSkyB entity. They feel they will be in a position to restrict or distort competition through cross- promotion, bundling, banning rivals advertisements and distorting the advertising market with cross-platform deals.

Virgin (redacted)

Trinity Mirror PLC (also part of the Group of Media companies – but they submitted a separate submission)

- Trinity Mirror PLC (TM) believes that the proposed merger would have profound implications for their businesses, and also on plurality in the UK.
- They say Sky News's audience is boosted by being heavily promoted on other BSkyB channels. Under the new arrangements will Sky News be charged "rate card" for the time paid for advertising? If the time is to be given free or at a discount, Sky News becomes further beholden to BSkyB and therefore News Corporation and if it loses viewers it will become less viable.
- They doubt that Newco will have freely and publicly tradable shares.
- TM do not feel that the governance provisions in the remedy proposal can safeguard Sky News' editorial independence in circumstances where it is financially and commercially dependent on News Corporation.
- They mention that previous experience show that obligations of this type have not prevented News Corporation from influencing editorial policy.
- They also feel that you can rely on the independent directors to act as the guardians of editorial independence. They mention that the independent directors will have a legal obligation to promote the best commercial interest of Sky News, which equates to maintaining the financial support of News Corporation on which Sky news will be dependent.
- They feel that in reality there will be no independent external oversight of Sky News editorial policy.

2. *Lobbying groups who responded*

DLA Piper (submitted their response on behalf of Avaaz – the company responsible for the internet generated letters)

DLA Piper/Avaaz believe that the proposed acquisition should be referred to the Competition Commission on the grounds that for News Corp to have 100% ownership of BskyB in addition to 37% of the UK newspaper market gives one enterprise and one individual too much control of the media. Moreover the UILs are insufficient to prevent News Corp exercising a significant degree of control. Given that there has been a month of negotiations 'behind closed doors', 17 days for public consultation is insufficient to take account the significant public concerns expressed.

However, if the Secretary of State decides accept the UILs and not refer the proposed acquisition, the DLA Piper submission comments on ways in which the UILs must be strengthened:

- Media Plurality should be protected permanently and not just for 10 years.
- Completion of the acquisition should be delayed until after Sky News has been spun off.
- A Monitoring Trustee should be appointed to supervise the negotiations on the commercial contracts and spin off of Sky news.
- Newscorp to have limited voting rights to avoid it having *de facto* control over Sky News.
- Ensure that Sky News can become financially independent. The terms of commercial agreements should be improved including a requirement that they should be on fair and reasonable terms and terminable by Sky News.
- More active monitoring by strengthening the obligations regarding compliance and reporting on adherence to the UILs including financial penalties for breach given upfront.
- Impose a non-compete obligation on Newscorp so that it cannot circumvent the UIL and undermine Sky News.

Letter from Avaaz of 20 April

This is Avaaz's record of a meeting with the Secretary of State on 15 April.)

- The Secretary of State is reported to have said that News Corp's 8th April admission of liability on phone hacking is not relevant to the BSkyB deal.
- When the Secretary of State issued the European intervention notice on the takeover, he was unaware of relevant matters that now give rise to additional public interest considerations. This makes the original notice defective and invalid and obliges him to issue a fresh notice specifying all of the public interest considerations that now arise.
- The announcement on 8th April shows that News Corp is not a suitable guardian of our media standards, that its owners are not fit and proper people as set out in the 2003 Communications Act, and that they cannot be trusted to implement in good faith the letter or spirit of the undertakings they have proposed.
- The Secretary of State should delay announcement on the merger, and to issue a new European intervention notice expanding the scope to look at media standards and fit and proper persons owning our media. He should not take an inappropriately narrow interpretation of his powers, but rather to interpret them broadly so as to safeguard the public interest.

3. *Responses from Academic and noted industry observers*

Patricia Holland, Senior Lecturer, Bournemouth Media School

- It was stated that if the acquisition were to go ahead UILs will not guarantee the editorial or operational independence of Sky News as the new company will be partially controlled by News Corporation. The UILs also leave open the possibility after 10 years that Sky News may be fully owned by News Corp.
- The problem of market dominance and plurality of provision extends across the broadcasting genres, and is not confined to news.
- It was also noted that the strength and international reputation of UK broadcasting has been built on an ecology which balances provision from the publicly funded BBC with that from a range of different commercially funded companies. Pluralism in provision has meant vigorous competition for quality and audiences between the differently funded organisations and between the different commercial companies resulting in a breadth and diversity which benefits all parts of the viewing and listening audience.
- Ms Holland also referred to the media analyst Claire Enders who pointed out in her report of Sept 2010 that Sky is already bigger than the BBC in broadcasting revenues. Sky could grow to control 50% of the newspaper and television markets respectively. Consequences are cultural as well as financial and affect the broad range of programming especially the domestically produced programming.
- The issue of cultural consequences of having a dominance of a powerful internationally company need to be addressed but are outside the terms of reference of the Competition Commission.
- She concluded that the Secretary of State should refer the proposal to the Competition Commission and take into account the aspects which are not within the Competition Commission's remit.

Campaign for Press and Broadcasting freedom (CPBF)

CPBF do not believe undertakings address the concerns they expressed in original Ofcom submission and events since have highlighted the inadequacy of UK media ownership law and regulation.

- Argued to Ofcom that takeover would "represent a transformative shift in UK media ownership"
- Consultation fundamentally flawed because it excluded any competition aspects of the proposed merger and narrows discussion on the viability or otherwise of undertakings regarding Newco.
- Issue of Sky News, though important in terms of plurality of news, is marginal in terms of the overall impact the merger would have on UK media. From News Corps perspective the obligation to fund Sky News is a minor concession to gain full control of the profits BSkyB will generate in the future.
- Argues that the proposed merger raises both competition and media plurality issues which are inextricably linked and that EC ruling does not directly address the impact on the domestic UK media market and still allows UK to "take appropriate measures, including prohibiting proposed transactions to protect legitimate interests, such as the plurality of the media".

- Argues that News Corp wants BSkyB for two reasons:
  - BSkyB has already invested heavily in its infrastructure – broadband and HD TV and profits are rising;
  - Merged organisation will be a multi-media emporium able to bundle and cross-promote its products. It would completely dominate UK media and is capable of damaging or destroying other media.
- No consideration of the future impact of the merger company on other UK media companies.
- Newco will not be a viable independent news business. Its economic dependency will make it vulnerable if News Corp exerts influence.
- The definition of independence and the safeguards for editorial independence in the UILs are weak.
- Concerned that monitoring compliance lies with Secretary of State rather than independent regulators. At least seven different ways in which the Secretary of State can be required to approve or agree to behaviours governed by the undertakings, which make them susceptible to more or less implicit political interference in the future.
- Some key elements of the arrangements have not been made public.
- Query whether the further test on the viability and robustness of the commitments advised by OFT has been possible during the consultation process.
- Bid has highlighted that the media ownership laws are unfit for purpose – need a wider review of the current laws on media plurality, establishment of a Media Commission and a proper definition of media plurality.

Prof Steven Barnett, University of Westminster, Communications and Media Research Institute (CAMRI)

- Prof Steven Barnett believes that the UILs are inadequate for 3 reasons (highlighted below) and that taken together should be sufficient reason for the Secretary of State to refer the matter to the Competition Commission.
- **Independent Board of Directors will not insulate Sky News from potential editorial influence from News Corporation.** On the two previous occasions when similar boards have been established to safeguard editorial independence within News Corporation the structure has failed; the Times Newspaper and the Wall Street Journal. The new company will be almost entirely financially dependent on News Corp who will also be presumably responsible for paying the bulk of the salaries of independent directors.
- **Ofcom's advice in relation to the UIL appears to be qualified and contingent on the detail of further negotiations with News Corporation.** How can an acquisition with profound repercussions for media diversity in Britain be acceptable when the main communications regulator has not yet been satisfied about the precise terms of UILs which are then to be determined behind closed doors.
- **Any undertakings will apply for 10 years only, after which News Corp will be able to take full control of Sky News.** Why has a time limit been imposed given the uncertainty over how media plurality and consumption will unfold? There is an assumption by Ofcom and government that the direction of travel is towards greater plurality, but this is contrary to empirical evidence.

- Prof Barnett also stated that the coalition parties are committed to better democratic practices allowing important decisions to be properly and publicly interrogated. However, this transaction is apparently to be permitted after nothing more than an exchange of letters between government, regulators and News Corp constrained by an extremely tight timetable. A reference to the Competition Commission would allow for proper detailed transparent and public scrutiny of the merger. The decision itself and the indecent haste in which the Secretary of State is seeking to impose it are affront to the principles of democratic accountability and transparency.
- He concludes that there is not sufficient knowledge of the detailed arrangements to know whether they are sustainable and there is no evidence that the media environment will be sufficiently benign after the proposed 10 year period to accommodate a full editorial takeover of Sky News by News Corp. Also that the manner in which the decision is being taken is undemocratic and contrary to the public interest and asks the matter to be referred to the Competition Commission.

Jewish Funds for Justice (JFJ)

JFJ believe that the UIL's do not sufficiently mitigate or prevent the public interest concerns in relation to media plurality and fall short of protecting the UK public. They believe UIL's should be referred to Competition Commission for full investigation.

- JFJ stated that 'Newco' would not be adequately independent to protect media plurality.
- JFJ raised concerns about the content of some of News Corporation's TV broadcasts in the US and argue that it does not give reason to believe that News Corp will act in a way that protects the greater public interest in UK.
- JFJ do not believe the consultation was long enough to allow parties to fully investigate the UILs and that there are questions outstanding. Referral to the Competition Commission would be a way of investigating these, including, are the checks and enforcement clauses adequate to ensure that Murdoch will not exert editorial influence over 'Newco'? What will prevent Murdoch from increasing the profile of Fox News in the UK? Are the timescales adequate to protect the long-term media plurality?
- JFJ also raised the question of public interest protection. They feel the acquisition threatens media plurality, prospect of fair and balanced reporting and the partial independence granted to Sky News will not solve these. The submission cited Rupert Murdoch's tolerance of comments by Glenn Beck that they feel are anti-Semitic in nature as examples of this.
- JFJ believe the merger is counter to the public interest both on grounds of protecting media plurality and preventing dangerous rhetoric from receiving greater prominence on UK television.

Media Matters for America

- Insufficient checks to ensure the undertakings are strictly adhered to and only valid for 10 years.
- Nothing in the proposals prevents News Corp from creating a news station totally under the aegis of BSkyB (and hence News Corps editorial control). This would be antithetical to the public interest and not enhance plurality.

- Refers to Murdoch's purchase of the Times and Dow Jones as precedent of promises of maintaining independence not kept.
- Assumes independence can be measured – editorial influence can be exerted in a number of immeasurable ways.
- UILs do not prevent News Corp from building the profile of Fox News in the UK and therefore a "Foxification" of news agenda leads to viewers being misinformed on key areas.

UK Coalition for Cultural Diversity

- Concerned that the acquisition bid does not take account of the commitments to the AVMS Directive, which requires all television channels where practical to carry a majority of national/European content, excluding sport, current affairs, news and game shows. Also any concessions or measures should take account of the objectives of the UNESCO Convention on promotion and Protection of Diversity of Cultural Expressions, 2005.
- Believe that BSkyB has already used its purchasing power to get audiences away from national broadcasters i.e. Mad Men bought for £225,000 per programme compared with the BBC £65,000 and sports events. Argue that the inclusion of BSkyB within News Corp will increase this fiscal intimidation for market space to the detraction of diversity of expression in programming.
- The Secretary of State should demonstrate how the issues and compliance with the AVMS Directive or diversity of expression are taken into account in the negotiations with News Corp and the promise of a longer debate with media organisations and experts prior to a Green Paper to allow issues of public interest to be protected.

David Elstein

- Believes the Ofcom report is flawed – the Secretary of State should not believe that there really is a plurality issue. Neither the Competition Commission nor a judicial review of the Ofcom report could conceivably sustain its methodology.
- Attached was a note he prepared in February detailing a series of errors and questionable judgments in the Ofcom report, whose combined effect is to enlarge the potential effect on media plurality.
- The figures given by Ofcom on the two key indicators reach and share from combining the businesses 51% and 24% are wrong and more plausible figures are 9% and 14%.
- The methodology is misguided and no reliance can be put on it.
- If Ofcom: seemingly does not know how to define reach in comparable terms as between different media; does not understand the significance or even the quantum of supposed consumption of news across different media; and chooses to ignore the detailed research about consumer behaviour it has commissioned; it is hard to have much confidence in its ability even to define the circumstances for non-transaction intervention.
- The government will have ample time to consider the wisdom of the Ofcom bid for extra powers in the run-up to a new Communications Act in 2015 and that the UILs offered by News Corp and are accepted by Ofcom and OFT will do as little damage as possible.

- The merger should not be referred to the Competition Commission and that the best outcome would be for the merger to proceed without restrictions.

James Firth, Dalton Firth Limited

- Concerned that the proposed merger will impact competition and plurality in the online news market and that this has not been fully assessed. It could lead to a closed market of news for BSkyB customers and challenges for other online newspapers.
- Concerns stem from the estimated 2.5 million broadband subscribers using BSkyB's internet service Sky Broadband. The proposed deal could put News Corporation in a position to give discounted, bundled or preferential access for Sky Broadband subscribers to its online news titles.
- This could adversely affect other publishers in the online news sector if News Corporation chose to promote News Corps online titles to Sky Broadband customers and in the sale of advertising slots which may have an adverse impact on competition in the market for advertising.
- The deal might restrict the plurality of news sources accessed by a bulk of Sky Broadband subscribers if News Corporation decided to promote its own online news content on its portal services.

4. Unions

BECTU

- BECTU do not accept that the competition issues have been satisfactorily dealt with.
- The sheer size and reach of the proposed merged company gives rise to clear concerns that it would be anti-competitive. These include: the merged company would be the largest private media company ever seen in the UK; an enlarged News Corp with an expected turnover of £9b within a few years would have almost double the revenue of the BBC. Its size and scale would dominate every other media organisation in the UK; the combined BSkyB/News Corp would reach across all significant media platforms.
- News Corp would have opportunities on a scale unavailable to any competitor to cross promote News Corp new titles and channels, to bundle news products with other media services, to develop integrated news products for convergent devices and media to win wholesale news contracts, to distort the advertising market with cross platform deals, to take a dominant position in competing for rights.
- The proposed new company operating Sky News would be independent, but it would be small and commercially dependent on News Corp/BSkyB for 85% of its revenue and 25% of its costs. News Corp would be its largest shareholder as well as sole funder, and there is no guaranteed mechanism for the new company to escape this position of dependence in the future.
- The measures to provide 'editorial independence' appear to be completely inadequate, especially given News Corp's previous record of promises of editorial independence and integrity at the time of earlier takeovers.
- Concern this is taking place whilst News Corp companies are subject to civil actions and police investigation concerning illegal phone hacking.

- Concerned about News Corp's commitment to editorial independence as they noted it was not willing to undertake that the chair should be independent.
- They note that following reports from Ofcom and OFT Secretary of State was minded to refer the issue to the Competition Commission, and question why News Corp were then allowed the privilege of series of private discussions with regulators without any public scrutiny leading to reluctant and unconvincing undertakings.
- BECTU in conclusion calls on the Secretary of State to refer the proposed merger to the Competition Commission rather than abjectly accepting this inadequate settlement. They also call on the Government to institute a broader review of the statutory framework governing the public interest in media pluralism.

National Union of Journalists

- Believes the massive power of the planned Newscorp/BSkyB operation through financial and other resources which the merger would make available is inimical to the public interest.
- Financial power of merged Newscorp/BSkyB can only damage the sustainability of the other media groups which are an important factor in media plurality as well as strengthening any political or other causes which Newscorp/BSkyB or its proprietor chooses to support.
- Exclusion of competition aspects of the proposed merger means the overall effect on media and media plurality in the UK has been ignored.
- Merger would also allow opportunities for cross-promotion giving it an advantage over other media.
- Guarantees of editorial independence queried.
- Will not be a viable independent news business – using BSkyB platforms to access viewers.
- Query whether the further test on the viability and robustness of the commitments advised by OFT have been possible during the consultation process.

National Union of Journalists Parliamentary Group

- Concern that previous guarantees and assurances have been disregarded citing Murdoch's takeover of The Times and Sunday Times.

TUC

- UIL's are inadequate.
- Does not believe that Newco will be a viable independent news business. Will be economically dependent on News Corp/BSkyB and vulnerable to influence.
- Guarantees of editorial independence inadequate as News Corp executives will be able to exert influence over Sky News.
- Previous guarantees over editorial independence broken.
- UIL's place great onus on the Secretary of State – seven ways in which he can be required to approve or agree to behaviours governed by the UILs. Has to be seen in the context where Newscorp is a major player in British political life.

5. a) Individual submissions

The Department for Culture, Media and Sport received over 40,000 direct submissions in response to the consultation. The majority opposed the proposed merger and requested that the proposal be referred to the Competition Commission. Issues raised include:

UILs – safeguards for independence

- A large number of respondents were concerned that the UILs do not address the fundamental concerns and not all concerns raised by Ofcom have been addressed. It is felt that the UILs for independent board, appropriate skills, independent director, editorial independence, governance undertakings will not guarantee independence. There is concern that there is nothing in the agreement to reverse the situation of ownership of BSkyB should Sky News fail as an independent organisation.
- The UILs do not ensure the Board of Directors will be sufficiently independent because:
    - Former employees of News Corporation can be directors of the Board as long as they have not been employed by News Corporation within 5 years prior to appointment to the Board;
    - Anyone with material business relationship with News Corporation can be a director, only need to demonstrate that this relationship ceased three years before appointment to the Board.
    - Family members of News Corporation advisers, directors or senior employees can become directors, only need to demonstrate not close family members;
    - No provision to prevent friends of News Corporation advisers, directors or senior employees or any former politicians who have benefited from News Corporation directly or through their political parties from becoming directors.
- The Chairman should have no past involvement with News Corp and this should be added to the undertakings.
- The decision is fatally flawed because it will: severely undermine media pluralism, destroy competition, give Murdoch more antidemocratic, monopolistic media power, allow more offshore tax avoidance by News International, allow further anti-democratic, anti-cultural diversity and anticompetitive cross media ownership concentration, allow potential further illegal reporting on the News of the World Glen Mulcaire/Coulson model.
- Some raised concerns that under the terms of the UIL there is nothing to stop individual members of the Murdoch family being one or more of the independent directors of Sky News or Newco.
- There was concern that Ofcom has not given unqualified support to UILs and has stated that their effectiveness in addressing plurality concerns will depend on the detail of the arrangements. It was felt that if further negotiations take place behind closed doors how will the public to be satisfied that the regulator's concerns about the precise detail of the undertakings have been responded to.

- The matter of monitoring Sky News was raised by a number of respondents in particular who would conduct the daily monitoring to ensure no Murdoch interference and who will pay for it and the cost to the taxpayer.
- There were doubts that the proposed Corporate Governance and Editorial Committee could ensure compliance with the principles of the editorial independence and integrity when the existing regulatory framework 'The Press Complaints Commission' has shown itself incapable of controlling the excesses of the press. Especially as News Corp seem adept at circumventing regulation.

Media Plurality

- The proposed acquisition would result in too much media control in the hands of one individual and this raises moral, ethical and political concerns and democratic health of the country. It would not just harm media plurality but harm the quality of output and amount of investment in UK talent. A belief that Murdoch already owns too much media in the UK.
- A number argued that the deal would undermine the diversity and quality of media and that there was a need to have a balanced, plural set of media both for entertainment and for news coverage.
- Films often have a political dimension and ownership by News Corporation may influence the nature of films shown. Documentaries that expose News Corporation's misconduct are likely not to be commissioned and sports programmes can be influenced by owners (Commentators).
- Media plurality is not just about the number of owners but the range of views represented in the media sector. Currently right-wing bias is in most areas of the news media. It was felt that genuine plurality cannot emerge without a multiplicity of media owners and editors who are truly independent of each other and who have roughly equal powers of influence
- Publishers in different media push their own agenda through their papers, radio and television programmes. The plurality of media ownership in the UK has in the past offered some protection and balance to free speech with the BBC as the gold standard for independent reporting.

10 year carriage contract and 7 year brand licensing

- The undertakings for 10 year carriage contract and 7 year brand licensing will result in Mr Murdoch retaking control of Sky News sooner or later.
- There were suggestions that there is not a problem with the theory of the 10 year carriage and 7 year (plus 7) brand licensing agreement but there is a problem in the likely practice and News Internationals failure to keep to its agreement as history suggests that no matter what "agreement" is reached the reality is it will work to NI's benefit.

Referral to the Competition Commission

- The proposal should be referred to the Competition Commission for impartial scrutiny, especially due to the significant political and economic implications of this highly significant and controversial media merger.
- Some commented that Jeremy Hunt's announcement against the Ofcom recommendation to refer the proposal to the Competition Commission and it

was arrogantly bypassing the process laid down in the UK by refusing to let the UK Competition Commission review this proposal.
- A few people have also requested that the matter be exposed to a public debate in Parliament.

Suggestions to strengthen UILs

- There was a concern that there are omissions in the undertakings offered by News Corp; what happens in the event of a breach of the UILs by News Corp? There is nothing in the UILs that will prevent Rupert Murdoch buying Sky News at a later date.
- Suggested additional safeguards/undertakings including:
    - a quota for UK produced content for each of Sky's channels;
    - a cap on American imports;
    - a requirement to make expensive public service type programmes including high quality kids TV on free to air channels;
    - requiring BSkyB to take at least 80% of its news and current affairs programming from Sky News; and
    - the proposed local television licences; the addition of diversity and pluralism through online media;
- News Corp should be restricted to no more than 15% of the Sky News shares. The current proposal allowing News Corp to retain 39.1% of the hived-off Sky News undermines Sky News's proposed status as an independent news provider. News Corp would retain the power to block any strategic decisions that directors might refer to shareholders where consent of more than 75% of those voting required for approval.

Threat to democracy

- It was argued that a media organisation which has 37 % of the newspaper market and 35% of the broadcasting market has, not only the monopolistic power to unduly influence the broadcasting market, but also the power to unduly influence politicians and government. This is detrimental to the UK Constitution and UK Parliamentary democracy.
- The proposed takeover of BSkyB would be the most serious threat to democracy in Britain since World War 2.
- Granting Murdoch control of BSkyB would trample our media ownership laws and threaten our democracy.

Comments in relation to past experiences

- The proposal and process showed that we are relying too heavily on minimal regulation and a market economics based approach to policy.
- The proposed acquisition would result in the UK's media being similar to the Berlusconi's situation in Italy.
- There were a number of accusations that Sky has been detrimental to the broadcasting environment in the UK broadcast. For example, the high number of channels has diluted spending by advertisers, restricting access to high quality domestic content as you have to be a subscriber, and spreading football over several sports channels.

Comments relating to the Rupert Murdoch's/News Corp integrity

- There were a number of concerns raised about Rupert Murdoch and News Corporations fitness to own so much media including:
  - dumbing down the Times, turning the Sun into a porn magazine which is available to Children;
  - appear to tolerate or encourage illegal activity;
  - News Corp and Murdoch pay no or little tax in the UK; and
  - the quality and type of programmes currently broadcast on Murdoch's channels often one-sided political prejudice;
- disagree strongly with the government over the BBC and Murdoch has influenced policy regarding license fees.
- A number of respondents asked the Government to stand up to Murdoch and not to allow him to run the country.

Comments on Secretary of State's integrity

- Respondents made the point that the approval of the acquisition was favours being returned following Murdoch media's endorsement of the Conservative party at the general election.

Impact on BBC

- The merger would leave News Corp the undisputed dominant player in the UK's media market and able to dictate terms to both suppliers and customers. The combined revenues of BSkyB and News Corp will be 2-3 times that of the BBC while BSkyB alone has turnover of more than BBC and ITV put together.
- Some raised concerns about the impact on British broadcasting, in particular News Corp removing programmes from the BBC, therefore taking viewers to Sky. This reference is in relation to Rupert Murdoch recently purchasing daughters company Shine TV which produces some BBC shows.
- A number of people mentioned the Government trying to destroy the BBC with funding cuts.

Competition concerns

- Some respondents said that the EU does not have competence to deal with UK competition concerns. Also that the BSkyB primary market does not cross European borders.
- The massive dominance of one company should be a major concern to a coalition so committed to competition.

"Bundling" and "cross promotion" concerns

- The merger would put News Corp in a strong position to offer cross promotion, cross subsidising, advertising sales packages that span print, online and TV and to bundle newspaper subscriptions with SkyTV/Sky Broadband subscriptions. Many believe that BSkyB revenues will be used to support News Corp's non profitable newspapers leading to a negative impact on other newspapers facing difficulties due to declining circulations.

- If the proposed merger goes ahead there is a possibility that online versions of News Corporations newspapers will be given exclusive access to multimedia content from BSkyB's TV channels that BSkyB owns the broadcast rights to.

Other relevant comments

- That impartiality laws should apply to print newspapers and their online counterparts separating news from opinion columns.
- If the acquisition goes ahead then it would be one more British company to no longer be British.
- Trust this decision is successfully challenged in the courts.
- A number of people mentioned that they would like to review any business plans Sky may present for a standalone Sky News PLC. They feel that they could identify material financial questions currently unanswered and help in negotiating the appropriate amendments to the business plan with Sky.
- The numbers of actual people reached by News Corp compared with other media should be examined not just the provision of news.
- News Corp would be one of three providers of UK-wide news and current affairs on three of four platforms at the retail level but the only news and media provider present on all four platforms (TV, newspapers, on-line and radio).
- In terms of "news minutes" consumed, News Corp would consolidate its position as the second place provider behind the BBC.
- There were a number of questions raised by the respondents:
    - Who would appointment the new board and select the new chairman?
    - What will happen to the ownership of Sky News in the longer term?
    - Why should News Corp be able to have any shares at all in Sky News?
    - Who will make senior editorial appointments and for how long a so-called separation of one channel from a corporate parent be sustained?
    - Will the proposed Corporate Governance and Editorial Committee have jurisdiction over both Sky News and BSkyB?
    - Does governance require a compliance report to be published unrestricted and public annually?
    - What incentives/penalties/restraints are there to assure that Sky News remains a viable business and is not closed and a new business set up outside the realm of the Corporate Governance and Editorial Committee?
    - Is there a requirement for BSkyB to adhere to Ofcom's Broadcasting Code added and enshrined in the company's articles of association?
    - Who will conduct the daily monitoring of Sky News to ensure no Murdoch or News International interference and who will pay for this monitoring and at what cost to the taxpayer?
    - Is BSkyB prevented from setting up another news channel within BSkyB after takeover?
    - Is BSkyB prevented from showing any programme with a political element that could influence viewers on any political subject after takeover?
    - What extent will BSkyB be allowed to show fiction with a strong political bias which has been shown to influence views after takeover?

  - What extent will employees of BSkyB after takeover be allowed to openly campaign on air for any one political party or political view or be allowed to openly recommend on air the assassination of people?
  - Who will ensure that the employees of BSkyB do not hack into private emails or answer phone services as Murdoch's employees and agents have done already and what cost to the taxpayer?

Individuals who were in favour of the acquisition made the following comments:

- A few changed the Avaaz campaign letter to say it would not undermine media diversity and quality and feel our democracy will live with this takeover.
- As a Sky customer for years found coverage of news and current affairs to be of good quality, fair and unbiased.
- Some felt that Rupert Murdoch has done more to modernise the television service than ITV and BBC together. ITV and BBC have borrowed his on screen style his 15min 24 hour news turn around and Sky box
- There was disapproval at the start of the ITV network of companies, and reflects on the enormous influence it had on the BBC.

MPs

- A number of MPs have expressed views of constituents as part of the consultation, either by forwarding letters received or by noting points raised.

Points raised include:

UILs – safeguards for independence

- The safeguards for editorial independence are weak and the arrangements for Sky News will not be sufficient to prevent a media monopoly as Rupert Murdoch will be a large shareholder and able to influence decisions by putting people on the board of Newco.
- MPs do not feel reassured by the principle UILs which envisage a majority of independent directors and an independent chairman of the Board guaranteeing editorial independence at Sky News. Concern that despite this arrangement Rupert Murdoch will still wield significant influence over the agenda and philosophy of Sky News which will compromise the plurality of media and news control in the UK.
- There was concern that the definition of independence in the UILs relies on an unspecified principle of editorial independence. Potential that this would lead to editorial staff putting themselves into dispute with their employer in defence of editorial independence.
- The on-going management of the UILs puts too much power to the Secretary of State rather than independent regulators. Direct oversight by Government risks politicising the agreement.
- A number of questions were asked in relation to the proposed UILs including:
  - Who will appoint the Sky News Board and the proportion who will be Newscorp representatives or independent non-executive directors?
  - Who will be responsible for hiring and firing Sky News editorial staff?
  - Whether Sky News will be dependent on News Corp for finance?

- Who will monitor the independence of Sky News?
- Will the broadcasting news impartiality rules will remain in place?
- Whether other UK media organisations who opposed the acquisition have been consulted during the past month?
- Do you accept the following in relation to Newco?
  - It will be dependent on a contract with News Corporation for 85% of its revenues and 25% of its costs
  - It will be dependent on News Corporation to distribute its TV news output on the BSkyB network
  - It will only be viable long-term if Newscorp are willing to renew the carriage agreement.
- How is the proposed remedy consistent with OFT's guidance that it is rare to accept even interim purchase/supply arrangements between merging partners and the divestment business given the requirements for a clear cut remedy in lieu of a competition commission reference?
- What steps are you taking to ensure that the 40% stake Mr Murdoch will have in Newco will not allow him to have an undue influence on decisions made by the Newco Board?
- What steps are you taking to ensure that if there are concerns Mr Murdoch is influencing the output of the channel these can be thoroughly investigated and dealt with?

Media Plurality

- The safeguards are so weak that they will be rendered ineffective and that the takeover is a serious threat to media plurality.
- Some MPs have highlighted the point made by Ofcom about the inadequacy of the current laws protecting media plurality and call for a review of the laws protecting media plurality in order to improve and modernise the regulations.
- Concerns that the proposed acquisition of BSkyB might result in an over concentration of power over news media over 4 different media platforms, thus compromising media plurality.

Past experience

- A lack of trust that News Corp will deliver what it promises. Previously News Corp has offered UILs in relation to acquisitions but has not lived up to these. There were references to broken promises in relation to the Times as well as its general attitude to the industry and media plurality.
- Questions were asked about whether any assessment has been undertaken of News Corp's approach to past UILs.

10 year carriage contract and 7 year brand licensing

- Concern that the carriage agreement between News Corp and Newco, will provide financial stability, but will also leave Sky News in a state of economic dependency vis-a-vis News Corp and lacking control of its own affairs.
- The government needs to set out what will happen at the end of the 10 year period; i.e. what restrictions will be placed on the ability of News Corporation to regain control of Sky News as currently the UILs leave open the possibility;

where will the decision rest; will News Corporation or any of its newspapers be able to establish another 24 hour news channel within this period?

Referral to the Competition Commission

- The matter should be referred to the Competition Commission for independent scrutiny.

Comments relating to Rupert Murdoch's/News Corp integrity

- The Department should delay or extend the consultation period until the reopened criminal investigations by the Metropolitan Police into Murdoch's News of the World has been completed.

6. Campaign submissions

a) Avaaz internet campaign

Avaaz is a global 'citizens' network with 7 million members worldwide (over 500,000 members in the UK). Avaaz's particular interest is in safeguarding democracy.

The Department for Culture, Media and Sport received 38,465 responses which replicated the standard text proposed by Avaaz:

> "I am deeply concerned that News Corporation's bid for full ownership of BSkyB would harm our democracy. I strongly urge you to reject it.
> The proposals that you are consulting on would undermine our media quality and diversity. The temporary safeguards you propose for News Corporation are weak and can easily be circumvented. News Corporation would still have strong control over Sky News through its shareholding, its financing and its control of satellite access.
> Rupert Murdoch has exploited his media power for political influence and opinion polls show that 9 out of 10 members of the public oppose his takeover of BSkyB.
> I object to the proposed deal and call on you to immediately refer it to the Competition Commission"

A significant number of these submissions contained different text in one form or another, with many raising further points and making additional comments including:

Government influence

- The most common addition related to a perception that the decision not to refer the proposed acquisition to the Competition Commission was political, and a form of pay back for Murdoch's support of the Conservative Party at the last election. Blatant example of government being bought by big business.
- The Secretary of State appears biased in favour of the deal.
- Comments about the U-turn from the original "minded" to refer to private meetings and allowing time for Murdoch to negotiate the UIL's.
- Support democracy in Libya and elsewhere but allowing it to be stifled here.

- Government is simply taking the line of least resistance rather than trying to support and sustain the reputation of Britain and its cultural media.
- It is clear from the evidence of phone and email-hacking, the failure of the Metropolitan police to adequately investigate in a timely manner, and from the appointment of a former NoW editor as Cameron's press secretary, that the relationship between this government and Murdoch's empire is, at the very least, unhealthy; indeed morally and ethically corrupt.
- Belief that Rupert Murdoch wields too much power and has been able to determine elections in the past – jeopardising democracy. Murdoch has more influence on UK politics than millions of voters.

Comments relating to the Rupert Murdoch's/News Corp integrity

- Is Rupert Murdoch not a fit person to own so much media.
- There is a conflict of interest as Mr Murdoch's son is chair of BSkyB
- A number of people referred to his Australian/American nationality.
- Many people included the following quote from Private Eye (1986): " You tell these bloody politicians whatever they want to hear, and once the deal is done you don´t worry about it. They´re not going to chase after you later if they suddenly decide what you said wasn´t what they wanted to hear. "
- Seen as a threat to a cohesive multicultural nation, stifling diversity of reason and opinion.
- Many gave the example of Fox News in the US as an example of what we could expect to see more of. Shows he does not respect principle of impartiality in broadcast news and current affairs.
- Murdoch stake in TNT who might bid for Royal Mail.
- He is interested in media domination. News Corp is a rapaciously acquisitive organisation and does not have a good reputation for political neutrality and objectivity.
- He is a serial monopolist – reference to his stranglehold on sport and charges he makes to pubs for showing matches.
- Murdoch has had an appalling influence on UK politics and TV programmes.

Threat to democracy.

- Concern about 1 person, with such strong views, controlling a large part of UK media. Murdoch's influence already evident; to increase it further is anti-democratic.
- Secretary of State should be acting as a guard and gate keeper to the free and fair operation of democracy in Britain.
- Corporate monopoly smothers democracy as effectively as state control.
- Murdoch has always opposed real democracy if it threatens his substantial interests, and manages to terrify governments, especially those who support socialist or liberal values.
- UK's great heritage is free speech and democracy. Both would be harmed.
- The merger would leave us with a media sector dominated by one family with only the BBC left to stem the tide. What's more, it isn't even a British influence which is coming to dominate our screens, as well as our papers. We have already seen much of our manufacturing sector allowed to fall under foreign ownership (& often closure) e.g. Cadbury, our utilities are dominantly owned

by the French and Germans, and even insurance lies largely in the hands of international groups,

- The efforts of civilians in the Arab world to address monopoly media and political control is admired by our politicians...and yet you are considering allowing the creation of an overly powerful media monopoly here in the UK.
- Influence the political climate to undermine political leaders and promote extremism in order to draw attention to his media outlets.
- Need objective, analytic, well researched information, accessible to all to enable people to make balanced decisions

Comments in relation to past experiences

- News Corp in the past has broken undertakings in relation to previous acquisitions i.e. Dow; Times and Sunday Times.
- Recent example of BSkyB's acquisition of Virgin media's TV channels and closing them down within 3 months.
- Mention of supporting price rigging in the case of pub landlords having to pay BSkyB fees

Competition

- BSkyB removed some competition by buying Living TV group from Virgin Media. It then closed Bravo and Virgin 1as they competed with existing Sky channels.
- BSkyB/News Corp's earnings would multiply as packages bundle together monopolistic sports, TV archive and film rights, combining advertising and sales offers across newspapers, their websites and all digital platforms and make it impossible for competitors to enter the market.
- Should not support monopolies, but instead introduce real competition to big business.
- There are no alternative satellite TV operators in the UK, why should such a large company which is 100% dominant in the satellite TV sector be allowed to be taken over by a foreign company?
- Government should seek to increase the spread of media ownership by limiting how many titles and broadcasters any one company, individual, consortium or umbrella organisation can own
- Has already used buying power to outbid competitors for TV programmes which have won an audience on terrestrial TV- Mad Men, Lost – HBO back catalogue for Sky Atlantic. Can only get worse if Murdoch gets his way.

Media Plurality

- News Corp share of global and UK media market is already having an adverse effect on plurality of views and on public discussion.
- Need for free and unbiased media. Lost diversity will not be regained. This has happened with the local press which is losing accountability.
- The power of the media should never be underestimated and it is absolutely vital that we maintain the integrity of the information our society consumes. Although system is not perfect, it does serve as an example to the world and helps maintain an intelligent free thinking, creative and tolerant society.

UILs – safeguards for independence

- UILs should restrict Newscorp from distorting competition through cross-promotion, bundling, banning rivals' advertisements and distorting the advertising market with cross platform deals.
- Note the UILs protect news output; however, News Corp would be able to broadcast their views via other programming.
- Nothing to stop BSkyB introducing a news channel to undermine Sky News.
- Murdoch family could buy shares in Sky News to increase 39.1% stake
- Despite the UILs, Murdoch would still be able to influence/control Sky News.
- A large number doubted Sky News would be financially viable as the majority of funding could come from News Corp.
- News Corp will find ways to undermine 10 year undertaking.

Comments relating to BBC

- A number raised concern that the BBC funding is being cut, and limiting BBC's spending power all the quality/expensive and special events will be broadcast behind a paywall costing £240/year.
- Government insisted that BBC now has to pay for running fibre optic cables across country even though beneficiary would be subscription only services owned by Murdoch's company.
- Believe Murdoch strengthening will undermine BBC. Demonstrates Secretary of State/government hostility to BBC.
- Sky pressure on government to restrict BBC online services because they compete with the 'commercial' sector.

Other comments

- A number of respondents referred to an ICM poll where: (sample size 2,500)
  - 63% said there should be an independent investigation before deciding whether to allow the deal to proceed
  - 84% said that a single organisation should not be allowed to control too much of the news media
  - 75% said it was important to have competing independent sources of news in the UK
  - 44% oppose the deal with a mere 5% in favour; opposition among Conservative voters was nearly as strong with 43% opposed and just 5% in favour
  - 53% of those who currently identify themselves as Lib Dem oppose the deal with just 4% in favour
- As a minimum today all media outlets should make the public aware that they are owned or controlled by a single person or entity where more than 20% of shares are not held by public. For example TV should broadcast regularly who they are owned by, and Newspapers set out on the front page.
- Draining the UK of important tax money because his organisation does not pay UK tax. This money should be re-injected into the UK economy.
- Few people indicated whether they were or had been BSkyB subscribers.

b) Media Matters campaign

Media matters sent in a letter which had been signed by about 300 people in the UK. The letter argued that they were unconvinced that the UILs would satisfactorily remedy, mitigate or prevent the public interest concerns in relation to media plurality. In particular the following points were made:

- Although News Corp may have committed to the independence of Sky News from BSkyB there are not sufficient checks and balances to ensure that News Corp strictly adheres to the UILs.
- Concern that the UILs do not prevent Murdoch or News Corp from building the profile of Fox News in the UK. There is nothing to prevent Murdoch creating a new news channel along the lines of Fox News. It was felt that the UILs do not go far enough to prevent the 'Foxification' of the UKs news agenda.
- Requested more time be given to considering this matter further either by pursuing a full investigation by the Competition Commission which would allow for proper scrutiny and public protection. At the very least insist News Corp promise new UILs for consideration by UK public which address the issues above and truly protect the public interest concerns raised by Ofcom's report.

Annex

In addition, a number of comments on how the process and consultation has handled were received:

- **Length of consultation** Some respondents commented that the 18 day consultation was not long enough to test the UILs
- A number felt that sufficient time has not been spent in reaching the decision.
- A few were concerned had not published any information about how many people contacted the Government.
- **Question over capacity and expertise** of DCMS due to the haste which responsibility transferred.
- **Secret meetings** A number of people have referred to Jeremy Hunt, David Cameron having un-minuted meetings with James Murdoch from News Corporation and Prime Minister's lunch over Christmas with the CEO of News Corp and members of Murdoch family. Therefore proposed decision for non-referral is biased and partial.
- **Secretary of State position** A number of people are sceptical about the impartiality of Secretary of State in relation to the merger, and therefore not the right person to make the decision.
- It is felt that the Secretary of State has a **bias against the BBC** and allowing News Corp to acquire BSkyB is a way of further weakening the position of the BBC by allowing an already significant competitor to become even stronger.
- Should have run extensive opinion polls at the start of this matter (not the end) asking whether the British public had any wish to extend News Corp ownership of the media available to us.
- **OFT restrictions** A number of people have asked questions relating to OFT consultation including why they did not consult with third parties, did not have sufficient time to test the veracity of statements given by News Corp, regarding the UIL. Terms of reference given to the Oft restricted to 'practical and financial viability; why did they not test democratic balance of potential ownership and influence implied by the UIL?

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18 March 2011

Dear Ed,

NEWS CORP/BSKYB MERGER: UILS

I am forwarding to you copies of the representations made by Slaughter and May (who represent an alliance of media groups), BT and BECTU in response to the on-going consultation on the proposed undertakings in lieu offered by News Corporation on 1 March 2011 (the UILs). I would be grateful if you would review the advice you have already given me on the potential impact on media plurality of the proposed UILs in light of these representations. Please also let me know whether, having considered these representations, it would be appropriate in your view for the UILs to be amended in any respect.

I envisage that my officials will also in due course send you copies of any other submissions that make material representations with regard to the practical and financial viability of the proposed UIL, together with a summary of all of the consultation responses. I would be grateful if you would, in the same way, review your previous advice and advise whether any amendments to the proposed UIL would be appropriate in light of such submissions and the summary of responses.

I said in my statement to Parliament that I would be asking Ofcom and OFT to advise me on the detailed provisions on carriage, brand licensing and certain operation agreements which are set out in undertakings in lieu. I understand that News Corp is working on these documents, and I would be grateful for your advice in connection with these contracts in accordance with my previous request for your advice.

Department for Culture, Media and Sport

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I am writing to OFT in similar terms and I would ask that both organisations continue to work closely together on these questions.

Yours ever

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

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18 March 2011

Dear Colette,

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Yours ever

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

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18 March 2011

Dear Clive,

NEWS CORP/BSKYB MERGER: UILS

I am forwarding to you copies of the representations made by Slaughter and May (who represent an alliance of media groups), BT and BECTU in response to the on-going consultation on the proposed undertakings in lieu offered by News Corporation on 1 March 2011 (the UILs). I would be grateful if you would review the advice you have already given me on the practical and financial viability of the proposed UILs in light of these representations. Please also let me know whether, having considered these representations, it would be appropriate in your view for the UILs to be amended in any respect.

I envisage that my officials will also in due course send you copies of any other submissions that make material representations with regard to the practical and financial viability of the proposed UIL, together with a summary of all of the consultation responses. I would be grateful if you would, in the same way, review your previous advice and advise whether any amendments to the proposed UIL would be appropriate in light of such submissions and the summary of responses.

I said in my statement to Parliament that I would be asking Ofcom and OFT to advise me on the detailed provisions of the carriage and brand licensing agreements as well as certain operational agreements which are referred to in the proposed UILs. I understand that, subject to any amendments that may be necessary in light of the responses to the consultation, News Corporation anticipates that it will be in a position to provide Ofcom and the OFT with copies of drafts of these key documents for your respective consideration shortly. I would ask you to engage with News Corporation as necessary and advise me whether in your view these agreements, once finalised, are consistent with the proposed UILs (as amended, if applicable, to take account of the responses to the consultation) and the OFT's previous advice with regard to their practical and financial viability.

Department for Culture, Media and Sport

I am writing to Ofcom in similar terms and I would ask that both organisations continue to work closely together on these questions.

Yours ever

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

Letters and reports published 3 March 2011

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BY COURIER

STRICTLY CONFIDENTIAL

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18 January 2011

Our ref

Dear [redacted]

News Corporation - British Sky Broadcasting Group Plc

On Friday 14 January 2011, we filed - on behalf of News Corporation (**News**) - News' submission (the **Submission**) to the Secretary of State for Culture, Olympics, Media and Sport (the **Secretary of State**) in response to Ofcom's report dated 31 December 2010 (the **Report**) on News' proposed acquisition of those shares in British Sky Broadcasting Group plc (**Sky**) that it does not already own (the **Transaction**).

News submitted that, having reviewed the Submission and applying the legal test objectively on the basis of the relevant evidence, the Secretary of State can reasonably and should: (i) decide that the Transaction will not result in insufficient plurality for any audience in the UK; and/or (ii) decide that the Transaction will not operate against the public interest; and/or (iii) exercise his discretion not to refer.

As mentioned in the Submission, and without prejudice to the views expressed therein, should the Secretary of State otherwise be minded to refer the Transaction to the Competition Commission (**CC**), News is prepared to submit undertakings in lieu (**UIL**) in order to remedy, mitigate or prevent such of the potential effects adverse to the public interest which Ofcom identifies in its Report as potentially resulting from the Transaction which the Secretary of State still believes to be of concern.

A decision on UIL rests with the Secretary of State under paragraph 3 of Schedule 2 of the Enterprise Act (Protection of Legitimate Interests) Order 2003 (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."*

News is submitting the attached UIL proposal at this stage to ensure that the Secretary of State has ample time to consider the UIL.

The attached UIL proposal involves a commitment from News that Sky News will be spun off as an independent UK public limited company (**Newco**), with its shares publicly traded. Shares in Newco would be distributed to the existing shareholders of Sky, as far as possible, in the same proportions as their existing shareholding (so that News will retain only the same shareholding in Sky News as it currently has in Sky, 39.1%).

The corporate governance structure of Newco will also replicate the effect of the existing governance structure of Sky, which has been in place for a number of years. In particular, after closing:

(a) the voting agreement dated 21 September 2005 between the Sky and News which prevents News from exercising more than 37.19% of the votes in Sky will be replicated in respect of Newco;

(b) a majority of the board of Newco shall comprise non-executive Directors determined by the board to be independent;

(c) material transactions between Newco and News/Sky will require the approval of Newco's Audit Committee, which will consist exclusively of independent non-executive Directors. In addition Newco's constitutional documents will provide that such transactions 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).

There will also be a number of commercial agreements between News/Sky and Newco, including a long-term carriage agreement which will provide Newco with a significant and committed long term revenue stream. None of the commercial agreements between News/Sky and Newco will give News/Sky any right to influence the editorial content of Sky News.

A business plan for Sky News and a letter from News' financial advisers regarding the suitability of Sky News for admission to trading will be made available to the Secretary of State in due course.

Ofcom states in paragraph 5.46 of the Report that: "*As a result, today* [Sky News] *makes a strong and positive contribution to plurality.* [...] *The proposed transaction would result in Sky ceasing to be a distinct media enterprise from News Corp.*" The attached UIL proposal, under which Sky News would be spun off as an independent legal entity, will fully safeguard the status quo as regards the editorial independence of Sky News and will ensure that Sky News remains as a distinct media enterprise and independent broadcast voice. This fully addresses all of the concerns identified by Ofcom in its Report and relied upon by Ofcom in recommending to the Secretary of State that he refer the Transaction to the CC.

The UIL will therefore remedy, mitigate or prevent any purported effects resulting from the Transaction which have been identified by Ofcom as potentially adverse to the public interest.

With such a robust structural remedy being offered by News, it is clear that a reference to the CC would serve no useful purpose. News submits that even if the Secretary of State would otherwise be minded to refer the Transaction to the CC, the only reasonable course in light of this offer of remedies is for the Secretary of State to accept UIL at this stage.

Yours sincerely

[redacted]

Partner

cc: [redacted]
Int[redacted]

18 January 2011

NEWS/SKY

UNDERTAKINGS IN LIEU PROPOSAL

1. **Introduction**

1.1 News Corporation (**News**) proposes to acquire the shares in British Sky Broadcasting Group plc (**Sky**) that News does not already own (the **Transaction**).

1.2 The Secretary of State for Business, Innovation and Skills issued a European Intervention Notice on 4 November 2010 (the **Intervention Notice**) under section 67(2) of the Enterprise Act 2002 (the **Act**) and the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (the **Order**). On 31 December 2010, as requested by the Secretary of State for Business, Innovation and Skills and provided for in Article 4A of the Order, Ofcom issued its report on media plurality issues (the **Report**).

1.3 The Secretary of State for Culture, Olympics, Media and Sport (the **Secretary of State**) is now considering whether or not to refer the Transaction to the Competition Commission (the **CC**) under Article 5 of the Order. In doing so, he is not bound by the content of the Report.

1.4 If the Secretary of State would otherwise intend to make a reference to the CC, he has the power to accept undertakings from News in lieu of making such a reference (undertakings in lieu or **UIL**), 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."*

1.5 The decision as to whether or not to accept UIL lies with the Secretary of State and Ofcom has not provided any specific advice on this aspect of the decision to be taken by the Secretary of State. Even if the Secretary of State would otherwise be minded to refer the Transaction to the CC in this case, he must give full consideration to News' offer of undertakings which, as explained below, will remove any perceived risk identified in the Report that a public interest concern might arise as a result of the Transaction.

1.6 For the reasons summarised in News' submission to the Secretary of State of 14 January 2011 (the **News Submission**) News believes that (i) the Transaction will not lead to there being insufficient plurality in media voices serving any relevant audience in the UK; and (ii) the Secretary of State should decide that the Transaction does not operate against the relevant public interest consideration (**PIC**) identified in the Intervention Notice without a reference to the CC.

1.7 The basis for the perceived concerns as to media plurality set out in the Report is the loss of Sky News as an independent broadcast news voice. The potential loss of Sky News as an independent contributor to plurality (on the assumption, which News does not accept, that News would influence or control Sky News' editorial agenda post-Transaction) is the only concern which is, in fact, identified in the Report as specifically justifying (in Ofcom's view) a reference to the CC.[1]

[1] Ofcom has not relied upon its "dynamic" concerns (set out in section 6 of the Report) in providing advice to the Secretary of State that the Transaction might merit reference to the CC. This is the correct approach, since speculative arguments about the potential exit of other media providers or a reduction in their influence in setting the agenda cannot form the basis for a finding of adverse effects to the public interest arising from the Transaction and provide no reasonable basis for seeking a further review of the Transaction at this stage. Furthermore, the European Commission has unconditionally approved the Transaction in a first phase procedure thereby dismissing any perceived concerns that the Transaction may give rise to competition issues (including but not limited to a risk of exit of rival operators in

1.8 Regardless of News' view that more than sufficient cross-media plurality would remain post-Transaction in any event, the concerns identified by Ofcom could not arise if Sky News was maintained as a distinct media enterprise as per the situation pre-Transaction.

1.9 Without prejudice to News' views on the outcome of a properly conducted media plurality analysis, in order to forestall any potential concerns which have been identified by Ofcom and avoid a CC reference which would create a serious risk to the successful completion of the Transaction, News is prepared to offer the UIL described below for the purpose of remedying, mitigating or preventing the potential effects of the Transaction which are perceived to be adverse to the relevant PIC.

1.10 This UIL is a structural solution which ensures the continued existence of Sky News as a distinct media enterprise and an independent editorial voice and preserves the pre-Transaction status quo, therefore negating any possible need for further regulatory review by the CC.

2. UIL Proposal - structural solution which will maintain the status quo with respect to Sky News

2.1 News is prepared to offer a structural commitment that Sky News will be spun off as an independent UK public limited company (**Newco**), with its shares publicly traded. Shares in Newco would be distributed to the existing shareholders of Sky in the same proportions as their existing shareholding (so that News will retain the same shareholding in Newco as it currently has in Sky, i.e. 39.1%, following completion).

2.2 News envisages that the structural solution will involve the following elements:

(i) Sky will form a new public limited company incorporated under the laws of England and Wales as a subsidiary of Sky to which the business of Sky News (including its employees) will be transferred in exchange for shares in Newco. The transfer will extend to all the activities of Sky News, including the provision of wholesale news inputs to third party media enterprises.

(ii) Shares in Newco will be spun-off to existing shareholders of Sky (including News which will remain a shareholder) and will be publicly traded.

(iii) Sky will enter into a long-term carriage agreement with Newco under which Sky will pay a carriage fee to Newco for the provision of its news services to Sky for distribution to end users, thereby providing Newco with a significant and committed long-term revenue stream.

(iv) Sky will license to Newco the "Sky News" brand (subject to payment of a royalty and standard terms and conditions).

(v) Ongoing agreements for support services between Sky and Newco (including in relation to access to facilities, premises and other assets owned by Sky to the extent required by Newco) will be dealt with on an arms'-length basis. Sky will also provide advertising sales representation for Newco on agreed terms.

(vi) Newco will be adequately financed by virtue of Sky News being demerged [✂] and via the long-term carriage agreement with Sky, together with other revenue streams, including existing revenues from activities such as the sale of advertising space, licensing and international distribution.

(vii) The corporate governance structure of Newco will be established to substantially replicate the effects of the existing corporate governance structure of Sky. In particular:

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the foreseeable future). Consequently, these issues are irrelevant to the decision-making process and should be ignored by the Secretary of State.

(A) News/Sky will be subject to a voting limitation of 37.19% of the total votes of Newco on the same terms as currently apply in relation to Sky.

(B) A majority of the board of Newco will comprise non-executive Directors determined by the board to be independent.

(C) Material transactions between Newco and News/Sky will require the approval of Newco's Audit Committee, which will consist exclusively of independent non-executive Directors. In addition Newco's constitutional documents will provide that such transactions 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).

(D) Newco will also adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in Section 1 of the Combined Code (Principles of Good Governance).

(viii) News will procure that the shares of Newco commence trading at or as soon as possible after the closing of the Transaction and, in any event, no later than 9 months from the acquisition of control of Sky by News.

Effect of proposed UIL

2.3 In its summary of the analysis of external plurality Ofcom states that: "*As a result, today* [Sky News] *makes a strong and positive contribution to plurality.* [...] *The proposed transaction would result in Sky ceasing to be a distinct media enterprise from News Corp.*" (paragraph 5.46 of the Report).

2.4 The proposed UIL will ensure that Sky News remains as a distinct media enterprise and independent broadcast voice. This fully addresses all of the concerns identified by Ofcom in its Report and relied upon by Ofcom in recommending to the Secretary of State that he refer the Transaction to the CC.

2.5 News does not agree with Ofcom's conclusions as regards the potential impact of the Transaction on News' level of influence over Sky News, for the reasons set out in the News Submission. However, it is notable that Ofcom takes the view that, in practice, News' influence over Sky News is currently limited by the presence of independent shareholders and directors. These limitations will persist under the proposed UIL. At paragraph 1.16 of its Report Ofcom states that "*the proposed acquisition would give it a 100% ownership of shares in Sky so that Sky would become a wholly owned subsidiary of News Corp. Currently, News Corp's stake in Sky, while representing material influence over Sky, does not enable News Corp to pass general and special resolutions alone given the presence of other shareholders and independent directors.*"

2.6 News' proposed structural solution will maintain the editorial independence of Sky News and the Transaction will therefore have no effect on the plurality of persons with control of media enterprises serving audiences in the UK.

2.7 Newco will be subject to the Takeover Code such that, as is currently the case for Sky, any further acquisition of shares by News in Newco would trigger a mandatory offer for the shares and such an offer would be subject to the same regulatory approvals which apply to the Transaction.

2.8 Without prejudice to News' submission as to its view on the effect of the Transaction on the relevant PIC, the proposed UIL will therefore address, *ab initio*, the key change brought about by the Transaction which is perceived by Ofcom to give rise to concerns about potential effects adverse to the public interest.

3. Conclusions

3.1 For the reasons summarised in the News Submission, News believes that (i) the Transaction will not lead to there being insufficient plurality in media voices serving any relevant audience in the UK; and (ii) that the Secretary of State should decide that the Transaction does not operate against the relevant PIC identified in the Intervention Notice without a reference to the CC.

3.2 Without prejudice to this view, News has submitted a comprehensive UIL which will ensure that the Transaction has no adverse effect on the independence of Sky News, or on the sufficiency of plurality of news provision in the UK thereby maintaining the status quo and removing any potential public interest concern identified by Ofcom as justifying a reference of the Transaction to the CC.

3.3 In these circumstances it is clear that no public interest would be served by a further lengthy investigation by the CC which would prejudice the chances of successful completion of the Transaction.

3.4 No issue of substance has been identified by Ofcom in its Report which would not be addressed by the proposed UIL. Given that the remedy being offered by News removes any doubts as to the continued sufficiency of media plurality in the UK, the only reasonable decision at this stage would be for the Secretary of State to accept the UIL being offered by News.

Allen & Overy LLP on behalf of **News Corporation**

18 January 2011

DRAFT: 24 January 2011

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 will be distributed to the shareholders of Sky in the same proportions as their shareholdings in Sky.

2.2 News will 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 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;

(iii) the putting in place of arrangements for the public trading of Newco shares;

(iv) the establishment of the corporate governance arrangements set out in section 3 below;

(v) the transfer of the business of Sky News (as set out in section 4 below) into Newco in exchange for shares in Newco; and

(vi) the entering into of the agreements between Sky and Newco set out in sections 4.3, 4.5 and section 5 below.

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 the same terms as currently apply in relation to Sky;

(ii) a majority of the board of Newco shall comprise non-executive directors determined by that board to be independent;

(iii) material transactions between Newco and News or Sky shall require the approval of Newco's audit committee, which shall consist exclusively of independent non-executive directors. In addition Newco's constitutional documents shall provide that such transactions 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); and

(iv) Newco shall also adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in Section 1 of the UK Corporate Governance Code.

4. SKY NEWS BUSINESS TO BE HELD WITHIN NEWCO

4.1 News will 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, production, online and multimedia staff and Sky News international 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 Without prejudice to the generality of 4.1, and subject to obtaining the necessary third party consents, News will also use all reasonable endeavours to procure that there shall 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 Freeview;

(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.

4.3 In addition News will 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.

4.4 News will be deemed to have complied with the obligation at 4.3 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) 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"; and

(iv) (subject to EPG regulation and any FRND changes to Sky's EPG listing policy) 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.

4.5 News will 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.

4.6 News will be deemed to have complied with the obligation at 4.5 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; and

(iii) 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.

5. OPERATIONAL AGREEMENTS BETWEEN SKY AND NEWCO

5.1 News will 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; and

(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).

6. COMPLIANCE

6.1 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.

6.2 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.

6.3 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 shall comply with these undertakings as if it had given them. Post the Closing Date, Sky shall be treated as an Affiliate of News for the purposes of this paragraph.

7. PROVISION OF INFORMATION

7.1 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.

8. INTERPRETATION

8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

8.2 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.

8.3 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.

8.4 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 4.5 above;

"**business**" has the meaning given by section 129(1) and (3) of the Act;

"**Carriage Agreement**" has the meaning set out in 4.3 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;

"**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;

"**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;

"**Newco**" means the public limited company into which the business of Sky News will be transferred and which will continue to operate that business, as described at 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.

Department for Culture, Media and Sport
Rt Hon Jeremy Hunt MP
Secretary of State

2-4 Cockspur Street
London SW1Y 5DH
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T
F

dcms
department for **culture, media and sport**

CMS 164661/DC

Ed Richards
Chief Executive
Ofcom
Riverside House
2a Southwark Bridge Road
LONDON
SE1 9HA

27January 2011

Dear Ed,

NEWS CORP/BSKYB PROPOSED MERGER: NEXT STEPS

I announced on Tuesday that I intend to refer the above merger to the Competition Commission but, before doing so, will consider undertakings in lieu offered by News Corporation which could have the potential to prevent or otherwise mitigate the potential threats to media plurality identified in the Ofcom report.

In accordance with section 106B of the Enterprise Act, I am therefore writing to ask you for advice on the extent to which you think that the enclosed News Corp undertakings in lieu (UILs) address the potential impact on media plurality identified in Ofcom's report. I would be grateful if you could provide me with your assessment within two weeks of receipt of this letter.

I would like your advice to focus on whether the UILs address the potential impact on media plurality that you raised in your report delivered on 31 December 2010. Separately I have written to the OFT under Section 93 of the Enterprise Act asking them for their views on the practical and financial viability of the proposals set out in the UILs. I have also asked them to consider the UILs and consult on my behalf with News Corporation. I would anticipate that should they require Ofcom's assistance with this you will be able to help.

Department for Culture, Media and Sport

My officials are obviously on hand to provide any clarification or assistance you may need throughout this process.

Yours ever

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

Department for Culture, Media and Sport
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27 January 2011

Dear John,

NEWS CORP/BSKYB PROPOSED MERGER: NEXT STEPS

I announced on Tuesday that I intend to refer the above merger to the Competition Commission but, before doing so, will consider undertakings in lieu (UILs) offered by News Corporation which could have the potential to prevent or otherwise mitigate the potential threats to media plurality identified in the Ofcom report.

In accordance with Section 93 of the Enterprise Act, I am therefore writing to ask you to consult with both merging parties with a view to discovering whether those undertakings are in your view practically and financially viable, so that they would be acceptable to me. I would like you to let me know your view on this within 2 weeks, but I suggest my officials meet with you or your officials at the earliest opportunity to discuss an appropriate timetable.

I have also written today to Ofcom to ask them for their advice on the potential impact of the UILs on the concerns they raised about media plurality in their report delivered to me on 31 December 2010. I have also asked that Ofcom provide any assistance you might require in considering the UILs.

I enclose a confidential version of Ofcom's report in order that you are aware of the issues which this merger raises, together with a draft of the undertakings offered by News Corporation. Whilst Ofcom are considering plurality issues, I would be grateful if you could consider if there are any practical issues which could undermine the operation of the undertakings and whether they would be effective over the medium

Department for Culture, Media and Sport

and long term. I understand that, of necessity, this will be a somewhat iterative process between the OFT, Ofcom, and my officials, as well as involving consultation with the merging parties who may agree to vary their undertakings to meet any specific concerns you raise.

Yours ever

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

CONFIDENTIAL

Ofcom

11 February 2011

Jeremy Hunt
Secretary of State
DCMS
2-4 Cockspur Street
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Colette Bowe
Chairman

Ed Richards
Chief Executive

Dear Jeremy,

News Corporation/BSkyB proposed merger: advice on proposed undertakings in lieu

We are writing today as requested to advise you in relation to News Corporation's proposed undertakings in lieu ("the proposed UILs"). We are aware that the OFT is also writing to you today with their advice on whether the proposed UILs would be practically and financially viable and effective in the short to medium and long term, in relation to which we have, as requested, assisted in light of our sectoral expertise.

You asked Ofcom to advise you, in accordance with section 106B of the Enterprise Act 2002, on the extent to which we think the proposed UILs address the potential impact on media plurality identified in Ofcom's report on the proposed merger between News Corporation and BSkyB dated 31 December 2010.

We focused on Sky news and current affairs services ("Sky News"), which we saw as essential to plurality. Our concern, in sum, was that the proposed transaction would result in Sky ceasing to be a distinct media enterprise from News Corporation, which would result in an increase in News Corporation's ability to influence public opinion (through Sky News), as measured by share of news and current affairs consumption by a UK-wide cross media audience. Taken in combination, this indicated a change in the concentration of media ownership which would be likely to affect sufficient plurality.[1]

[1] Paragraphs 5.46 and 5.52 of the report.

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The proposed UILs[2]

1. The proposed UILs, in essence, provide for Sky News to be spun off into a new company ("Newco") owned 39.14% by the News Corporation/Sky merged entity. The other shareholdings in Newco and its governance arrangements would reflect those of Sky today. Assets used only by Sky News would be transferred to Newco, while arrangements would be made to allow Newco the continued use of other shared assets, in particular the Sky brand. The News Corporation/Sky merged entity would enter into a carriage agreement with Newco for the continued supply of the Sky News channel over News Corporation/Sky's capacity for 10 years and thereby provide Newco with a revenue stream.

2. This would essentially replicate the current shareholding and governance arrangements of Sky. But the nature of Newco and its relationship with News Corporation would not be the same as that between Sky and News Corporation today and is indeed fundamentally different.

3. We have had two weeks in which to report to the Secretary of State. In the time available, we have put in writing to News Corporation our views on their proposed UILs, we have met with them to discuss these and have received today in writing from News Corporation amendments that it is willing to offer to its proposed UILs. The following assessment sets out our views of News Corporation's proposed UILs taking account of its further proposals to us.

Assessment

4. We have seen a draft of the OFT's report to you in relation to the financial and practical viability of the proposed UILs. In relation to the matters addressed by the OFT on financial and practical viability, we have no concerns over and above those set out by it. We note that the issues raised by the OFT are relevant to our plurality concerns and would need to be satisfactorily addressed in any final UILs.

5. We see the proposed UILs as a significant step by News Corporation towards addressing the potential impact on plurality we identified in our report. We take this view mainly because the combination of the carriage agreement and the brand licensing agreement make explicit the value that News Corporation and Sky place on Sky News and represent a significant commitment to the continuation of the Sky News operations for a period of 10 years. In addition, the Newco business plan appears to provide reasonable certainty over the viability of the spun-off entity against future market risks.

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[2] See attachment to letter from Jeremy Hunt to Ofcom dated 27 January 2011.

6. However, whilst the proposed undertakings reproduce the shareholding and governance structure of Sky, the context is unavoidably very different. Newco would not be like Sky. Today, Sky is a large, financially independent company with a range of products and services offered direct to consumers and Sky News is a relatively small part of its business. By comparison, Newco would be a relatively small company, with (at least to begin with) a small range of products – Sky News would be its sole product. Most importantly, it would be commercially dependent on its relationship with the merged News Corporation/Sky entity for about 85% of its revenues and 25% of its costs. This fundamental commercial dependency is inherently created by the spin-off process, and therefore inevitable in this context.

7. Therefore, in our view, to address our concerns about the impact on plurality, the following cumulative package of governance matters are needed. In outline:

   - The Board of Newco should consist of a majority of independent directors, "independent directors" being directors who have no other News Corporation or News Corporation associated interest;
   - The Board of Newco, including the independent non executive directors, should have a combination of both senior editorial and business experience/expertise;
   - The Chairman of Newco should be an independent non executive;
   - There should be a sub-committee of the Board of Newco to oversee editorial independence and integrity of Newco's services ("the Board Editorial Committee").

Independent non-executive directors

8. The proposed UILs provide that the Board of Newco would comprise a majority of independent non-executive directors (not including the Chairman), complying with the UK Corporate Governance Code (the Code)[3]. We believe this is a positive commitment to support the independence of Newco.

9. However, we consider that it is essential that these directors are truly independent from any potential News Corporation conflict of interest. Under the UK Corporate Governance Code, a board identifies each non-executive director it considers to be independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgment. Under the Code, a board may determine that a director is independent (stating its reasons) notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

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[3] UK Corporate Governance Code, B.1.1

- has been an employee of the company or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors
- through involvement in other companies or bodies; represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.

10. In our view, in order to address our plurality concerns, a director should not be considered independent if there are any such relationships or circumstances in existence.

11. By letter on 11 February 2011, News Corporation informed us that it is willing to amend its proposed UILs also to undertake that a definition of "independent director" would be enshrined in Newco's constitutional documents, and that definition would exclude the circumstances and relationships set out above.

12. There would be a need to embed this in the constitutional documents, and for News Corporation to undertake to vote against any proposed changes to them.

Expertise

13. The proposed UILs gave a general undertaking to adhere to the obligation imposed by the Listing Rules as regards compliance with the principles set out in Section 1 of the UK Corporate Governance Code.

14. In our view, to address our concerns about the impact on plurality, the Board of Newco, including the independent non executive directors, should be required to have a combination of both senior editorial and business experience/expertise.

15. By letter on 11 February 2011, News Corporation informed us that it is willing to amend the proposed UILs also to undertake:

    - That the requirement in provision B.1 of the Code (that "the Board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively") be enshrined in Newco's constitutional documents; and

- That at least one independent member would have editorial and/or journalistic experience.

16. There would be a need to embed this in the constitutional documents, and for News Corporation to undertake to vote against any proposed changes.

Independent Chairman

17. In our view, to address our concerns about the impact on plurality, in addition to a majority of independent non-executives, we believe the Board of Newco would need to be independently chaired, as clearly recommended by the Corporate Governance Code[4]. Such independence should be determined on the same basis as for other non-executives outlined above.

18. By letter on 11 February 2011, News Corporation has informed us that it is not willing to undertake that the Chairman would be independent. We do not understand the basis for this refusal, particularly since the clear recommendation of the Corporate Governance Code is that the chairman should, on appointment, meet the independence criteria set out in the Code, which News Corporation has agreed to on the stricter basis set out above, to ensure the independence of non-executive directors.

19. Without such an undertaking, it would be open to the Newco Board to appoint a Chairman who is affiliated with News Corporation. Given the nature of Newco and its relationship with News Corporation as set out above, we consider this would undermine the effectiveness of the proposed UILs in meeting our plurality concerns and the credibility of the undertakings.

Editorial committee of the Board

20. In order to meet our concerns on plurality, we believe that there should be a transparent mechanism in place to ensure editorial integrity and independence of Sky News is at the heart of the Newco Board's interests. We proposed to News Corporation that an editorial committee of the Board be established as follows:

    - Members of the Board Editorial Committee to contain a majority of independent non executive board members, one of whom is the Chairman of the Board Editorial Committee. We would expect the Chairman to have senior editorial experience and expertise.

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[4] UK Corporate Governance Code A.3.1 - The chairman should on appointment meet the independence criteria set out in B.1.1

- We would expect the terms of reference for the Board Editorial Committee to include:
  - the editorial independence and integrity of Sky News
  - the hiring, firing or replacement of the Sky News Editor and all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal)
  - any changes to the authority, reporting relationship and consultation rights of the Sky News Editor.

21. News Corporation was not willing to agree to this. However, by letter on 11 February 2011, News Corporation informed us that it is willing to amend the proposed UILs to undertake that:

    - Newco's constitutional documents explicitly provide that Sky News TV service will abide by the principle of editorial independence and integrity in news reporting and that it will comply with the Broadcasting Code;
    - The hiring and firing of the head of Sky News (i.e. the most senior editorial position of Sky News) would have to be approved by Newco's Board, (which would comprise a majority of independent directors);
    - Newco would establish a Corporate Governance and Nominations Committee. This would operate under terms substantially similar to those of Sky's current Corporate Governance and Nominations Committee. It would comprise a majority of independent members, including the independent member with editorial and/or journalistic experience. It would be chaired by an independent board member. It would be specifically entrusted with oversight of compliance with both Newco's corporate governance provisions (as provided for under the UIL) and Newco's constitutional provisions relating to the principle of editorial independence and integrity in news reporting, and compliance with the Broadcasting Code.

22. We believe it is critical to the effectiveness of the undertakings in addressing our plurality concerns, that editorial issues are put at the heart of the Board's function, but note this could be achieved in a number of ways. The terms now proposed by News Corporation are a promising basis from which to work. There would be a need to embed provisions relating to the constitutional documents, and for News Corporation to undertake to vote against any proposed changes to them. However, we note that the terms of reference of Sky's current Corporate Governance and Nominations Committee require the committee's recommendations to the Board to be made in consultation with the Chairman [of the Board], which means that, absent an independent Chairman, we would continue to have concerns.

Duration

23. We note that the OFT's assessment of the practical and financial viability of the proposed UILs is that they are likely to be effective over the short to medium term (no longer than 10 years) and are unlikely to be effective over the long term.

24. We agree that the proposed UILs are not a permanent solution and that their effectiveness may start to diminish in the run up to the end of the 10 year period. As advised to the OFT, we consider that a carriage agreement of a 10-year term in the context of industry dynamics in this sector is long term. This is because we consider there is likely to be significant evolution of the market and consumers' use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time.

Advice

25. In the circumstances, we advise that the proposed UILs as currently drafted do not address the potential impact on media plurality identified in Ofcom's report.

26. However, were it possible to resolve the question of the independence of the Chairman, then together with the amendments accepted by News Corporation, the proposed UILs may represent a way forward in principle.

27. Depending on your decision, we consider (as, we note, does the OFT), that further negotiation with News Corporation may be necessary on the precise terms of the UILs offered by them. It is important to note that the financial and practical viability of the proposed UILs and their effectiveness in addressing our plurality concerns, will depend on the detail of the arrangements, including on specific contract terms and conditions between Newco and Sky/News Corporation.

28. In addition, in the time available, Ofcom has had discussions with News Corporation and received from News Corporation in writing amendments which News Corporation is willing to make to the original text of the proposed UILs. Given the time available, News Corporation has not provided Ofcom with a revised version of the proposed UILs. We therefore think that if the Secretary of State is minded to accept revised UILs, it would be sensible that any final draft be approved by Ofcom and the OFT.

29. In the context of the short to medium term effectiveness of the proposed UILs, as you will recall from our report, we recommend that the Government consider undertaking a wider review of the statutory framework to ensure plurality in the public interest. Specifically, we said that there may be value in providing for intervention where plurality concerns arise in the absence of a corporate transaction involving media enterprises and which are not safeguarded by the current media ownership rules. If the Government followed this recommendation, such a review could consider and provide

for the longer term position as appropriate and this would provide additional assurance in relation to the position beyond the 10 year term of the proposed UILs

Yours sincerely

Colette Bowe   Ed Richards

cc. Clive Maxwell, Executive Director, OFT

OFFICE OF FAIR TRADING

A report to the Secretary of State for Culture, Olympics, Media and Sport in response to the undertakings in lieu offered by News Corporation pursuant to Schedule 2 paragraph 3 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 concerning the anticipated acquisition by News Corporation of British Sky Broadcasting Group plc

A report pursuant to Section 93 of the Enterprise Act 2002

11 February 2011

NON-CONFIDENTIAL VERSION

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The Secretary of State has excluded from this published version of the OFT's report information which he considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

1. Executive summary and conclusions

Introduction

1.1. On 25 January 2011, the Secretary of State for Culture, Olympics Media and Sport (the Secretary of State) announced that he was minded to refer the proposed acquisition by News Corporation (News) of shares in British Sky Broadcasting Group plc (Sky) (together, the parties) that it does not already own to the Competition Commission (CC) for a detailed investigation.

1.2. The Secretary of State indicated that he is willing to consider undertakings in lieu (UIL) offered by News which have the potential to prevent or otherwise mitigate the media plurality concerns identified in the report sent to the Secretary of State by Ofcom on 31 December 2010.

1.3. The OFT has been asked to consult with the parties with a view to discovering whether in its view those UIL are practically and financially viable; and to consider if there are any practical issues which could undermine the operation of the UIL and whether they would be effective over the medium and long term.

1.4. The OFT has had two weeks in which to report to the Secretary of State. In the limited time available, the OFT has held meetings with News, Sky and Ofcom (in its position as sectoral regulator), and has received responses from News to a number of requests for information. The OFT has not been requested to consult with third parties and notes that this would not have been feasible in the timeframe. However, the OFT notes that third parties will have the opportunity to be consulted as provided for by statute[1] if the Secretary of State is minded to accept the UIL.

1.5. Depending on the decision of the Secretary of State, the OFT considers that further negotiation with News (with assistance from Ofcom) may be necessary on the precise terms of the UIL offered by News; however some progress has been made with News in these two weeks in terms of improving the practical and financial

[1] Schedule 10 of the Enterprise Act 2002.

viability of those UIL from the text originally proposed to the Secretary of State by News.

The clear-cut standard for UIL

1.6. UIL are typically regarded as appropriate where the remedies proposed are **clear-cut** and are **capable of ready implementation**.[2] The applicable principles are set out in the OFT's guidance.[3]

1.7. The OFT has carried out its analysis of the proposed UIL in this case by reference to the clear-cut standard. The OFT is mindful, however, that:

- the Secretary of State may consider it appropriate to adopt a different standard because he is acting under public interest considerations and the OFT's guidance is designed to deal with competition-related matters; moreover, the clear-cut standard is a policy position adopted by the OFT and other competition agencies;
- even taking into account the clear-cut standard, the OFT's preference for structural divestment solutions[4] in relation to UIL does not preclude the consideration of remedies other than divestment in appropriate cases. Moreover, the UIL offered by News bear some resemblance to a 'carve-out' remedy, which the OFT would generally regard as structural in nature, provided the relevant business or assets are capable of being separated from the parent; and
- whilst behavioural undertakings (such as price caps) are not generally accepted at the first phase of a merger investigation in lieu of a reference to the CC in competition cases, this does not preclude behavioural undertakings being provided in <u>support</u> of a structural solution provided that the overall remedy meets the clear-cut standard.

[2] OFT Mergers - Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122) (the Exceptions and UIL guidance), paragraph 5.7.
[3] Exceptions and UIL guidance, paragraph 5.39.
[4] [✂], a sale of the business may be disproportionate if the proposed UIL meets the concerns raised in Ofcom's report and satisfies the clear-cut standard.

1.8. Any UIL must be assessed on a case by case basis. The basic principles for assessment are that:

- there must not be material doubts about the overall effectiveness of the remedy in solving the problem identified; and
- in practical terms, the remedy should not be of such magnitude and/or complexity that its implementation would require unworkable resources at first phase.[5]

1.9. In undertaking its assessment of the practical and financial viability of the UIL, the OFT focuses in this report on whether the UIL offered is capable of ready implementation and also, as instructed by the Secretary of State, whether the UIL would be effective over the medium and long term from the standpoint of practical and financial viability only. Ofcom will separately advise on the effectiveness of the UIL to meet media plurality concerns.

Overall assessment of the proposed UIL

1.10. The proposed UIL involve the establishment of Newco as a distinct owner of Sky News. The financial viability of Newco – and therefore the continued operation of Sky News – relies on the existence of a proposed carriage agreement between News and Newco, without which Newco would be significantly loss-making. News proposes that the term of the carriage agreement between News and Newco shall be 10 years. There is no provision for renewal of the carriage agreement at the end of the term.

1.11. In terms of the clear-cut standard, News argued that the spin-off of Sky News into Newco is a structural remedy that will lead to the creation of a stable, well-resourced, viable entity over the long term. It considers that its/Sky's ongoing incentive to carry the Sky News channel and thus to purchase it from Newco is an important feature that had informed the design of the UIL and should enable the Secretary of State to have confidence in the success of the UIL. Indeed, News noted that Sky had chosen to start a 24 hour news channel and had invested in that service since Sky News was launched in 1989. In essence, unlike in a normal divestiture

[5] Exceptions and UIL guidance, paragraph 5.8.

remedy, where the merging parties may have an interest in the (competitor) divested business failing, News submits that News/Sky would have an interest in the success of Newco going forward.

1.12. The OFT accepts that the UIL involve certain structural elements supported by behavioural commitments, and considers that, in practice, the proposed spin-off of Sky News is capable of ready implementation, albeit with further detailed issues to be resolved, including those set out below.

1.13. The OFT has identified certain risks which may undermine the practical and financial viability of the UIL. These include the following:

- the successful operation of Newco relies to some extent on the incentives of News/Sky to continue to carry and fund a 24 hour news channel. There is a strong likelihood that the commercial incentives lie with the continued operation of Newco, but it remains plausible that such incentives may change over time;
- uncertainty about the prospects for renewal of the carriage agreement on equivalent terms may begin to affect Newco some years before its term date, [✂]; and
- Newco's prospects post-termination of the carriage agreement are not clear.

1.14. The OFT advises that set against these risks are:

- the commercial incentive for News/Sky to continue paying for the Sky News channel (reinforced by the contractual rights afforded to Newco under the carriage agreement and brand licensing agreement);
- the protection and transparency afforded by being [publicly traded] [✂];
- the fact that the brand licensing agreement lasts for up to 14 years, which may place pressure on News/Sky to renew the carriage agreement upon termination for a further four years; and

- the ability of Newco to diversify its product offering or to continue with a distinctive news channel that ensures that Sky is willing to re-commit to the carriage agreement at the end of 10 years (or earlier).

1.15. In assessing these risks, the OFT has been asked to advise the Secretary of State on whether there are practical issues which could undermine the effective operation of the UIL, and whether the UIL would be viable over the medium and long term. The OFT's assessment, based on the information provided to it by News, indicates that the key agreements (the carriage agreement and the brand licensing agreement) would appear to underpin the short-to-medium term (no longer than 10 years) viability of Newco and the UIL. The OFT, however, considers that the finite duration of the carriage agreement, in particular, entails a material risk to the long term viability of Newco and hence the UIL.

1.16. The OFT notes that each of News, Sky and Ofcom consider that a carriage agreement of this length and duration, in the context of the industry dynamics of the media sector, is "long-term". The OFT accepts that the carriage agreement may be longer than the industry norm. However, the OFT considers that, in the context of ensuring the 'long-term' viability of Newco and the UIL, it is important to consider whether Newco can continue as a stand-alone entity on a permanent or lasting basis. It is clear that, absent the revenue stream provided by the carriage agreement [✂], Newco is effectively loss-making. As a consequence, absent renewal on a similar basis, an alternative revenue stream, or being acquired, there is a real risk that Newco may not survive as envisaged by the UIL beyond the term of the carriage agreement. This risk may also, as discussed above, affect Newco's prospects before that point. The relevance of these risks ultimately depends on the time horizon which the Secretary of State considers relevant to ensure the effectiveness of the UIL.

1.17. The OFT has not been able to identify with News any improvements to the UIL that overcome the essential structural limitation of the UIL, namely, the finite duration of the carriage agreement.

1.18. The OFT advises the Secretary of State that:

- if News enter into certain additional undertakings (details of which are set out in paragraph 1.20 below), the UIL are likely to be effective in the short and medium term (that is, no more than 10 years); and

- even if, however, News enters into such additional undertakings, the UIL are unlikely to be effective over the long term; the finite duration of the carriage agreement is a practical and financial issue which poses a significant risk to the operation of the UIL beyond 10 years (and possibly earlier).

1.19. In seeking to assess this advice, the Secretary of State may want to consider whether the UIL, supplemented by the additional undertakings mentioned above, which the OFT considers likely to be effective in the short-to-medium term, are of sufficient duration to meet the media plurality concerns identified by Ofcom or are effective in relation to them.

1.20. The additional undertakings referred to in paragraph 1.18 above are as follows:

- **interim protection** – interim protection for the business to be divested is a standard feature of divestment remedies in competition cases, and will normally be included in OFT UIL. News has agreed to the inclusion within the UIL in this case of commitments from News regarding the preservation and continued operation of Sky News pending its spin-off. These will provide an assurance that the Sky News business to be spun-off will not be materially different to the Sky News business today;

- **non reacquisition commitment** – a commitment not to reacquire the business to be divested without prior OFT approval is a standard feature in OFT UIL; News has proposed to provide the Secretary of State with a form of non-reacquisition commitment, subject to two carve-outs: (a) a sunset provision which means that the clause would no longer apply at the end of 10 years; and (b) a carve-out in the event that a third party bid is launched for Newco. In the particular circumstances of this case, and subject to the more general points about the finite nature of the carriage agreement, the related long-term risks and the extent to which the Secretary of State considers the duration of the carriage agreement sufficiently 'long-term', the OFT believes the 10 year limitation (that is, point (a)) to be acceptable, but would recommend against the carve-out in (b) given that this would still risk the frustration of the purposes of the UIL;

- **prior review of key agreements** – the success of Newco depends significantly on at least two key agreements – the carriage agreement and the brand licensing agreement; News has agreed that the form of both agreements should be subject to approval by the Secretary of State before he accepts the UIL; the OFT considers that there may be other key contracts which should require prior approval by the Secretary of State should he be minded to accept the UIL; the OFT would envisage that both the OFT and Ofcom (potentially supported by an independent expert funded by News) would have a role in the approval process of these agreements;

- **inclusion of an arbitration/dispute resolution mechanism** – given the importance of the key agreements between News and Newco going forward, News has agreed to the insertion of an arbitration or dispute resolution mechanism to ensure that any contractual disputes in relation to these agreements are resolved promptly, efficiently and without undue cost; more precise details of how such an arrangement would function have not been determined in the time available;

- **restrictions on termination of the key agreements** – the success of Newco depends significantly on at least two key agreements – the carriage agreement and the brand licensing agreement; these agreements are terminable only in the event of 'material breach'; in order to protect Newco against the risk of an unjustified termination by News, (and in light of concerns expressed by the OFT about the potential inequality in the positions of News and Newco and their respective resources in the context of a possible contractual dispute) News has offered a commitment in the form of a undertaking not to terminate either agreement prior to a formal and final determination having been made under that dispute resolution mechanism applicable under the relevant agreement (that is, a finding that Newco has committed a material breach of the carriage agreement or brand license agreement); the OFT advises that it believes that this proposal is acceptable in order to reduce the risk of an unjustified termination of the key agreements by News that could jeopardise Newco; and

- **other obligations** - the OFT sets out in sections 7 to 12 of this report further detail on each of the points raised above, together with further undertakings and improvements to the UIL.

1.21. The OFT notes that further review, negotiation and consultation on the UIL may be necessary as part of this process. It also notes that News has, to date, signalled its unwillingness to agree to one of the above additional undertakings. Given the limited time available, News has not provided the OFT with a revised version of the UIL. As a matter of prudence, the OFT considers that any finalised draft of the UIL for acceptance by the Secretary of State should be submitted by News to the OFT and Ofcom for further advice.

1.22. On the basis that the Secretary of State were minded to accept the UIL in an amended form, the OFT advises that it would be appropriate for the Secretary of State to test further the viability and robustness of the commitments offered during the statutory public consultation process.

1.23. The OFT has given such advice as it considers appropriate, having regard to the limited time period in which to consider the UIL and consult with News.

2. Transaction

2.1. The proposed transaction involves the acquisition of sole control by News over Sky through an offer for the remaining 60.86 percent shareholding in Sky not already owned by News.

3. Jurisdiction

3.1. The Secretary of State for Business, Innovation and Skills issued a European Intervention Notice on 4 November 2010 (the Intervention Notice) as permitted under Article 21(4) of the EC

Merger Regulation[6] to protect the UK's legitimate interest in media plurality, and pursuant to section 67(2) of the Enterprise Act 2002 (the Act) and the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (the Order).[7]

3.2. The Intervention Notice referred to the public interest consideration set out in section 58 of the Act to ensure the sufficiency of plurality of persons with control of media enterprises in the UK. In this regard, the Secretary of State for Business, Innovation and Skills requested that Ofcom provide its recommendation and advice on the specified public interest consideration in deciding whether to refer the case to the CC for detailed investigation.[8]

3.3. On 31 December 2010, Ofcom issued its report, as provided for under Article 4A of the Order, which concluded that in its reasonable belief, the proposed acquisition may be expected to operate against the public interest on the basis that there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences.

3.4. In deciding whether to refer the transaction to the CC under Article 5 of the Order, the Secretary of State has the discretion to accept undertakings in lieu of making such a reference (UIL) from the parties, as permitted under paragraph 3 of Schedule 2 of the Order.

3.5. In a statement issued on 25 January 2011, the Secretary of State said he was minded to refer the merger to the CC but would first consider, with the involvement and advice of the OFT and Ofcom, the UIL offered by News and whether they would have '*the potential to prevent or otherwise mitigate the potential threats to media plurality identified in the Ofcom report.*'[9]

[6] Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the Merger Regulation).
[7] The transaction falls within the sole jurisdiction of the European Commission to assess the competitive effects of the merger in the European Economic Area or a substantial part of it. On 21 December 2010, the European Commission cleared unconditionally the proposed transaction.
[8] As also required by the Intervention Notice, the OFT provided advice to the Secretary of State, pursuant to Article 4 of the Order, confirming that, in its view, the Secretary of State has jurisdiction and is able to exercise the power to make a reference to the CC.
[9] Statement from Culture Secretary Jeremy Hunt of 25 January 2011.

4. Scope of OFT advice

4.1. The Secretary of State has asked the OFT, pursuant to section 93 of the Act, to give its view on whether he should accept the UIL offered by News.

4.2. By letter to the OFT of 27 January 2011, the Secretary of State requested that, within two weeks, the OFT determine whether the UIL would, in its view, be practically and financially viable, so as to be acceptable to the Secretary of State. In particular, the OFT has been asked to consider if there are any practical issues which would undermine the operation of the UIL and whether they would be effective over the medium and long term. The Secretary of State requested that Ofcom provide any assistance required by the OFT in considering the UIL.

4.3. The Secretary of State has not asked the OFT to consult third parties. In any event, if he were minded to accept the UIL, third parties would have this opportunity as provided by the consultation provision in Schedule 10 of the Act.

4.4. In this report, the OFT does not advise on the potential impact of the UIL on the concerns raised by Ofcom regarding media plurality. This is being specifically addressed by Ofcom as a separate piece of advice requested by the Secretary of State pursuant to section 106B of the Act.

4.5. The OFT has received submissions from News and has met with each of the parties. The OFT has also received assistance from Ofcom in its role as sectoral regulator.

5. OFT approach to UIL

5.1. The OFT has carried out its analysis of the proposed UIL in this report by reference to its clear-cut standard. However, the OFT acknowledges that the Secretary of State may consider it appropriate to adopt a different standard in light of his assessment of public interest considerations in this case, whereas the OFT's guidance is designed to deal with competition-related matters.

5.2. In order to accept UIL (or in this case to recommend acceptance by the Secretary of State of proposed UIL), the OFT must typically be confident that all the potential concerns that have been identified by it (in this case, all concerns identified by Ofcom relating to sufficient media plurality) would be resolved by means of the UIL without the need for further investigation.[10] This is necessary since, once the UIL are accepted, the Secretary of State has no further recourse to refer the case to the CC after this point.

5.3. The explanatory note to section 73 of the Act states:

> *'The purpose of accepting undertakings is to allow the OFT (where it is confident about the problem that needs to be addressed and the appropriate solution) to correct the competition problem the merger presents without recourse to a potentially time-consuming and costly investigation. This provision mirrors the existing power...for the Secretary of State to accept undertakings-in-lieu, but with responsibility transferred to the OFT.'*

5.4. UIL are accordingly only appropriate where the remedies proposed to address any concerns raised by the merger are clear-cut and are capable of ready implementation.[11] For these reasons, the OFT typically does not consider that behavioural undertakings will be sufficiently clear-cut to address identified concerns.[12]

5.5. The clear-cut requirement has two dimensions: (1) there must not be material doubts about the overall effectiveness of the remedy; and (2) in practical terms, the remedy should not be of such magnitude and/or complexity that its implementation would require unworkable resources at first phase of a merger investigation.[13] The European Commission adopts a similar approach to remedies accepted at Phase I.[14]

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[10] Exceptions and UIL guidance, paragraph 5.6.
[11] Exceptions and UIL guidance, paragraph 5.7.
[12] Exceptions and UIL guidance, paragraph 5.39.
[13] Exceptions and UIL guidance, paragraph 5.8.
[14] Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (ECO No 802/2004: 'Commitments in phase I can only be accepted where the competition problem is readily identifiable and can be easily remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation.', paragraph 81.

5.6. In the present case, the OFT is concerned with the second part of its clear-cut requirement, since Ofcom will address the effectiveness of the UIL in its separate report to the Secretary of State.

5.7. Whilst behavioural undertakings are not generally accepted at Phase I of a merger investigation in lieu of a reference to the CC in competition cases, this does not preclude such undertakings being offered in support of a structural solution, so long as the overall remedy meets the clear-cut standard. In any event, the UIL are assessed on a case-by-case basis.

5.8. The monitoring of compliance with undertakings in lieu accepted by the Secretary of State under paragraph (3)(2) of Schedule 2 of the Order is the responsibility of the OFT pursuant to section 92 of the Act.[15]

6. Outline of News' proposed UIL

Summary of the proposed UIL

6.1. News proposes to offer to the Secretary of State a commitment involving the following core elements:

- Sky News will be spun off as an independent UK public limited company (that is, Newco), with its shares publicly traded [✂], either at the Closing Date[16] or as soon as reasonably practicable following the Closing Date and, in any event, no later than nine months from the acquisition of control of Sky by News. Shares in Newco will be distributed to existing shareholders of Sky in the same proportions as their existing shareholdings, such that News will retain the same 39.1 percent shareholding in Newco as it currently has in Sky;
- all tangible assets currently used exclusively for the purpose of carrying on the Sky News business, as well as key Sky News editorial staff, and all relevant licences, agreements and other material contracts will be transferred by Sky to Newco;

[15] See Schedule 3, paragraph 1(5)(b) of the Order.
[16] '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.

- Sky will enter into a 10 year carriage agreement with Newco under which Sky will pay a carriage fee to Newco for the provision of its news services to Sky for distribution to end users. Sky will also license the 'Sky News' brand to Newco subject to payment of a royalty, for an initial period of seven years, with automatic renewal for a further seven years, and with the possibility of an extension for three more years;
- if required by Newco, Sky will enter into arms' length agreements for facilities and support services (such as advertising sales representation, lease of premises, broadcast and technical services and other assets owned by Sky); and
- the corporate governance structure of Newco will be established to replicate substantially the effects of the existing corporate structure of Sky such that: (1) News/Sky will be subject to a voting limitation of 37.19 percent of the total votes of Newco; (2) a majority of the board of Newco will comprise non-executive Directors determined by the board to be independent; (3) material transactions between Newco and News/Sky will require approval of Newco's Audit Committee, which will consist exclusively of independent non-executive directors; and (4) Newco will adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in Section 1 of the UK Corporate Governance Code.

[News]' view on the clear-cut nature of the UIL

6.2. [News] submitted that the proposed UIL provide a clear-cut, structural solution which will maintain the existing degree of independence of Sky News. In [its] view, Newco will be established as a separate publicly-traded legal entity with corporate governance arrangements reflecting those of Sky, which can be implemented unilaterally by News based on the UIL.

6.3. [News] differentiated the proposed UIL from those in a normal divestment remedy on the basis that News would be a customer of Newco going forward, rather than a competitor. [News] emphasised that Sky had chosen to start a 24 hour news channel and had invested in that service since Sky News was launched in 1989. Sky News has therefore been a key part of Sky's commercial proposition to customers, and there is no reason to believe that News/Sky would wish to change this in the future.

6.4. News argued that its/Sky's ongoing incentive to carry the Sky News channel and thus to purchase it from Newco is an important feature that had informed the design of the UIL and should enable the Secretary of State to have confidence in the success of the UIL. In essence, unlike in a normal divestiture remedy, where the merging parties may have an interest in the (competitor) divested business failing, News submit that News/Sky would have an interest in the success of Sky News going forward.

6.5. [News] likened the UIL to that of 'an upfront remedy which does not require that a competition authority subsequently approve a suitable purchaser' and noted that 'it is therefore more clear-cut than a number of other structural remedies that are commonly accepted by regulatory authorities.'[17] [News] argued that given their structural nature, the UIL do not require ongoing monitoring as Newco will continue to operate as a distinct, profit-maximising enterprise under the direction and supervision of its board.

[News]' arguments on practical and financial viability

6.6. [News] argued that Newco will be practically and financially viable post-spin off. [It] argued that the UIL have been structured so as to ensure the continuation of Sky News as a distinct enterprise with an independent news voice, thereby addressing the relevant public interest consideration. In [its] view, it is not necessary (as would be the case if competition concerns were at issue) to require that all the links between Sky and Newco be severed; rather, that the current degree of editorial independence is preserved and that Newco is financially viable.

6.7. To address these issues, [News] submitted that by substantially replicating the corporate governance structure currently applied under Sky, Newco will be free to pursue its core news business. In [its] view, the 10-year carriage agreement means that Newco will have a reliable revenue stream for a much longer period than is typical in the media sector. This will allow Newco to independently plan for future investment and expansion based on a quantifiable

[17] News Response to the OFT's questions of 1 February 2011.

and stable cash flow over the medium to long term. Similarly, [News] argued that the grant of a licence to use the 'Sky News' brand will allow Newco to generate significant revenue streams from third parties.

7. **Legal spin-off of Sky News**[18]

7.1. The outline of the arrangements as regards the spin-off of Sky News to Newco has been set out in section 6.1 above.

7.2. In general, the OFT sees no reason why the proposed corporate arrangements in relation to the creation of Newco should not be practical. Partial divestments of businesses are common, and News provided a number of examples of spin-offs of businesses in similar sectors by way of illustration of the regularity of such arrangements.[19]

7.3. The OFT is unable to advise, given the limited time available, on the prospects of success for [an admission to trading] [✂]. When asked whether [an admission to trading] would be likely to be successful, News provided an opinion [✂][20] confirming that [✂]. The OFT has no reason to doubt the contents of this opinion but notes [✂].

7.4. The aspects of the spin-off which required the OFT's particular consideration relate to timing, the absence of any interim protection (which relates to timing), the shareholder base of Newco and the absence of a non-reacquisition commitment by News. The corporate governance of Newco is also a key consideration, which is addressed in the following section.

Timing of spin-off

7.5. News committed to effecting the spin-off of Sky News within nine months from the acquisition of control of Sky by News. [✂].

7.6. [✂].

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[18] Paragraphs 2.1, 2.2 of the UIL.
[19] News response to OFT questions of 1 February. The examples provided by News included: Time Warner's spin-off of AOL and Time Warner Cable, Liberty Media's spin-off of DirectTV, Cablevision Systems Corp's proposals to spin off Rainbow Media. News noted Cable and Wireless also split into two separate companies last year.
[20] Annex 4 of the News response to OFT questions of 1 February.

7.7. [✂].

7.8. The OFT queried why News believed that a nine month period was reasonable in order for Newco to be divested (as envisaged by paragraph 2.1 of the proposed UIL). In particular, the OFT queried whether a shorter time period would be possible.

7.9. News said it considered that there were a number of reasons why the nine month period was reasonable:[21]

- [✂];
- [✂]; and
- [✂].

7.10. News noted that the obligation on it was to effect the spin off 'as soon as reasonably practicable' but believed the nine month backstop was appropriate.

7.11. [✂]. When agreeing and accepting UIL in competition cases, the OFT will determine the appropriate divestment period within which the remedy must be implemented according to the specific circumstances of the case. The OFT would generally seek to ensure that a remedy is implemented within a time period that is significantly shorter than nine months from completion (typically closer to three months). This is generally to ensure that the business(es) being divested do not deteriorate in the meantime. The extent to which interim protection is required during the nine month period is considered in the sub-section below (see paragraphs 7.13ff below).

7.12. Overall, the OFT considers that, in the particular circumstances of this case, the proposed nine month period in paragraph 2.1 of the UIL is not unreasonable.

Absence of interim protection

7.13. The proposed UIL do not include any provision regulating the way in which News, including Sky, would deal with, and exert control over, Sky News following News' acquiring control over Sky and

[21] News response to OFT questions of 1 February.

pending completion of the spin-off arrangements as required by paragraph 2.1 of the UIL.

7.14. Such interim protection is a standard feature of divestment remedies in competition cases, and will normally be included in the UIL in competition cases before the OFT. Its purpose is to protect the position of the assets or business to be divested. In practical form, these obligations normally require the acquiring business to maintain the business to be divested as a going concern with sufficient resources; not make substantive changes to it; preserve its facilities and goodwill; continue the nature, description, range and standard of services supplied by it; maintain its name or brand; not dispose of its assets, other than in the ordinary course of business, not integrate it with the acquirer's competing business; take steps to ensure that key staff are encouraged to remain with the business; and ensure that confidential information relating to the business to be divested is not shared with the acquirer's business.

7.15. News argued that interim protection was not required given that '*ownership/control of Sky News for an interim period of less than a year, pending spin-off of that business, would not eliminate or weaken Sky News as a distinct broadcast voice contributing to media plurality in the UK.*'[22] News further noted that it would have no incentive to inflict damage on the Sky News business given that: (a) it would not be competing with it after the spin-off; and (b) it would be purchasing from it going forward.

7.16. However, in order to assuage the OFT's potential concerns in this respect, News agreed[23] to provide interim protection in relation to the preservation and continued operation of Sky News pending its spin-off in the form of an assurance that the Sky News business to be spun-off will not be materially different to the Sky News business today. Such an assurance would be in similar terms to those typically provided in UIL in competition cases (as described above). The OFT would expect that such protection would include an obligation on News to seek to ensure that at least the Key Sky

[22] News response to OFT questions of 1 February.
[23] News response to OFT questions of 9 February.

News Editorial Staff remained with the Sky News business in the interim period.

7.17. On the basis that News ensures compliance with the interim protection as set out above, the OFT considers that its concerns would be alleviated in this regard.

The shareholder base of Newco (Sky News)

7.18. The UIL provide for the shares in Newco to be spun-off to the current shareholders of Sky in the same proportions as their current shareholding in Sky. Thus News would hold 39.1 per cent of Sky News.

7.19. The OFT considered what would happen to the shareholding in Sky News on its proposed flotation [✂], given that Sky News would be a considerably smaller entity than Sky, [✂] and the business model of Newco would be considerably narrower than that of Sky. Specifically, the OFT considered whether there was any reason why any changes to the shareholder base of Newco (compared to that of Sky at present) could undermine the viability of Sky News going forward.

7.20. News acknowledged that the shareholder base in Sky News was likely to change after admission of Newco's shares to trading. It considered, for example, that UK index tracking funds are very likely to sell their positions as [✂]. This change, and the fact that a reasonably significant proportion of Newco shares would change hands once such shares are publicly traded, would not, News argued, affect Newco's ongoing viability.

7.21. The OFT sees no reason to doubt News' submission in this respect. To the extent that there could be any concern about the change in Sky News' shareholder base, this could, the OFT believes, only likely come about through the fact that Sky News would be a considerably smaller body than Sky is at present. Specifically, the OFT considered whether this could result in Sky News having difficulty raising finance for future capital investment.

7.22. The OFT notes the implication of the inability to raise finance could impair the ability of Newco to respond to technological advances in the way that news is collected (input) or disseminated (output) can involve significant investment. By way of example, Sky informed the OFT that the conversion of Sky News so as to be able to provide output in HD cost in total around £[✂].

7.23. News did not foresee any need for Newco to borrow to finance its activities, but noted that it should be able to do so against the revenue stream provided by the 10 year carriage agreement.

7.24. News also emphasised that, in its view, '*the key question to be addressed by the UIL is the maintenance of Sky News as a distinct and viable broadcast news voice contributing to media plurality, NOT its ability to develop and expand beyond its core news provision business.*'[24]

7.25. Sky informed the OFT that, following conversion to HD, Sky News was well positioned in terms of technological status in terms of its competitors [✂]. However, to the extent that it did wish to fund new development, it could do this either by way of borrowing and by seeking to renegotiate an enhanced carriage fee (for example, a higher carriage fee for 3D channels).

7.26. Having regard to the above, the OFT does not believe that the changed shareholder base of Newco, as compared to Sky at present, provides any reason to believe the viability of Newco would be materially undermined for the foreseeable future.[25]

7.27. The OFT also considered whether there was any risk to the ongoing viability of Newco if Newco were at any future point to cease to be [publicly traded] [✂]. In response to this, News noted[26] that [removal from the market] would not have an impact on [Newco's] commercial operations and that there were alternative methods of trading shares in Newco (for example, over the counter or via a listing in a different market). The OFT has no reason to doubt this explanation [✂]-.

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[24] News response to OFT questions of 1 February 2011.
[25] The OFT notes that Newco would clearly no longer have access to the significant resources of Sky to draw on for future development or innovation. However, the OFT believes that this factor falls outside the remit of advice sought from the OFT by the Secretary of State under section 93 EA 02.
[26] News response to OFT questions of 7 February 2011.

Absence of a non-reacquisition commitment

7.28. The OFT would normally expect any UIL to contain a non-reacquisition commitment. This typically provides that the merging parties commit, except with the prior written consent of the OFT, not to re-acquire any interest in the divested business, any company controlling the divested business or any of the assets of the divested business.

7.29. The UIL proposed by News did not contain any form of non-reacquisition commitment. News submitted that such an obligation was not justified in this case for a number of reasons, including that this was not a competition case and given that any further acquisition of Newco shares by News would lead to a "relevant merger situation" with consequent statutory regulatory approvals under the Act.[27]

7.30. News emphasised[28] its view that the general practical considerations underlying a non-reacquisition restriction did not specifically relate to the practical viability of the UIL proposed by News in the present case. As such, it considered that the Secretary of State would want to decide whether this is a relevant consideration.

7.31. News also noted that any hypothetical reacquisition of Newco shares by News would not automatically trigger a substantive review on issues of media plurality – given that this would depend on the issuing of an intervention notice.

7.32. Nevertheless, in order to meet the OFT's concerns about the absence of a non-reacquisition commitment, News proposed, except with the prior written consent of the Secretary of State, to commit not to acquire shares in Newco that will result in News holding more than 39.14 per cent of the shares in Newco, subject to two carve-outs:

- the inclusion of a sunset provision which means that the clause would no longer apply at the end of 10 years; and

[27] News' response to OFT questions of 1 February.
[28] News' response to OFT questions of 9 February.

- a carve-out to this restriction in the event that an independent third party has made an offer or proposed a merger (including by way of scheme of arrangement) or has otherwise indicated an intention to acquire 50 per cent or more of Newco's voting shares (in which case, News would promptly inform both the OFT and the Secretary of State, on confidential basis, of any acquisition by it of shares in Newco).

7.33. The OFT's UIL normally require an indefinite prohibition on reacquisition of the divested assets/business. However, News correctly identified that the CC's remedy guidelines stipulate that the standard practice of both the Competition Commission[29] and the European Commission[30] is that any undertaking for a non-reacquisition should be limited to 10 years. The OFT considers that, in the specific circumstances of this case (and subject to the Secretary of State accepting the duration of the carriage agreement to be sufficiently 'long-term' to deal with concerns about media plurality), a 10 year limitation on the non-reacquisition obligation may be justified. The OFT also observes that the ban on reacquisition would end at the same time as the carriage agreement.

7.34. However, in relation to a carve-out in the event of an attempted third party bid for control of Sky News, the OFT considers that this is unlikely to be acceptable given that this might still result, in practical terms, in the frustration of the UIL. The OFT also notes in this context that even if a non-reacquisition clause was entered into by News in the UIL, the effect of this non-reacquisition clause could be frustrated, in part, by the operation of the change of Control provisions in the brand licensing agreement. These provide (as detailed in paragraph 10.17 below) that the brand licensing agreement (and the carriage agreement) will terminate if any third party acquires in excess of 40 per cent of Newco. Should the Secretary of State wish to consider the UIL further, it would be important to consider the various agreements in detail and the risks that certain of these provisions may pose to the overall viability of Newco and the UIL.

[29] Competition Commission - Merger Remedies Guidelines (CC2), paragraph 3.8.
[30] European Commission's Model Divestiture Commitments, paragraph 3.

7.35. On the basis of the above, the OFT considers that the non-reacquisition commitment from News for a period of 10 years would be acceptable, but that this should not include a carve-out of an attempted third party bid.

8. Corporate governance of Sky News[31]

8.1. The UIL provide for the corporate governance of Newco to be designed with a view to substantially replicate the existing corporate governance structure applying to Sky. These provisions are set out in paragraph 3.1 of the proposed UIL, and concern: voting restrictions on News; board composition; approval of material transactions; and adherence to the principles of good governance.

8.2. News emphasised to the OFT that the proposed arrangements in relation to corporate governance would provide 'symmetry' between the current arrangements, that is, between the relationship News currently has with Sky, and the proposed continuing relationship between News and Newco.

8.3. The OFT notes, however, that several aspects of the proposed relationship between News/Sky and Newco are not symmetrical with those between News and Sky today. Notably, the extensive contractual arrangements that will exist between News/Sky and Newco are not as central to the relationship between News and Sky.

8.4. The OFT considered whether there were aspects of the board arrangements that could impact on the financial and practical viability of Newco over the medium to long term. It considered that the corporate governance of Newco essentially went to the question of the independence of Sky News from News, which was essentially a media plurality question for Ofcom. However, the OFT sets out below its position in relation to Newco's adherence to the corporate governance provisions in the UIL and the definition of 'material transactions' requiring approval from Newco's audit committee.

[31] Paragraph 3.1 of the UIL.

Adherence to the corporate governance provisions in the UIL

8.5. News proposed in the UIL a number of measures by which the corporate governance structure of Newco would be established to substantially replicate the effects of the existing corporate governance structure of Sky (paragraph 3.1 of the UIL).

8.6. The OFT queried what assurance there would be that this provision would remain in place in the Newco Articles of Association going forward, in particular given that Newco would not itself be a signatory to the proposed UIL and that News would not have a controlling interest in Newco. This issue goes to the practical viability of the UIL as drafted.

8.7. In response to this, News noted that these restrictions would be embedded in Newco's Articles of Association and agreed that it would be prepared to give an undertaking that it would vote against any change in Newco's Articles of Association which would remove the governance provisions provided for in sections 3.1 (ii) to (iv) of the UIL.[32]

Definition of 'material transactions'

8.8. The UIL provide that 'material transactions between Newco and News/Sky will require the approval of Newco's Audit Committee, which will consist exclusively of independent non-executive Directors. In addition Newco's constitutional documents will provide that such transactions 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)' (paragraph 3.1(iii) of the UIL).

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[32] Response to OFT questions of 7 February 2011. This assurance was on the condition that it should endure for so long as no single shareholder group has more than 50 per cent and News has the right to vote more than 25 per cent of the shares in Newco. The OFT has not explored the first part of this caveat with News but notes that, in any event, this situation would have resulted in a change of control in Newco, which is a ground for termination of the brand license agreement.

8.9. No definition is provided in the UIL for what constitutes a 'material transaction'. News stated that in the case of Sky:

- the audit committee (which consists solely of independent directors) is required to approve any transaction between Sky or its subsidiaries and News or any of its subsidiaries: (i) which involve or could reasonably involve the payment or receipt by Sky or its subsidiaries of amounts of £10 million or more but not exceeding £25 million; or (ii) which involves amounts of £25 million or more; and

- any transactions between Sky or its subsidiaries and News or any of its subsidiaries involving amounts of £25 million or more, if approved by the audit committee, must also be approved by the board of Sky.

8.10. News suggested that the UIL provide that such thresholds be used to define 'material transactions' for the purposes of the UIL.

8.11. The OFT is concerned, however, that the transaction thresholds that were appropriate in the context of Sky are not necessarily appropriate in the context of Sky News, given that it is a considerably smaller and more focused company. The OFT is also concerned that the above definition might exclude the brand licensing agreement. The OFT would therefore recommend that a revised definition of 'material transaction' be explored with News, that at least include the carriage agreement and brand licensing agreement (to the extent that they needed to be revised or renegotiated).

9. Transfer of Sky News[33]

9.1. The proposed UIL involve the transfer into Newco of Sky News, which is currently part of Sky.

9.2. As noted above, News cited a number of examples of when businesses have been separated or hived-off from their existing corporate structures (see paragraph 7.2 above).

9.3. At present, Sky News forms part of the wider business of Sky and is not a distinct legal entity. Sky described Sky News as being a

[33] Paragraphs 4.1, 4.2 of the UIL.

'directorate' of Sky, in that it was not a financially distinct business, but did have a distinct management structure that reported to the Head of Sky News.

9.4. The OFT considered in relation to the transfer of Sky News into Newco a number of practical issues with respect to the assets to be transferred as well as the staff. The OFT also considered the extent to which contracts where Sky is currently a party and which relate to Sky News, would be able to be transferred to Newco in order that it has the benefit of those contracts going forward.

9.5. The issues considered in this section are set out in concise form in paragraphs 4.1 and 4.2 of the proposed UIL. In terms of practical importance, they relate to the key question of what a separated Sky News business will comprise and how it will operate.

Assets to be transferred

9.6. The proposed UIL state that the Sky News business to be transferred to Newco shall comprise '*all or substantially all tangible assets currently used exclusively for the purposes of carrying on Sky News' business*' (paragraph 4.1 of the UIL).

9.7. News clarified[34] that this definition was intended to capture – such that they would be transferred into Newco – all tangible assets located in the existing Sky News building and other facilities used by Sky News for newsgathering, with the exception of the land and buildings at Osterley currently used by Sky News and shared technical facilities such as data networks, transponder capacity, transmission and uplink and play out facilities.[35]

9.8. The UIL also provide that: '*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*' (paragraph 4.1(i) of the UIL).

9.9. News clarified[36] that (in addition to shared technical facilities to be covered by an ongoing broadcast and technical services agreement (see paragraph 11.4 below) this was a reference to other facilities

[34] News response to OFT questions of 1 February 2011.
[35] Access to these is discussed in paragraph 11.4.
[36] News response to OFT questions of 1 February 2011.

and services to which Newco might require access while continuing to use the Osterley site.

9.10. News stated that it would offer to Newco a site support services agreement under which it would provide, among other things: canteen/food services, computer/IT services, finance systems, phone services, heating, lighting, security and cleaning, if required by Newco.

9.11. News stated that, to the extent needed by Newco, News/Sky will also continue to make available additional services which are in any event available on the open market, including broadcast operations (technical staff, for example camera operators) and creative services (design specialists). Sky stated it [could] provide access to the relevant facilities under a service contract to the extent required by Newco.

9.12. Sky identified the two main areas where Sky News was currently dependent, in operational terms, on services that were shared with other parts of the Sky business. These were technical services and creative services. Otherwise, Sky stated that it regarded Sky News as operationally relatively self-sufficient from the remainder of Sky.

9.13. Based on the information available to it, the OFT sees no reason why the core tangible assets required for Sky News could not be separated off into Newco. However, the OFT recommends that, given that Sky News is not currently a physically distinct business within Sky, the proposed UIL should set out precisely what assets are to be included in Newco, what assets will not be transferred, and what assets will be made available by Sky to Sky News as part of the ongoing arrangements.

9.14. News stated[37] that it[38] would be prepared to set out in greater detail the assets to be transferred / not transferred to Newco in the form of a schedule.[39] The OFT believes this would be appropriate.

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[37] News response to OFT questions of 7 February 2011.

[38] News noted that such a schedule would have to be prepared in consultation with Sky. Given that such a document would likely take a number of days to draw up, News suggested that the best way forward would be for Sky to provide it to the OFT during the public consultation on the UIL (should the Secretary of State be minded to accept the UIL).

Sky News staff, including non-solicitation

9.15. The UIL provide that all '*Key Sky News Editorial Staff and all or substantially all staff currently engaged principally in the Sky News business, including news gathering staff, production, online and multimedia staff and Sky News international staff*' will be transferred to Newco (paragraph 4.1(ii) of the UIL). Key Sky News Editorial Staff are defined as the head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News.

9.16. News noted in this respect that 'TUPE will operate to transfer staff employed in the Sky News business to Newco'.[40]

9.17. As in relation to assets (see paragraphs 9.13 to 9.14 above), the OFT proposed and News agreed[41] to ask Sky to prepare separately a list of key personnel to be transferred to Newco.

9.18. Based on the information available to it, the OFT sees no reason why the UIL as drafted should not provide for the staff required to operate the Sky News business to transfer into Newco.

9.19. The UIL as drafted do not include a non-solicitation clause in respect of any of the Sky News staff transferred to Newco. News justified the absence of any such restriction on the basis that it was unnecessary given that neither Sky nor News will be a direct competitor of the spun-off Sky News business and given that Sky will continue to have a vested interest in the continued provision of quality output from Sky News.[42]

9.20. The OFT was unsure, however, what would prevent News launching a neighbouring channel, such as a current affairs channel, from which it might acquire staff from Newco.

9.21. Although News stated that it had no such plans, in response to this concern, News stated[43] that it would be prepared to give a standard non-solicitation commitment for a short period of time if

[39] See the Schedule to the European Commission Model Texts for Divestiture Commitments, available at: http://ec.europa.eu/competition/mergers/legislation/legislation.html.
[40] News response to OFT questions of 1 February 2011.
[41] News response to OFT questions of 7 February 2011.
[42] News response to OFT questions of 1 February 2011.
[43] News response to OFT questions of 7 February 2011.

the OFT took the view that such a commitment was needed. The OFT believes that, particularly given the importance of staff to the success of a news channel, the inclusion of a non-solicitation obligation would be sensible.[44]

Transfer of contracts – third party consents

9.22. The UIL provide for the transfer to Newco of four specific classes of contracts to which Sky is a party but which would be required by Newco if Sky News were to continue operating in the way it does at present. These four categories of agreement are: (i) carriage agreements with third parties; (ii) DTT capacity agreement with Arqiva; (iii) Channel 5 and IRN wholesale contracts; and (iv) contracts for the supply of content to Sky News/fixed newsgathering.

9.23. Where a third party consent is a critical feature of a particular remedy, then the OFT may be willing to accept undertakings in lieu only once it is clear that such consent will be forthcoming.[45] The OFT notes that, in the time available, it has only been possible to consider whether any of the above agreements proposed to be transferred to Newco were of critical importance to the ongoing viability of Newco where third party consent was required.[46]

9.24. In relation to the carriage agreements with third parties, News provided a list of these contracts, including whether consent would be required in relation to the transfer of each of them.[47] Around a third of these would require consent to be assigned. News argued that it was only the contract [✂].

9.25. [✂]

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[44] In addition, the OFT considers that interim protection is needed in relation to key staff – see paragraph 7.14.
[45] For example, see Completed acquisition by Aggregate Industries UK Limited of Atlantic Aggregates Limited and of Stone Haul Limited, OFT decision 2 March 2009, paragraph 132.
[46] If further investigation showed that these (or any other) agreements were of critical importance to the ongoing viability of Newco, and that third party consents were required, it may be appropriate to consult with those third parties prior to acceptance of the UIL or to obtain confirmation that such consents would be forthcoming.
[47] News response to OFT questions of 1 February 2011. News acknowledged that the list was non-exhaustive at this stage.

9.26. [✂]. In the limited time available, and based on the evidence supplied by the merging parties, the OFT does not, at this stage, believe that any of the existing carriage agreements can individually be said to be of critical importance for the viability of Newco going forward.

9.27. In relation to Sky's current contract with [✂][48] relating to.[49]

9.28. [✂]. The OFT examined the projected revenues and costs of Sky News on two alternative bases, under each of which Sky News would be profitable, namely:[50]

- [✂]; or
- [✂].

9.29. Based on the information supplied by News, the projected cost and revenue implications under either scenario are not significant enough to undermine Newco's profitability.

9.30. [✂]

9.31. [✂]

9.32. [✂]. Given the nature of these contracts (where services are supplied to Sky), the OFT has no reason to believe that Newco would be unable to source supply from these providers on an independent basis.

10. Carriage agreement and brand agreement with Sky[51]

Significance of the carriage agreement to Newco

10.1. Under the carriage agreement Newco will provide 'Sky News' channels and services to Sky on a wholesale basis for distribution by Sky to viewers or subscribers in return for the payment of a carriage fee. News submits that the carriage agreement will provide Newco with 'a significant and long-term revenue stream'. The 10-

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[48] [✂].
[49] News response to OFT questions of 1 February 2011.
[50] See paragraphs 3.20 of the Annex.
[51] Paragraphs 4.3, 4.4, 4.5, 4.6 of the UIL.

year term contrasts with carriage agreement durations of three to five years typical in the pay TV industry.

10.2. News submitted that the terms of the proposed Sky carriage agreement reflect the importance of Sky News as part of Sky's offering to its subscribers, and that this importance has provided the basis for Sky's previous investment in, and funding of the net costs of, Sky News.

10.3. The Newco business plan indicates that the Sky carriage agreement would initially account for [✂] per cent of Newco total revenues (in 2010/2011),[52] rising to [✂] per cent of forecast total revenue in 2015/2016, and [✂] per cent of total revenue in 2019/2020.

10.4. [✂]. The Annexe contains a detailed analysis of the revenue projections for Newco including, in particular, the significance of [✂] to the profitability of Newco.

10.5. It is clear that a Sky carriage agreement in place on sufficiently long and financially attractive terms is fundamental to Newco's ability to cover its costs from the outset, and hence to its viability.

Significance of the brand licensing agreement to Newco

10.6. The proposed UIL require that Sky enter into a brand licensing agreement with Newco, which would permit Newco to use the Sky News brand in connection with its news output. This would be subject to payment of a royalty, and associated terms and conditions. In enabling Newco to provide output which is branded as 'Sky News' – an underlying requirement of the proposed carriage agreement – the brand licensing agreement is also key to Newco's ability to generate its main revenue stream, and hence its ongoing viability.

10.7. The brand licensing agreement will also place certain restrictions on Newco's activities, and will be terminable in certain circumstances.

Other agreements of key significance to Newco's viability

10.8. The carriage agreement and the brand licensing agreement are of critical importance to Newco's prospective viability. The UIL

[52] Sky carriage fees of £[✂]; total revenues of £[✂].

provide for Newco and Sky also to enter into various operational agreements (paragraph 5 of the UIL).

10.9. It is possible that some of the operational agreements are similarly important to Newco's viability and possible also that they could not readily be obtained from third parties other than News/Sky for an identifiable market price. Given the time available, the OFT has not been able to reach a view on whether any such operational agreements fall into this category. However, to the extent that this is the case, the OFT considers that these should be subject to additional oversight as discussed below in relation to the carriage and brand licensing agreements, namely prior approval and restriction on termination.

Prior approval of key agreements

10.10. Whilst the term of the Sky carriage agreement is specified in the proposed UIL, the structure and level of the carriage fees (and hence the value of Sky's contribution to Newco revenue) are not specified. The proposed UIL require that the form of carriage agreement would be subject to approval by the Secretary of State prior to acceptance of the UIL (paragraph 4.3 of the UIL).

10.11. The OFT considers that given the importance of the brand licensing agreement it would be appropriate for it to be subject to a similar approval mechanism. News has indicated[53] it is willing to include this provision.

10.12. In considering approval of these key agreements, the Secretary of State may consider it appropriate to request advice from the OFT and Ofcom on whether the specific proposed terms of the carriage agreement and the brand licensing agreement are acceptable in terms of securing the practical and financial viability of the undertakings. The OFT and/or Ofcom may need to call on expert external advice in relation to assessing the terms of these key agreements.

10.13. To the extent that there are further agreements (other than the carriage agreement and brand licensing agreement) that can be described as of key significance to Newco (see paragraph 10.8

[53] News response to OFT questions of 7 February.

above), then the OFT would recommend that such agreements also be the subject of upfront review and approval by the Secretary of State (and/or the OFT) prior to approval of the UIL.

Termination of key agreements

10.14. The carriage agreement would be terminable by Sky in the event of material breach, or in the event that Newco ceases to produce output which is branded 'Sky News'.

10.15. News explained that 'material breach' would typically be linked to commitments relating to the nature and quality of the channel to be provided to Sky.

10.16. Any change of Control of Newco which led to termination of its Brand Licensing Agreement (which permits Newco to use the 'Sky News' brand) could consequently also result in termination of the carriage agreement.

10.17. The brand licensing agreement would be terminable by Sky in the event of a material breach, or in the event of a change of Control[54] of Newco. Hence if a third party acquired a greater than 40 per cent holding of Newco's shares, Newco would be at risk of termination of both the brand licensing agreement and the carriage agreement.

10.18. Given the importance of the key agreements to the viability of the UIL, any developments resulting in early termination would have major significance. The OFT discusses below whether this consideration should require specific further obligations on News.

Restrictions on termination of the key agreements

10.19. The OFT noted the importance of the key agreements to the viability of the UIL. Although, for the reasons explained elsewhere, the OFT has no reason at present to doubt that News' incentives

[54] Control is defined in the draft UILs in terms of holding 40 per cent of shares or voting rights. This provision means that Newco would be unlikely to be taken over by a third party, given the implications for the brand licensing agreement, and therefore the carriage agreement. The OFT does not consider that this limitation undermines the financial viability of Newco, but notes that in any event the terms of the brand licensing agreement and the carriage agreement are subject to upfront review by the Secretary of State.

are currently to ensure the successful operation of Sky News as a provider of TV news content to it, the OFT is concerned about the degree of reliance that the UIL place on the continued operation of the carriage agreement and brand licensing agreement. The OFT therefore considered carefully whether the contractual obligations owed by News to Newco in relation to performance of the key agreements should be reinforced in some way.

10.20. Specifically, the OFT considered whether it would be appropriate to seek from News a direct commitment in the UIL to the Secretary of State that News would not terminate the key agreements without first obtaining prior approval from the OFT (such approval to be given only in the event of a material breach by Newco). News argued that an ongoing obligation from it to the Secretary of State in relation to the agreements was unnecessary and considered that this would raise practical issues around how the OFT would determine whether a material breach by News had in fact occurred. News also emphasised its willingness to commit to a more specific dispute resolution mechanism if the OFT considered that an ad hoc mechanism is needed (see paragraph 10.35 below).

10.21. News proposed to undertake in the UIL that it should not be permitted to terminate the key agreements prior to a formal and final determination having been made under that dispute resolution mechanism applicable under the relevant agreement. In order to address any concerns about Newco bearing the costs of arbitration/dispute resolution,[55] News stated it would be prepared to commit in the relevant agreements that it would bear its and Newco's costs of any dispute resolution originating from News' proposed termination (irrespective of the outcome).[56]

10.22. News observed that its proposal had the benefit of avoiding the position where the OFT would itself have to make a determination on a contractual dispute between two independent parties before it is adjudicated under the applicable dispute resolution mechanism.

[55] The OFT noted that, in comparison to News, Newco would be a small business with limited resource to engage in an extended dispute with News.
[56] News response to OFT questions of 9 February.

10.23. The OFT considers that the safeguard suggested by News as described in paragraph 10.21 above provides an acceptable means in order to reduce the risk of an unjustified termination of the key agreements by News that could jeopardise Newco, subject to the details of the safeguard being further developed.

Duration of key agreements

10.24. The proposed term of the carriage agreement is 10 years. News argues that Newco will therefore have a reliable revenue stream for a much longer period than is typical in this sector. Ofcom confirmed this.

10.25. The proposed UIL require that under the brand licensing agreement Newco would receive a licence of the Sky News brand for an initial seven year term, with an automatic renewal for a further seven years, and which may then be extended at the option of Newco for a further three years. [✂].

10.26. The finite duration of the carriage agreement contributes to some uncertainty about Newco's long-term viability as a stand-alone entity. As noted above, in the Newco business plan the carriage agreement accounts for an increasing proportion of Newco forecast total revenues as the term progresses. Newco's prospects at (and in the period leading up to) conclusion of the term may depend on:

- Sky's incentives to negotiate a further carriage agreement;
- the terms Sky may prepared to negotiate at that time; and
- the alternative revenue streams which Newco has been able to develop or may have access to at that point.

10.27. The question therefore arises of how Newco would expect to derive its principal revenue stream once the carriage agreement (at ten years duration) has ended.

10.28. On one view, uncertainty about the prospects for renewal of the carriage agreement on equivalent terms may begin to affect Newco some years before its term date, [✂].

10.29. News argued that if Newco continues to produce a high quality and distinctive news service over the next 10 years, it is likely that Sky will wish to ensure that it can continue to offer Sky News as part of its offering, and renew its funding commitment to Newco in a way that ensures Newco's continued independent economic viability over the foreseeable future. As such, it argued that a renewal by Sky of the Carriage Agreement is by far the most likely counter-factual against which the OFT should consider the viability of NewCo. [57] However, notwithstanding this argument, the OFT believes it is not possible to conclude with any degree of certainty that the carriage agreement will be renewed after the expiry of the ten year period such that Newco's principal revenue stream will continue.

10.30. The OFT has been asked to advise the Secretary of State on whether there are practical issues which could undermine the effective operation of the UIL, and whether the UIL would be effective in the medium and long term.

10.31. The OFT accepts that the substantial length of the key agreements would appear to underpin the short-to-medium term viability of Newco. The OFT notes however, that the finite duration of the carriage agreement may entail a significant risk in relation to long-term viability. The relevance of this risk ultimately depends on the time horizon which the Secretary of State considers as relevant for ensuring the effectiveness of the UIL.

Dispute resolution mechanism

10.32. The proposed UIL do not contain any provision indicating what would happen in the event of a dispute between Sky and Newco in relation to any of the agreements between them, including the carriage agreement and the brand agreement. Successful resolution of such a dispute would be important given the reliance that these proposed UIL would have on the various contractual agreements between the parties.

10.33. The OFT considered that the proposed UIL should be modified by the requirement that the key contracts between Sky and Newco (that is, at least the carriage agreement and brand

[57] News response to OFT questions of 9 February.

licensing agreement – and potentially other agreements: see paragraph 10.9 above) should include within them a dispute resolution mechanism which would be binding on both parties. Such a mechanism would aim to ensure that disputes were settled quickly and efficiently by an independent arbitrator.[58]

10.34. Such an arbitration mechanism in relation to the contracts would impose a positive burden in relation to the party charged with this function. Given the technical nature of the disputes that could arise, the OFT considers that it would not be well placed to fulfil this function, but that consideration be given to the appointment of an expert independent arbitrator, to be funded by News as required.

10.35. News has indicated[59] that it would be willing to include a more specific dispute resolution mechanism (such as arbitration) in the agreements entered into between News and Newco.

11. Operational agreements with Sky[60]

11.1. As set out above in paragraph 10.9, to the extent that any of the operational agreements are of critical importance to Newco's viability and could not readily be obtained from third parties other than News/Sky for an identifiable market price, the OFT considers that they should be subject to similar protections given to the carriage agreement and brand license agreement.

11.2. However, with regard to operational agreements falling short of this status (that is, on the basis that the services to which they relate could potentially be sourced from third parties), the practical viability of Newco, at least initially, requires it to have ongoing access to currently shared technical facilities, and initial agreements in place to enable it to function effectively from the outset. This section considers how these agreements, that are not the subject of the upfront protection discussed in section 10, are treated under the UIL.

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[58] The OFT has not had time to consider with News the terms by which such arbitration or dispute resolution would proceed, but would envisage that these would have regard to the terms of the contract and the terms of the UIL themselves.
[59] News response to OFT questions of 7 February.
[60] Paragraph 5.1 of the UIL.

11.3. It is helpful to note at this point that the OFT's guidance recognises that, '*[i]n certain cases, contractual provisions such as purchase or supply arrangements between the seller and the purchaser may be necessary to support a structural divestment on an interim basis, although it will be relatively rare that this is the case given the requirement at the OFT stage for a divestment to act as a clear-cut remedy.*'[61]

11.4. The proposed UIL require that Sky will, if required by Newco, enter into various agreements under which Sky will provide facilities and support services to Newco, on arms' length terms. Specific agreements listed in the UIL are:

- an advertising sales agreement under which Sky will sell advertising and sponsorship on behalf of Newco for a term of up to three years (or such shorter time as required by Newco);
- a lease of existing Sky News land and buildings to Newco for a period of up to 15 years;
- a site support services agreement, covering services such as IT support services for a term comparable with the term of the lease; and
- a broadcast and technical services agreement, covering satellite capacity, playout and uplink, DTT transmission, online transmission and mobile distribution, for a term of up to 10 years.

11.5. News and Sky have each noted that Sky currently has agreements of this sort with various third party channel providers ([✂]).

11.6. The initial services agreements would be put in place before the spin-off of Newco. News has indicated that the pricing of the above services (other than the advertising sales agreement[62]) would be fixed at Sky's cost of provision plus a five per cent margin, with increases each year measured by CPI.[63] News further stated that it would be willing to commit to such a cost structure within the UIL if required. News stated that Newco would be free to source

[61] See OFT Exceptions and UIL guidance, paragraph 5.23.
[62] News stated that the terms of the advertising sales agreement would be [✂].
[63] News response to OFT questions of 7 February.

services from third parties once its initial service agreements with Sky have expired if it chose to do so, or subject to early termination provisions to be agreed in the relevant contracts, and that this will also give Newco the ability to market test the terms being offered by Sky.

11.7. The UIL do not contain any provisions for monitoring or approval of the pricing or terms of initial services agreements, nor dispute resolution in relation to ongoing operational relationships between Sky and Newco. The proposed UIL also do not make such agreements between Newco and News a mandatory part of the ongoing Newco business. Rather, the option for them is provided to Newco, with the duration of the potential agreement specified in the majority of cases (for example, that the lease of the land and buildings should be for a period of up to 15 years).

11.8. To the extent that these agreements could be provided by third parties in the event that Sky News and News were for some reason unable to agree terms following spin-off of Newco, the OFT does not believe that the UIL need to provide for the continuation of these agreement beyond the initial terms set out in paragraph 5.1 of the UIL.

11.9. The OFT nevertheless considers that the current position under the UIL, under which such agreements are merely potentially available, is confusing given that News/Sky will have set up Newco and that Newco will inevitably require such services at its inception in order to be able to commence operations and function as a news channel provider.

11.10. The OFT would therefore recommend that the proposed UIL be amended such that:

- News is required to put in place, or to procure the putting into place of such agreements at the time of the spin-off of Sky News for the terms provided for in paragraph 5.1 of the proposed UIL;

- the UIL include reference to the pricing structures for these agreements (as described in paragraph 11.6 above);

- the list of initial operational agreements and associated services required by Newco to operate its core business are set out in full;
- the UIL require that Newco be provided with termination rights in relation to each of these contracts, with a reasonably short notice period; News/Sky should not enjoy such termination rights; and
- to the extent that a monitoring or arbitration function is envisaged in relation to the key agreement aspects of the UIL, that this mechanism should extend also to resolution of any disputes in relation to these agreements.

12. Review of Sky News income and cost projections

12.1. The OFT summarises in this section the financial analysis set out in the Annexe. This analysis relies on information supplied, in the main, by News and limited discussions with Sky. The OFT notes that it has had limited time to review the income and cost projections supplied by News; the forecasts supplied by News are based on its review of Sky and Sky News' financial information and industry knowledge; and the OFT understands that the information supplied has not been subject to rigorous analysis by Sky or Sky News itself [✂].

12.2. The UIL propose that Sky News be formed into an independent public limited company, Newco, following Sky's development of Sky News over the last two decades. The financial analysis review conducted by the OFT has focussed on a review of assumptions and, where possible, some consideration of risks that could mean that projections are not achieved, such as income shortfall or cost overrun, which could threaten the viability of Newco.

12.3. [✂]. The UIL envisage contractual arrangements that provide a significant payment from Sky to Newco, for the news service and, on the basis of projections provided, would be expected to keep Newco profitable, for the duration of those arrangements. The use of the Sky name would continue, in return for a payment from Newco related to its revenue.

12.4. The two way income flow, with the bulk of the net income transfer from Sky to Newco for provision of the news service, is intended to ensure that incentives are aligned:

- Newco has the financial resources to continue providing a 24-hour news service. It continues to operate under the Sky News brand which has achieved a strong reputation;
- Sky has an incentive to utilise the news service for which a substantial payment is being made. While the carriage agreement remains in force, this may provide a significant disincentive to set up a competing news service, which would undermine Newco, diminishing the return from Sky's 39 per cent share in Newco; and
- similarly, while the brand licensing agreement is in force, use of the Sky brand ensures that Sky will want Sky News to maintain a good reputation for high quality output.

12.5. [✂]. Newco would be strengthened by the size of the payment under the carriage agreement, which provides a strong and relatively stable income stream and shows the high value that News appears to place on the news service. [✂].

12.6. The period over which the OFT has considered the financial viability of Newco extends to 2019/20 (FY20), for which financial projections have been provided and which approximates the period of the carriage agreement.

12.7. The OFT's analysis in the Annexe considers Newco's projected profitability, followed by a review of revenue and costs.

Overall assessment

12.8. Forecasting accurately over a 10 year period is difficult, particularly in an area where technological change can be rapid. A small error in assumptions can lead to an increasing cumulative effect at the end of the period, or a combination of adverse events could cause an otherwise profitable company to move into losses that could ultimately threaten its financial viability. However a reasonable test of financial viability would be that the proposed structure and projections are based on reasonable assumptions and there is some flexibility to handle any unforeseen problems that arise.

12.9. Sky News is currently a directorate within Sky, but is not accounted for on a standalone basis. [✂].

12.10. [✂].

12.11. This change is driven by a subscriber-related payment for the news service totalling £[✂] in FY12. Additional charges in FY12 of circa £[✂] relate to property and facilities (£[✂]); depreciation on equipment (£[✂]); new 'listed company costs' (£[✂]) and a new charge for use of the 'Sky News' brand (almost £[✂]).

12.12. After reviewing the financial projections, some risks to the achievement of the projections and ways in which confidence in Newco's continued viability could be increased are outlined in the Annexe, which also contains a more detailed review of the financial information provided. The key importance of the carriage agreement and brand licensing agreement is emphasised.

12.13. Although well-placed in terms of HD technology, the smaller size of Newco, compared with being a part of Sky, could create challenges if significant funds are required to finance investment in new technology. Success in raising funds would depend on the return expected from the investment and the period over which the return was expected to be made.

Operating Profit[64] 2011/12 - 2019/20

[✂]

12.14. While it is possible to imagine a combination of unfavourable events that could cause the financial viability of Newco to be threatened, this is not considered to be very likely. The assumptions made in the projections for Newco appear to be reasonable and there is some flexibility to handle unforeseen

[64] Operating Profit excludes the £[✂] per year revenues earned through joint ventures.

problems. The benefit of the assured income from the carriage agreement strengthens the financial position of Newco. While this agreement operates, based on the evidence seen, the OFT has no reason to expect that Newco would not be financially viable.

Clive Maxwell
Executive Director, Office of Fair Trading
11 February 2011

Annexe

Analysis of Revenue and Cost Projections

1 Overall profitability

1.1 This Annex sets out the OFT's analysis of Sky News income and cost projections.

1.2 The analysis relies on information supplied, in the main, by News and limited discussions with Sky. The OFT notes that it has had limited time to review the income and cost projections supplied by News; the forecasts supplied by News are based on its review of Sky and Sky News' financial information and industry knowledge; and the OFT understands that the information supplied has not been subject to rigorous analysis by Sky or Sky News itself or the subject of external assessment.

1.3 Sky News is currently a directorate within Sky, but is not accounted on a standalone basis. [✂].

1.4 Based on the projections provided, when Newco is formed additional income streams partly offset by new recharges of costs, will increase operating profit by £[✂] to show an operating profit of £[✂] in 2011-12 (FY12):

1.5 This change is driven by a subscriber-related payment for the news service totalling £[✂] in FY12. Additional charges in FY12 of £[✂] relate to property and facilities (£[✂]); depreciation on equipment (£[✂]); new "listed company costs" (£[✂]) and a new charge for use of the 'Sky News' brand (almost £[✂]).

1.6 [✂].

Operating Profit[65] 2011/12 - 2019/20

[✂]

Analysis of Revenue

[✂]

2 Revenue

2.1 **Total revenue** projected in FY12 amounts to £[✂], comprising:

2.2 **Sky subscription payment:** £[✂] payment from Sky based on a carriage agreement between Sky and Newco. Payment is based on the number of Sky subscribers, the number of Sky HD subscribers, and an exclusivity premium as long as Sky News HD is only distributed on Sky platforms.

2.3 Subscriptions are based on December 2010 reported subscribers and HD penetration. [✂].

2.4 [✂].

2.5 **Sensitivity:** HD penetration grows from [✂] per cent in FY11 to [✂] per cent in FY15. If the increase was a [✂] at [✂] per cent in FY15, with HD subscribers increasing from [✂] to [✂] (rather than [✂]), income would be almost £[✂] lower in FY15. This compares with projected operating profit of £[✂] in that year.

2.6 [✂].

2.7 **Other subscriptions:** £[✂] payment is received for supply to other subscriptions, [✂].

2.8 **Sensitivity:** Income would be £[✂] from FY15 [✂].

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[65] Operating Profit excludes the £[✂] per year revenues earned through joint ventures.

2.9 If the market for news on tablets grew less rapidly or was less remunerative, income would be up to £[✂] lower. However it is quite possible that other technological opportunities, as yet unknown, could offset this, particularly if Newco had access to technological developments made within Sky.

2.10 **Net advertising and sponsorship**: Income of £[✂] largely stems from spot advertising revenue, with smaller contributions from sponsorship and other forms of advertising. [✂].

2.11 This revenue is dependent on a contract with Sky to sell advertising and sponsorship. Commission of [✂] per cent and a sales margin of [✂] per cent are deducted from revenue.

2.12 **Sensitivity:** Dependence on Sky to sell advertising: [✂].

2.13 **Syndication**: Income of £[✂]: All syndication contracts will be transferred from Sky to Newco. The Five News contract, with income of £[✂] in FY12, comprises over [✂] per cent of this income, with the supply contract coming up for renewal in [✂]. It is assumed that the contract is renegotiated in [✂] with [✂].

2.14 **Sensitivity:** If the Five News deal is not renewed, income would be £[✂] lower from [✂], with costs around £[✂] lower.

2.15 **Income from joint ventures** of £[✂] is assumed across the period.

2.16 Overall, revenue of £[✂] will derive from Sky in [✂], (or £[✂] if including advertising revenue sold by Sky for Sky News). This would amount to around [✂] per cent of the total revenue stream, excluding advertising. Due to the expected growth in the carriage agreement payment, this is projected to increase to £[✂] or [✂] per cent of income in [✂] (£[✂] or [✂] per cent of total including advertising revenue). [✂].

2.17 This underlines the key importance of the carriage agreement and the relationship between Sky and Newco. Beyond the term of the carriage agreement an independent Newco would be very unlikely to be financially viable, unless the agreement is renewed or equivalent favourable arrangements were agreed.

Analysis of Costs

[✂]

3 Analysis of costs

3.1 **Total costs** [✂]:

3.2 **Programming costs** [✂].

3.3 Newsgathering costs comprise activities to find, compile and package the news stories. Costs growth recognises cost swings due to the expense of major events in the year, for example the Olympic Games in 2012.

3.4 [✂].

3.5 Online and multimedia costs represent the incremental costs associated with producing online, tablet and mobile products.

3.6 [✂].

3.7 **Sensitivity:** If the Five News contract is not renewed after [✂], costs will be £[✂] lower, but margin will also be reduced by a further £[✂] (see Syndication revenue comment).

3.8 [✂]. If annual inflation was [✂]per cent p.a. higher from [✂], programming cost would be around [✂] per cent (£[✂]) higher by [✂].

3.9 **Administrative costs** of [✂].

3.10 Corporate costs include both existing staff who support Sky News and an estimate of additional costs (£[✂]) arising from the creation of a new company including staff (for example, company secretary), cost of board meetings and audit, and need for a new incentive plan.

3.11 Property and facilities costs include rent, rates, utilities and facilities plus IT support to shared corporate systems e.g. HR. This is based on a 15 year agreement to lease land and buildings at cost plus [✂] per cent margin, [✂].

3.12 [✂].

3.13 Details of the assets involved are not currently available, but would need to be reviewed by Newco to ensure the value was appropriate.

3.14 [✂].

3.15 **Sensitivity**: The cost projections are significantly affected by the assumed rate of price inflation. If inflation averaged three per cent higher from [✂], administrative costs would be [✂] per cent (£[✂]) higher by [✂].

3.16 The contract for premises and facilities is envisaged to run for 15 years, whereas the carriage agreement runs for 10 years (the period subject to review). Unless Newco had a break clause available after 10 years, it could be committed to the premises with associated costs for a longer period.

3.17 **Technical and** broadcast **operations** of £[✂]: These costs include technical services needed to provide the news service such as satellite capacity, uplink services, DTT transmission, online transmission and mobile distribution. Sky proposes to offer a 10 year, fixed price contract for these services, or shorter if preferred, based at cost (rising at CPI) plus five per cent margin.

3.18 Broadcast operations and creative services would be provided and charged on actual usage, at cost plus five per cent margin; however for these services, News indicated that Newco would be free to move to a different third party supplier at short notice.

3.19 While the DTT capacity providing access to the Freeview channel would be charged initially at £[✂], the contract for the capacity expires in [✂], and it is assumed that Newco would negotiate directly with the supplier, [✂]. As a small company, Newco would be in a less strong position than Sky to negotiate a favourable deal.

3.20 [✂].

3.21 **Sensitivity**: The largest unknown is the availability and cost of the DTT transmission when the contract is renegotiated by Newco which would have significantly less financial negotiating power than News. [✂]. If the contract was not renewed, Sky estimate that costs of around £[✂] would be saved, but advertising revenue of £[✂] would be lost, overall a net revenue reduction of £[✂].

3.22 **Brand licensing costs** of £[✂] relate to payments made to Sky for use of the 'Sky News' brand. [✂].

3.23 The licensing agreement would give Newco assurance that it would continue to have access to the 'Sky News' name, so it is important that the brand licensing agreement give Newco assurance that the cost would not significantly increase on renewal of the contract

3.24 **Marketing costs** of £[✂] are projected based on current spending plus an additional £[✂] for advertising as an independent channel, assuming that Newco would be responsible for its own marketing.

3.25 **Sensitivity**: This level of advertising may underestimate the cost of establishing Sky News as an independent operation. In particular, opportunities to be advertised across Sky channels would be less easily available and likely to be more expensive, as market rates are charged, rather than costs not being allocated.

3.26 Property and facilities (£[✂]) and technical services (c. £[✂]) are very likely to be provided by Sky and broadcast operations and creative services might be supplied (c. £[✂]), suggesting a total of around £[✂] provided by Sky, [✂] per cent of their [✂] cost base. [✂].

4 Ability to raise funds to finance technological change

4.1 The investment made in high definition technology means that Newco is currently well placed in terms of technology. However technology can change rapidly and the possibility that substantial further investment would be required cannot be ruled out over the

10 year period considered. Newco would not be in as strong a position as Sky to provide any finance that would be required.

4.2 If these technological opportunities require additional capital investment there are three options available to Newco:

- Using retained earnings. This will depend on future earnings steam and dividend decisions that have been taken;
- Raising debt: There is a possibility of borrowing, possibly against the value of its fixed assets or its future income stream; and
- Raising additional capital: Newco could raise the required capital through a further rights issue or external share issue.

4.3 The likelihood of success in raising funds would depend on the return expected from the investment, alternatives available and the remaining term for the carriage agreement and expectations over its likely renewal. The smaller size of Newco could be a constraint in financing a major investment.

5 Risks

5.1 **Exposure to inflation**: [✂].

5.2 [✂].

5.3 [✂].

5.4 **Carriage agreement**: The payments made under the carriage agreement are crucial to the financial viability of Newco. If the arrangement was ended, unless the financial gap was closed by other forms of revenue, Newco would lose its major income stream and move into substantial losses.

5.5 While the agreement operates, this risk is mitigated by the term of the agreement and Sky's incentive to protect its brand and its apparent ongoing need for a well respected news service.

5.6 **Brand licensing deal:** The Sky brand is an important and valuable element of the Sky News product. The existence of a seven-year licensing arrangement gives continuity of the use of the name, which would be expected to be extended for a further seven years.

5.7 The price at which the contract would be renewed is very important to Newco and any substantial increase in the licensing cost at Sky's instigation could seriously damage Newco's financial position. However, [News] has confirmed that there will not be an increase in the brand loyalty fee if the licensing agreement is extended beyond the initial seven years.

5.8 **Estimation of costs:** [✂].

5.9 **DTT transmission contract:** The current arrangement for DTT capacity was agreed between Sky and [✂] and is due to be renegotiated in [✂]. [✂].

5.10 **Advertising revenue:** [✂]. TV advertising may not increase in demand, given alternative media available, particularly online and mobile. Also, another economic recession is a possibility that could lead in a significant fall in advertising revenue.

6 News Assessment of Risks to Financial Projections

6.1 [✂].

6.2 [✂].

7 Assessment of Risks

7.1 In the case of greater difficulties, the ability of Newco to survive short term losses would depend on its financial resources, and the company set up is projected to have some strengths:

- currently Sky News is unique insofar as it is the only HD 24 hour news channel in Europe;
- the company is set up with share capital of £[✂] and an initial cash injection of £[✂], of which half is expected to finance receivables;
- [✂];

- there is no gearing, so there could be potential to borrow against future earnings;
- shareholders, [✂], might be willing to provide further capital injections if required, as long as it maintained a strong interest in the supply of Sky News; and
- [✂].

7.2 While it is possible to imagine a combination of unfavourable events that could cause the financial viability of Newco to be threatened, this is not considered to be very likely. The assumptions made in the projections for Newco appear to be reasonable and there is some flexibility to handle unforeseen problems. The benefit of the assured income from the carriage agreement strengthens the financial position of Newco and while this agreement operates, and based on the evidence seen, the OFT has no reason to anticipate that Newco is not likely to be financially viable.

7.3 There are some areas where improvement in the financial arrangements could further reduce the risks to Newco, making it stronger and more able to face uncertainties in the future, such as:

- [✂];
- [✂]; and
- [✂].

8 Additional Future Financial Risk

8.1 Looking 10 years ahead, uncertainty about the continuation of the carriage agreement that provides the main income stream for Newco could lead to share price weakness in the final years of the agreement. Unless the agreement was renewed on favourable terms, or unexpectedly large alternative revenue sources were identified by Newco, it is difficult to foresee how Newco would continue to be viable as an independent company. [✂].

ENDNOTES

1. The OFT has corrected references in square brackets in paragraphs 1.14, 7.3 and 7.27, which were originally to 'listed' and 'listing' in its confidential report.

2. The OFT has corrected references in square brackets in paragraphs 6.2, 6.3, 6.5, 6.6 and 6.7, which were originally to 'The parties', 'they' and 'their' in its confidential report.

3. The OFT has corrected 'could' in square brackets in paragraph 9.11 which was originally 'will' in its confidential report.

4. The OFT has corrected 'Newco' in square brackets in paragraph 7.27 which was originally 'News' in its confidential report.

5. The OFT has corrected 'News' in square brackets in Annex 5.7 which was originally 'Sky' in its confidential report.

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James Murdoch
Chairman and Chief Executive
News Corporation
3 Thomas Square
London
E98 1EX

15 February 2011

Dear James

NEWS CORP/BSKYB MERGER

In a letter to me of 18 January from Allen & Overy, you sent me a set of proposed undertakings which News Corporation would be willing to give in lieu of my making a reference to the Competition Commission. I announced on 25 January that I would consider undertakings in lieu in respect of the above merger. I also indicated that I would ask OFT and Ofcom to consider the proposed undertakings in lieu with a view to advising me as to whether they considered that they would address concerns about plurality and be workable.

I have now received reports from both regulators which I enclose. It is clear from the reports that OFT and Ofcom have considered the proposals in some detail and worked with News Corp in relation to them. Progress has been made in discussion with Ofcom and the OFT in regard to concerns about plurality. There are nevertheless a number of substantive issues outstanding which mean that neither Ofcom nor the OFT have been able to give a definitive recommendation.

If the substantive issues are not resolved, I do not consider that it would be appropriate for me to accept such undertakings and as such I will refer the matter to the Competition Commission. If, on the other hand, the substantive issues identified by Ofcom and OFT have been dealt with, I believe that I would be in a position to give serious consideration to accepting them.

Department for Culture, Media and Sport

There are therefore four critical matters which need to be resolved if I am to consider accepting your undertakings:

- The Board of Newco would need to be independently chaired. I agree with Ofcom's assessment that, without such an undertaking, the Newco Board could appoint a Chairman who is affiliated with News Corporation which would undermine the spirit and potentially the practical effect of undertakings designed to address concerns about plurality.

- There needs to be a non-reacquisition commitment as set out by the OFT. Whilst I understand that it is proposed that this could lapse after 10 years, I quite understand the OFT's concern that there should not be a "carve-out" in the event of a third party bid for Newco.

- The key contracts would need to be approved by me. At a minimum this would cover the carriage agreement and the brand licensing agreement. I would anticipate asking Ofcom and the OFT to advise me on these contracts at the appropriate time.

- There needs to be more clarity around the definition of "material transactions" (as identified in para 8.11 of the OFT report) and the assets to be transferred (paragraph 9.7-9.14).

There are also a number of other important issues where there is agreement in principle, or a large measure of agreement, and these too would need to be agreed and incorporated into the undertakings in lieu.

If you are unwilling to agree to the necessary changes, I will refer the merger to the Competition Commission. If, on the other hand, you will accept that in principle these changes can be made, and confirm that to me within 24 hours, I will formally ask Ofcom and the OFT to continue their discussions with News Corp with a view to producing as soon as possible a set of finalised undertakings in lieu which I can consider. If I then propose to accept those finalised undertakings in lieu of a reference, they can then be published and consulted on as the legislation requires.

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

News Corporation

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

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(iii) this is addressed by sections 4.4 and 4.6 of the Draft UIL; and

(iv) this is addressed by sections 3.1(iv) and by a new definition of Material Transactions. As noted at footnote 38 of the OFT's report on the UIL to the Secretary of State, given that such a schedule will likely take a number of days to draw up, News suggests that the best way forward would be for News to provide it to the OFT during the public consultation. News notes that the OFT believes this to be appropriate (at paragraph 9.14 of its report).

I will instruct my advisers to engage with the OFT and Ofcom in short order with a view to agreeing that the suggested text is appropriate to address your concerns and to launch the public consultation.

I trust that in light of these concessions it will be clear that the UIL offered by News remedy, mitigate or prevent any residual concern that you may have at this stage and that the UIL should therefore (following the required public consultation) be accepted by you in lieu of an unnecessary reference to the Competition Commission.

I look forward to hearing from you, confirming how my advisers should now progress this with the OFT and Ofcom.

Yours sincerely

James Murdoch

James Murdoch
Chairman & CEO, Europe & Asia

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DRAFT: 16 February 2011

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 [✂] (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.

Department for Culture, Media and Sport
Rt Hon Jeremy Hunt MP
Secretary of State

2-4 Cockspur Street
London SW1Y 5DH
www.culture.gov.uk

Tel [redacted]
Fax [redacted]

department for
**culture, media
and sport**

Ed Richards,
Collette Bowe,
By e-mail: [redacted]

17 February 2011

Dear Ed and Collette

NEWS CORP/BSKYB MERGER

Thank you both for your letter of 11 February. I am grateful to you for all the work you have put into this report in such a short period of time.

I note your conclusion that, if the undertakings already offered were amended, concerns in relation to plurality could be met. I have now received assurances from News Corporation that they are prepared to meet all the outstanding matters set out in your report, and in the OFT's report, and an updated draft of the proposed undertakings is enclosed with this letter.

I should therefore be grateful if you could work with News Corporation and Sky to agree a set of undertakings, so that I can make a final decision, taking into account your further recommendations, whether or not to accept those undertakings.

My officials will be in touch to discuss the timeframe.

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

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culture, media
and sport

Clive Maxwell,
Executive Director
Office of Fair Trading

By e-mail: [redacted]

17 February 2011

Dear Clive

NEWS CORP/BSKYB MERGER

Thank you for your letter and enclosed report of 11 February. I am grateful to you for all the work you have put into this report in such a short period of time.

I note your conclusion that, if the undertakings already offered were amended, concerns in relation to plurality could be met. I have now received assurances from News Corporation that they are prepared to meet all the outstanding matters set out in your report, and in Ofcom's report, and an updated draft of the proposed undertakings is enclosed with this letter.

I should therefore be grateful if you could work with News Corporation and Sky to agree a set of undertakings, so that I can make a final decision, taking into account your further recommendations, whether or not to accept those undertakings.

My officials will be in touch to discuss the timeframe.

[redacted]

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

DRAFT: 1 March 2011

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 4.4, 4.6 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, radio and any closely related services (irrespective of the platform on which such service is distributed) will abide by the principle of editorial independence and integrity in news reporting and where appropriate will comply with the Ofcom Broadcasting Code;

(iii) The articles of association of Newco shall provide that, so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own 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 also 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 senior editorial and/or journalistic experience;

(vi) The articles of association of Newco shall provide that the appointment or removal (including any material changes in terms and conditions which could give rise to constructive dismissal) and any material changes to the authority or reporting relationship 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 News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of Newco's voting shares, Newco shall establish a corporate governance and editorial committee which will:

(A) comprise a majority of members who are Independent Directors (including an Independent Director with senior editorial and/or journalistic experience);

(B) be chaired by an Independent Director;

(C) be entrusted with oversight of Newco's compliance with the corporate governance provisions, 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; and

(D) operate under terms of reference which will stipulate that the corporate governance and editorial committee will:

I. be adequately resourced and have powers to review and investigate all areas within the remit of the committee;

II. meet at least four times a year;

III. report on a regular basis to the board of Newco;

IV. cause a statement to be included in the Newco annual report on its activities including its oversight functions specified in section 3.1(viii)(C) above;

V. consider any representations made by the head of Sky News as to Newco's compliance with the provisions relating to editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code as provided for under section 3.1(ii) above and report any such representations to the board of Newco; and

VI. advise the Newco board on any issues within its remit including any approval specified at 3.1(vi) above.

3.2 For so long as News in combination with any member of the same Group of Interconnected Bodies Corporate as News does not own more than 50% of the voting 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, which will be set out in a Schedule of Assets which will be provided to the Secretary of State prior to the Effective Date and which will include:

(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 24 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 Any Carriage Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.4 above shall:

(i) be for a term of 10 years;

(ii) 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 be 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") oblige 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) contain 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 Any Brand Licensing Agreement approved by the Secretary of State for the purpose of the obligation in paragraph 4.6 above shall:

(i) permit Newco to use the Sky News brand in connection with its news output;

(ii) 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 be 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) contain 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 proposed 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, 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:

(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;

(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 and which shall be in a form to be approved by the Secretary of State prior to spin-off;

(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) one or more agreements in relation to broadcast and technical services under which Sky will offer to Newco:

(A) satellite capacity;

(B) playout;

(C) uplink;

(D) DTT transmission;

(E) online transmission; and

(F) mobile distribution,

in each case for a term of up to 10 years (or such shorter time as required by Newco) except for the service set out at (D) which will be provided until [✂] (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, in the case of the agreement(s) relating to the services set out at (A), (B) and (C) in a form to be approved by the Secretary of State prior to spin-off; and

(v) broadcast operations (including studio operations staff such as camera operators and sound technicians; edit suite services and staff; in-studio graphics specialists; and video library staff) and creative services (on- and off- screen design services) agreements.

5.2 Each of the agreements set out at 5.1 (i) to (v) above will be terminable by Newco on the provision of reasonable notice to Sky and, where appropriate, break fees to cover Sky's unavoidable costs of early exit. The required period of notice (and, where applicable, break fees) will be set out in each agreement.

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

(i) 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); and

(ii) 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).

5.4 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 in combination with any member of the same Group of Interconnected Bodies Corporate as 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 it 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 maintained and preserved and is run in the ordinary course;

(iv) the nature, description, 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 or the OFT such information as the Secretary of State or the OFT 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. INTERPRETATION

10.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

10.2 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.

10.3 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.

10.4 For the purposes of these undertakings:

"**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 (Sky's independent directors shall not be excluded from this definition by virtue of having served on Sky's board);
- 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;

"**Interest**" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"**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 involves or could reasonably involve the payment or receipt by Newco or its subsidiaries of amounts of £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;

"**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.

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Ofcom

1 March 2011

Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport
Department of Culture, Media and Sports
2-4 Cockspur Street
London
SW1Y 5DH

Colette Bowe
Chairman

Ed Richards
Chief Executive

Dear Jeremy

News Corporation / BSkyB proposed merger: further advice on revised UILs

We are writing as requested in your letter of 17 February 2011, to provide you with our advice on whether a revised set of proposed undertakings (UILs) provided by News Corporation on 28 February 2011 addresses the potential impact on media plurality of its proposed acquisition of the shares in British Sky Broadcasting Group plc (Sky) it does not already own, as identified in our report of 31 December 2010.

Background

In our previous report of 31 December 2010, we noted that the proposed transaction would result in Sky ceasing to be a distinct media enterprise from News Corporation. We considered both external and internal plurality and a range of measures to assess the effect of the proposed transaction, including:

- **Audience share and reach within individual platforms** - Following the transaction, News Corporation would be the only news and media provider present on all four media platforms at the wholesale level (TV, newspapers, online and radio). At the retail level, it would be one of three providers of UK-wide news and current affairs on three of four platforms (alongside the BBC on TV, radio and online and Northern & Shell on TV, newspapers and online).
- **Consumers' consumption of news** – We considered the parties' position in respect of their share of 'news minutes' consumed. This suggests that the proposed acquisition would see News Corporation consolidate its second place in terms of news consumption (rising from 14% to 24% including wholesale news provision). This compares to the BBC, which has news consumption of 44% of minutes and DMGT which is third with 9%.

- **Primary research on consumers' claimed use of different media** - The proposed transaction would be a combination of the second and fourth largest providers based on our research into share of all references for news providers. For example, News Corporation's potential ability to influence would increase with the addition of Sky News, increasing its share of references from 12% to 22%. News Corporation's reach as a percentage of regular news consumers would increase from 32% to 51%.

By considering these measures, we concluded that the proposed transaction would result in an increase in News Corporation's ability to influence public opinion (through Sky News). This indicated a change in the concentration of media ownership which would be likely to affect sufficient plurality.

Our advice, based on the evidence and reasons set out in our report, was that we reasonably believed that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences.

We therefore recommended a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest.

On 25 January you announced that, following meetings with Ofcom and News Corporation, you intended to refer the merger to the Competition Commission, considering that it may be the case that the merger may operate against the public interest in media plurality. However, before doing so, you said that it was right that you consider undertakings in lieu (UILs) offered by News Corporation.

You requested Ofcom to advise you on the extent to which the proposed UILs address the potential impact on media plurality identified in our 31 December report. You separately asked the OFT to advise you on whether the proposed UILs would be practically and financially viable and effective, in relation to which we have, as requested, assisted the OFT in light of our sectoral expertise.

We wrote to you on 11 February 2011 with our views on News Corporation's UILs, which propose to separate Sky News into a new company – 'Newco'. In that letter, we detailed the importance of suitable governance measures being put in place as a result of the UILs given the fundamental commercial dependency of Newco on a merged News Corporation/Sky entity.

In our view, these UILs did not provide sufficient assurances on such governance arrangements to address our previously expressed concerns on the impact on plurality from the proposed transaction. However, we noted that the proposed UILs may represent a way forward in principle, subject to resolution of some key outstanding points and on further negotiation relating to the detail of the arrangements.

Following advice from Ofcom and the OFT, you received assurances from News Corporation that it was willing to address the outstanding concerns. On 17 February you asked us and the OFT to work with News Corporation on a revised set of UILs.

Following further discussion, News Corporation offered revised proposed UILs that are attached in full to this letter.

Revised proposed UILs

In our letter of 11 February, we had indicated that in light of Newco's commercial dependence on News Corporation, the following outline set of governance measures would be needed in addition to the measures offered in the original proposed UILs.

- The Board of Newco should consist of a majority of independent directors, "independent directors" being directors who have no other News Corporation or News Corporation associated interest;
- The Board of Newco, including the independent non executive directors, should have a combination of both senior editorial and business experience/expertise;
- The Chairman of Newco should be an independent non executive;
- There should be a sub-committee of the Board of Newco to oversee editorial independence and integrity of Newco's services ("the Board Editorial Committee").

In addition, we noted that the OFT had a number of remaining concerns relating to the practical and financial viability of the initial UILs. These concerns were relevant to our plurality concerns, and in our view would also need to be satisfactorily addressed in any final UILs.

Taking each of these points in turn, the revised UILs, received in final form on 1 March 2011, now propose as follows:

- a majority of the Newco board of directors will be independent, being directors who have no other News Corporation or News Corporation associated interest (UILs 3.1(iii) and 10.4);
- the Chairman of the Newco board will be an independent director (UILs 3.1(iii));
- the articles of association of Newco will 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 senior editorial and/or journalistic experience (UILs 3.1(v));
- the articles of association of Newco will provide that Newco's Sky News TV, radio and any closely related services (irrespective of the platform on which such service is distributed) will abide by the principle of editorial independence and integrity in news

reporting and, where appropriate, will comply with the Ofcom Broadcasting Code (UILs 3.1(ii)). The reference to closely related services is to ensure that the provision of text content alongside audiovisual content does not provide a mechanism for editorial influence that could affect the editorial independence and integrity of Newco news services; and

- Newco shall have a Corporate Governance and Editorial Committee, key points of whose terms of reference are defined in the articles of association. This committee would oversee and report to the full board on compliance with the principles of editorial independence and integrity in news reporting and compliance with Ofcom's Broadcasting Code (UILs 3.1(viii)).

Under the revised proposed UILs, the provisions in the articles relating to independent directors and the editorial committee would no longer apply if News Corporation acquired more than 50% of the shares in Newco (even though News Corporation might not have the 75% control of voting required to amend the articles of association of Newco).

However, News Corporation's share in Newco would be limited to 39.14% and it would require your prior approval to acquire any more (UILs 6.1).

In offering our advice in relation to the revised proposed undertakings we assume that you or any successor would consult both publicly and with Ofcom and the OFT before agreeing to any change which proposed to permit News Corporation to increase its shareholding above 39.14%.

We understand that if you are minded to accept these revised proposed UILs you will consult on them (as would also be required by statute for any future changes to or termination of the UILs). If you decide, subject to the outcome of the public consultation, to accept the UILs, we consider that further negotiation with News Corporation may be necessary on the precise terms of contracts outlined within them which require your prior approval. It is important to note that the financial and practical viability of the revised proposed UILs and their effectiveness in addressing our plurality concerns will depend on the detail of the arrangements.

As you are aware, the revised proposed UILs effectively run for a 10 year period. As we set out in our letter of 11 February 2011, we have advised the OFT that we consider that a carriage agreement of a 10-year term in the context of market dynamics in this sector is long term. This is because we consider that there is likely to be significant evolution of the market and consumers' use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time.

However, in this context, we would like to restate and emphasise our advice, set out in our report of 31 December 2010 and our letter of 11 February 2011, that the Government should consider undertaking a wider review of the statutory framework to ensure plurality in the public interest in the longer term. We believe that the current system is deficient in failing to provide for intervention to be considered where plurality concerns arise in the absence of a corporate transaction involving media enterprises.

Our advice

We have seen a draft of the OFT's further advice to you in relation to the financial and practical viability of the revised proposed UILs. We agree with the OFT's position.

In conclusion, and with reference to the points set out above, we consider that the revised proposed undertakings would address the plurality concerns identified in our report of 31 December 2010.

Yours ever,

Colette Bowe **Ed Richards**

Enc

cc. Clive Maxwell, Executive Director, OFT

OFFICE OF FAIR TRADING

The Rt. Hon Jeremy Hunt, MP
Secretary of State for Culture, Olympics, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

Your ref		Direct line	
Our ref		Fax	
Date	1 March 2011	Email	

Dear Secretary of State

Advice from the Office of Fair Trading on undertakings in lieu offered by News Corporation relating to the anticipated acquisition by News Corporation of British Sky Broadcasting Group plc

1. I refer to your letter of 17 February 2011 following on from our report to you of 11 February 2011 (the Report).

2. In your letter, you asked us to work with News Corporation (News) and British Sky Broadcasting Group plc (Sky) to agree a set of undertakings in lieu of reference (UIL), so that you can make a final decision whether or not to accept those undertakings, taking into account the OFT's further recommendations on whether they are practically and financially viable.

3. Since receiving your letter of 17 February, the OFT has engaged with News with a view to amending the UIL offered to you in light of the comments and recommendations in the Report. The OFT has also consulted with Ofcom in its role as sectoral regulator. This process has led to a revised set of UIL submitted by News on 1 March (the Revised UIL), a copy of which is annexed to this letter.

4. The advice and recommendations that I set out in this letter are based on the remit to the OFT set out in your letter of 27 January 2011. The OFT has advised on whether the UIL are practically and financially viable and has considered if there are any practical issues which could undermine the

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INVESTOR IN PEOPLE

operation of the UIL and whether they would be effective over the medium and long term. I note that your assessment of the Revised UIL will be in the context of their ability to resolve media plurality concerns. The OFT has not considered the effectiveness of the UIL in terms of their impact in addressing the media plurality concerns raised by Ofcom in its report of 31 December 2010. This issue is being addressed by Ofcom. To the extent that the OFT has been concerned with 'effectiveness' of the Revised UIL, this relates to their mechanical and operational effectiveness.

5. Before providing advice and recommendations in relation to the Revised UIL, I set out details of the amendments that have been made in the Revised UIL as against those originally submitted to the Secretary of State and considered by the OFT for the purposes of the Report.

Details of key amendments in the Revised UIL

6. The OFT set out in the Report (at paragraph 1.20) a number of amendments that it considered were necessary. These, together with the changes made since, are:

- **interim protection** – this has been included in paragraph 8.1 of the Revised UIL;
- **non reacquisition commitment** – this has been included in paragraph 8.1 of the Revised UIL;
- **prior review / approval of key agreements** – this has been incorporated in relation to the brand licensing agreement in paragraph 4.6 of the Revised UIL; News has provided that the lease of the current Sky News premises and the arrangements between News/Sky and Newco in relation to satellite capacity, playout and uplinking should also be subject to approval by the Secretary of State under paragraph 5.1(ii) of the Revised UIL;[1]
- **inclusion of an arbitration / dispute resolution mechanism** – this has been incorporated in paragraphs 4.5(v), 4.7(v) and 5.3 of the Revised UIL;[2]

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[1] Unlike the carriage agreement and brand licensing agreement, these would not need to be approved prior to the Effective Date (that is, acceptance of the UIL).

[2] News has provided details of the proposed arbitration mechanism to the OFT, but the OFT notes that the Secretary of State will have the ability to review and approve these in the carriage agreement and brand licensing agreement.

- **restrictions on termination of the key agreements** – this has been included in paragraph 4.8 of the Revised UIL; and

- **other obligations** – the OFT set out in sections 7 to 12 of the Report further detail on each of the points raised above, together with further undertakings and amendments to the UIL; further material amendments to the Revised UIL are considered below in paragraph 7.

7. In addition to the above, there have been a number of additional material amendments incorporated in the Revised UIL,[3] namely:

- **enumeration of transfer of assets** – as envisaged in paragraphs 9.13 and 9.14 of the Report – News has included in paragraph 4.1 of the Revised UIL an obligation to provide a schedule of assets to the Secretary of State prior to acceptance of the UIL;

- **non-solicitation of staff** – as envisaged in paragraph 9.21 of the Report – News has agreed to include a two year non-solicitation clause in paragraph 4.2 of the Revised UIL; and

- **operational agreements** – as envisaged in paragraph 11.10 of the Report – News has addressed in the Revised UIL the main points raised by the OFT in relation to the operational agreements (in particular, as well as prior review of key agreements (see above), termination rights by Newco in relation to all operational agreements).

Advice in relation to the Revised UIL

8. In light of the amendments proposed by News, and subject to prior approval of the key agreements, as described above, the OFT advises the Secretary of State that the Revised UIL are likely to be practically and financially viable in the short and medium term (that is, no more than 10 years).

9. The OFT also advises the Secretary of State that the amendments made to the Revised UIL do not address the essential structural limitation identified in the Report, that the UIL offered are unlikely to be practically and financially viable over the long term. The relevance of this limitation ultimately depends on the time horizon which the Secretary of State,

[3] In addition, there have been a number of drafting changes to the Revised Undertakings that are not set out here.

advised by Ofcom, considers relevant to ensure the effectiveness of the UIL in addressing any media plurality concerns. The OFT notes that Ofcom's advice of 11 February 2011 sets out its views on the dynamics of the industry.

Advice in relation to process going forward

10. To the extent that you are minded to accept the Revised UIL, you will be aware that Schedule 10 Enterprise Act 2002 provides for a consultation period on UIL to give third parties an opportunity to make representations on them for you to consider.

11. Paragraph 2(2) of Schedule 10 provides an explanation of the contents of the notice that should accompany the publication of any UIL. In practical terms, this notice is normally effected by means of the publication of an accompanying text issued by the OFT (or, in this case, the Secretary of State) explaining why it/he is minded to accept the UIL in question. In order to fulfil the requirements of paragraph 2(2) and provide an informative basis for the consultation, the notice should identify the media plurality concerns that the Revised UIL are seeking to deal with and explain the intended purpose and effect of the Revised UIL.

12. In particular, having regard to the limited time period in which to consider the UIL offered and to consult with News, the OFT advises that it would be appropriate for you to test further the viability and robustness of the commitments offered during the statutory public consultation process.

Yours sincerely,

Clive Maxwell
Executive Director, OFT

Documents published before 3 March 2011

EUROPEAN INTERVENTION NOTICE GIVEN PURSUANT TO SECTION 67 ENTERPRISE ACT 2002 – ANTICIPATED ACQUISITION OF BRITISH SKY BROADCASTING PLC BY NEWS CORPORATION

Whereas the Secretary of State has reasonable grounds for suspecting that it is or may be the case that:

(a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, as defined in section 23 of the Enterprise Act 2002 ("the Act") in that:

> (i) enterprises carried on by or under the control of News Corporation will cease to be distinct from enterprises carried on by or under the control of British Sky Broadcasting plc; and
>
> (ii) the value of the turnover in the United Kingdom of the enterprise to be taken over exceeds £70million;

(b) a concentration with a Community dimension (within the meaning of Council Regulation (EC) No 139/2004 - "the EC Merger Regulation), or part of such a concentration has thereby arisen or will arise;

Whereas the Office of Fair Trading is unable to refer the relevant merger situation concerned to the Competition Commission under section 33 of the Act (whether or not it would otherwise have been under a duty to make such a reference) by virtue of article 21(3) of the EC Merger Regulation;

Whereas the Secretary of State is considering whether to take appropriate measures to protect legitimate interests as permitted by article 21(4) of the EC Merger Regulation;

Whereas the Secretary of State believes that it is or may be the case that the public interest consideration specified in section 58 of the Act concerned with the sufficiency of plurality of persons with control of media enterprises is relevant to a consideration of the merger situation;

Now, therefore, the Secretary of State in exercise of his powers under section 67(2) of the Act, hereby gives this intervention notice and requires the Office of Fair Trading to investigate and report in accordance with article 4 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 and Ofcom to investigate and report in accordance with article 4A of that Order, both within the period ending on 31 December 2010.

4 November 2010

Andrew Rees

Andrew Rees
An official of the Department for Business Innovation & Skills

Press Releases

Mergers: Commission clears News Corp's proposed acquisition of BSkyB under EU merger rules

Reference: IP/10/1767 Date: 21/12/2010

HTML: EN FR DE
PDF: EN FR DE
DOC: EN FR DE

IP/10/1767

Brussels, 21 December 2010

Mergers: Commission clears News Corp's proposed acquisition of BSkyB under EU merger rules

The European Commission has approved under the EU Merger Regulation the proposed acquisition of British and Irish pay TV operator BSkyB by News Corporation, a global media and communications company headquartered in the US. The Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it. The Commission's findings concern solely the competition aspects of the proposed transaction. They are without prejudice to the ongoing investigation by the competent UK authorities of whether the proposed transaction is compatible with the UK interest in media plurality, which is different from the Commission's competition assessment. The UK remains free to decide whether or not to take appropriate measures to protect its legitimate interest in media plurality (as permitted under Article 21 of the EU Merger Regulation).

Commission Vice-President and Commissioner for Competition Joaquin Almunia said: *"I am confident that this merger will not weaken competition in the UK. The effects on media plurality are a matter for the UK authorities."*

The proposed transaction

The proposed transaction will bring together BSkyB, the leading pay-TV operator in the UK and Ireland, with News Corp, one of the six major Hollywood film studios (20th Century Fox), a TV channel producer (such as Fox, National Geographic), a leading newspaper publisher in the UK and Ireland (such as The Sun and The Times) and a leading pay-TV operator in Italy (Sky Italia) as well as in Germany and Austria (Sky Deutschland). News Corp announced on 15 June 2010 its offer to acquire the remaining 60.9% of the shares in BSkyB which it does not already own. On 3 November 2010, it notified the proposed transaction to the Commission for regulatory clearance.

News Corp and BSkyB are mainly active in different markets in the UK and Ireland and compete with each other only to a limited extent, in the wholesale supply of basic pay-TV channels and in the supply of online and TV advertising space. The Commission found that the proposed transaction would only lead to a small increment on BSkyB's existing share of the market for the supply of basic pay-TV channels in the UK and Ireland. The parties also have a small combined market share in the market for online and TV advertising. Therefore, the transaction does not give rise to horizontal competition concerns.

Given that the merging companies are mainly active at different levels of the market, the Commission's assessment focused on whether the proposed transaction could lead to possible anticompetitive effects arising from vertically linked or neighbouring activities in the audiovisual sector, in newspaper publishing, or in advertising.

Audiovisual sector

The Commission investigated whether, as a result of the proposed transaction, News Corp would be able to prevent or significantly limit access by BSkyB's competitors to premium movie content. The Commission found that News Corp lacks sufficient market power in the market for the licensing of broadcasting rights for premium movies and that BSkyB's competitors would retain several alternative suppliers with equally attractive content. While the market investigation revealed strong concerns over BSkyB's exclusive deals for premium movies with all six Hollywood majors for the first pay-TV window, the transaction will do little to worsen this market situation that exists already today – and is currently under investigation by the UK Competition Commission following a recent decision by UK regulator OFCOM.[1]

The Commission also investigated whether the proposed transaction would lead to a risk of exclusion from BSkyB's pay-TV offering of competitors of News Corp in the licensing of premium film content and TV programmes and in the wholesale supply of basic pay-TV channels. The Commission found that News Corp's premium movie content and TV programmes and basic pay-TV channels constitute a minimal part of Sky's bouquet and that BSkyB would continue to have the incentive to acquire content from News Corp's competitors to have the most attractive retail packages.

As the proposed transaction brings BSkyB into the same group as Sky Italia and Sky Deutschland, the Commission investigated if the new company would enjoy increased bargaining power vis-à-vis rights holders by purchasing premium content jointly for several territories, to the detriment of its pay-TV competitors. The Commission found that it was unlikely that the merged company would be able to impose upon content rights holders a change from current licensing practices (along national territories or language areas) towards simultaneous negotiations across several countries such as Germany, Austria, Italy, UK and Ireland.

Newspaper publishing sector

The Commission investigated whether the merged company would be able to foreclose competing newspaper publishers by offering mixed bundles of subscriptions to Sky and News Corp's print, online or tablet-based newspapers. With respect to bundling with print subscriptions, the market investigation revealed that price is only one, and not the main factor determining readers' choice of and loyalty to a newspaper. Furthermore, no such bundling has been attempted before. Finally, tabloid papers such as The Sun do not offer any subscriptions to its print editions and a low subscription rate to newspapers of 6% of overall UK circulation and of 25-33% for quality titles indicates that the subscription model currently does not appeal to a majority of readers. With respect to bundling with online news, the vast majority of newspapers' online editions – apart from most News Corp titles – as well as other news sources are currently free of charge and there is no evidence that this will dramatically change in the foreseeable future. For these reasons, the Commission excluded that competition concerns in the newspaper publishing sector would arise from the transaction.

Advertising sector

The Commission investigated concerns that the merged entity could either refuse advertising by BSkyB's competitors in News Corp's newspaper titles or charge a competitive premium, thereby impeding their ability to attract subscribers or viewers.

The Commission's investigation revealed that there are sufficient alternative opportunities to advertise with other print media. It also found that, in any event, News Corp's refusal would not have a significant impact on subscription rates in the pay-TV market.

The Commission also found that the merged entity was unlikely to be able to tie the purchase of advertisements in News Corp's print newspapers to the purchase of advertisements on BSkyB's TV channels given that News Corp or BSkyB lack the required market power to engage in such tying.

UK media plurality review and Article 21 of the EU Merger Regulation

The Commission has exclusive jurisdiction to assess the impact of the proposed transaction on competition in the various markets. However, Article 21 of the EU Merger Regulation recognises that Member States may take appropriate measures, including prohibiting proposed transactions, to protect legitimate interests, such as the plurality of the media.

The purpose and legal frameworks for competition assessments and media plurality assessments are very different. The competition rules focus broadly on whether consumers would be faced with higher prices or reduced innovation as a result of a transaction. A media plurality assessment reflects the crucial role media plays in a democracy, and looks at wider concerns about whether the number, range and variety of persons with control of media enterprises will be sufficient.

The UK Secretary of State for Business Innovation and Skills issued a European intervention notice on 4 November 2010.[2] This notice requires the relevant UK authorities to investigate and report by 31 December 2010 on whether the proposed transaction is or may be expected to operate against the public interest in sufficiency of plurality of persons with control of media enterprises.[3]

The Commission's findings concern solely the competition aspects of the proposed transaction. Today's clearance decision is therefore without prejudice to the UK's ongoing media plurality review of the proposed transaction.

More information on the case is available at:

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_5932

1 :

OFCOM – Premium pay TV movies. Market investigation reference to the Competition Commission, decision of 4 August 2010.

2 :

See

http://www.bis.gov.uk/assets/biscore/business-law/docs/b/bskyb-intervention-notice-nov-2010.pdf .

3 :

Section 58 of the UK Enterprise Act 2002.

OFFICE OF FAIR TRADING

A report to the Secretary of State for Culture, Olympics, Media and Sport in response to the European intervention notice issued on 4 November 2010 in relation to the anticipated acquisition by News Corporation of British Sky Broadcasting Group plc

A report pursuant to Article 4(2)-(5) of the Enterprise Act 2002 (Protection of legitimate interests) Order 2003

30 December 2010

BACKGROUND AND ADVICE

1. This report is made following the European intervention notice (the Notice) given to the Office of Fair Trading (OFT) by the Secretary of State on 4 November 2010 pursuant to section 67(2) of the Enterprise Act 2002 (the Act).[1] This report has been prepared pursuant to Article 4 (2)-(5) of the Enterprise Act 2002 (Protection of legitimate interests) Order 2003[2] (the Order).

2. The Notice required the OFT to investigate and report to the Secretary of State in accordance with Article 4 of the Order within the period ending on 31 December 2010. Article 4 of the Order requires the OFT to provide advice to the Secretary of State on the considerations relevant to the making of a reference under section 33 of the Act which are also relevant to the Secretary of State's decision as to whether to make a reference under Article 5 of the Order. Specifically, the OFT is required to provide a decision as to whether it believes that it is, or may be, the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation as defined in section 68 of the Act.

3. The Notice also required the Office of Communications (Ofcom) to investigate and report in accordance with Article 4A of the Order, within the same period on the sufficiency of plurality of persons with control of media enterprises.

4. This report sets out the reasons why the OFT believes that the Secretary of State has jurisdiction and is able to exercise the power to make a reference to the Competition Commission (the CC) under Article 5(3) of the Order to address any media plurality concerns arising from the merger provided that the Secretary of State believes that the conditions set out in Article 5(3) of the Order are satisfied.

THE PARTIES

5. **News Corporation (News Corp)** is a global media company active in: (1) filmed entertainment; (2) television; (3) cable network programming; (4) direct broadcast satellite television; (5) integrated marketing services; (6) newspapers and information services; (7) book publishing; and (8) other activities such as digital media

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[1] Although the Notice was originally given on behalf of the Secretary of State for Business, Innovation and Skills, following the transfer of all responsibility for competition issues relating to media, broadcasting, digital and telecoms sectors to the Secretary of State for Culture, Olympics, Media and Sport on 21 December 2010, this report is submitted to him.
[2] S.I. 2003/1592.

properties and outdoor display advertising. In the UK, it owns several daily and weekly newspapers (those are The Sun, The News of the World and The Times) and 39.14 per cent of British Sky Broadcasting Group plc (BSkyB).

6. The target is **BSkyB**. The acquisition will be effected through an offer to acquire the entire issued and to be issued share capital of BSkyB not already owned by News Corp. BSkyB's activities in the UK include: (1) the creation and retail and wholesale distribution of 'linear' TV channels; (2) the retail distribution of BSkyB's and third parties' 'audiovisual' content; (3) the provision of retail telephony and broadband services; (4) the provision of conditional access, access control and electronic program guide services to broadcasters and interactive service providers; (5) the sale of advertising and sponsorship on BSkyB and third parties' channels and websites; (6) interactive services on BSkyB's platform; and (7) the provision of fixed-odds betting services.

THE TRANSACTION

7. News Corp intends to acquire BSkyB through an offer for the entire issued and to be issued share capital of BSkyB not already owned by News Corp.

JURISDICTION

Introduction

8. This transaction falls for consideration under the EC Merger Regulation.[3] As a result, the European Commission has sole jurisdiction to investigate the competition aspects of this transaction.[4] However, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by the Merger Regulation and compatible with the general principles and other provisions of Community law.[5] The second paragraph of Article 21(4) Merger Regulation states that plurality of the media shall be regarded as a legitimate interest.

9. Under section 58 of the Act, the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience is specified as a public interest consideration. The Secretary of State is therefore entitled to intervene in relation to a European relevant merger situation where he believes that it is or may be the case that one or more than one public interest consideration is relevant to a consideration of the relevant merger situation concerned.

10. Under section 68 of the Act, a European relevant merger situation means a relevant merger situation: (a) which will be created if arrangements which are in progress or in contemplation are carried into effect; (b) by virtue of which a concentration with a Community dimension (within the meaning of the Merger Regulation), or a part of such a concentration, will arise; and (c) in relation to which a reference was prevented from being made under section 33 (whether or not there would otherwise have been a duty to make such a reference) by virtue of Community law or anything done under or in accordance with it.

11. The OFT sets out below why it believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation.

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[3] Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the Merger Regulation).
[4] Article 21(3) Merger Regulation.
[5] Article 21(4) Merger Regulation.

The transaction would create a relevant merger situation under the Act

12. A merger must meet all three of the following criteria to constitute a relevant merger situation for the purposes of the Act:[6]

- two or more enterprises must cease to be distinct, or there must be arrangements in progress or in contemplation which, if carried into effect, will lead to enterprises ceasing to be distinct; and
- either the value of UK turnover of the enterprise which is being acquired exceeds £70 million or the enterprises which cease to be distinct supply or acquire goods or services of any description and after the merger together supply or acquire at least 25 per cent of all those particular goods or services supplied in the UK or in a substantial part of it; and
- either the merger must not yet have taken place; or (subject to certain exceptions) the merger must have taken place not more than four months before the reference is made.

13. Taking each of these criterion in turn.

<u>Enterprises ceasing to be distinct</u>

14. Based on the information submitted by News Corp, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. These arrangements are the steps News Corp is taking to acquire BSkyB and which, if successful, will bring two or more enterprises (being each of News Corp and BSkyB) under common control.

15. At present, News Corp already owns 39.14 per cent of BSkyB and may therefore already exercise some degree of control[7] over BSkyB for the purposes of the Act. However, section 26(4) of the Act provides that a person or group of persons may be treated as bringing an enterprise under his or their control if being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate.

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[6] See *Merger Assessment Guidelines* (OFT1254), paragraph 3.1.3.
[7] That is, the ability to control or materially to influence the policy of BSkyB, but without having a controlling interest in BSkyB. See paragraph 3.2.5 of the *Merger Assessment Guidelines* (OFT1254).

16. The transaction would result in News Corp acquiring a controlling interest in BSkyB.[8] Regardless of whether News Corp was able previously to control or materially to influence the policy of BSkyB, section 26(4) means that the transaction would result in a change in the level of control so as to enable BSkyB to be treated as being brought under News Corp's control for the purposes of the Act.

Turnover threshold

17. The turnover test under the Act is met because the UK turnover of BSkyB is greater than £70 million.

Four-month time limit

18. The third criterion is, at present, met because News Corp has not completed the acquisition of the remaining shares of BSkyB. However, following the approval of the proposed acquisition by the European Commission (see paragraph 20 below), News Corp is permitted to acquire a controlling interest in BSkyB. As such, if at any stage, News Corp were to acquire shares in BSkyB above 50 per cent of its issued share capital, then the power to make a reference under the Act would last for four months from the date of such an acquisition.

19. As a result of the above, arrangements are in progress or in contemplation which if carried into effect would result in the creation of a relevant merger situation.

Transaction with Community dimension

20. The European Commission concluded on 21 December 2010 that the transaction constitutes a concentration with Community dimension, but that it would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it.[9]

21. As a result of this transaction, arrangements are in progress by virtue of which a concentration with a Community dimension (within the meaning of the Merger Regulation) will arise.

22. In relation to those arrangements, a reference would be prevented from being made since the European Commission has asserted its

[8] A 'controlling interest' generally means a shareholding of more than 50 per cent of the voting rights in a company. See paragraph 3.2.14 of the *Merger Assessment Guidelines* (OFT1254).
[9] Case No. COMP/M.5932. Decision not yet published. See IP/10/1767.

exclusive jurisdiction based on Article 21(3) of the Merger Regulation.[10]

Conclusion on jurisdiction

23. As a result of the reasons above, the OFT believes that there are arrangements in progress or in contemplation which, if carried into effect, will create a European relevant merger situation within the meaning of section 68(2) of the Act.

SUMMARY OF THIRD PARTY REPRESENTATIONS

24. Under Article 4 of the Order, the OFT's report may contain a summary of any representations about the case which have been received by the OFT and which relate to media plurality and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under Article 5. The OFT may also include advice and recommendations which relate to media plurality and which is or may be relevant to the Secretary of State's decision as to whether to make a reference under Article 5.

25. Following receipt of the Notice, the OFT has consulted and invited comments on jurisdictional matters only, since the Secretary of State has requested Ofcom to report on the issues relating to media plurality.[11] In response to the OFT's consultation, two third parties made representations.

26. These representations were not directly relevant for this report since they addressed competition issues. These representations were provided to the European Commission for consideration in its assessment.[12]

27. No representations were received that the Secretary of State does not have jurisdiction to intervene in this case.

CONCLUSION

28. The OFT advises the Secretary of State that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation for the purposes of section 68(2) of the Act. Therefore, the OFT believes

[10] As stated above. See paragraph 20 above.
[11] See further section 44A of the Act and 4A of the Order.
[12] The representations received also urged the OFT to request that the European Commission refer the case to the UK for a competition assessment pursuant to Article 9 Merger Regulation. In the context of these submissions, representations on why this transaction gives rise to a relevant merger situation were made. These are substantially aligned with the OFT's views as stated above (see paragraphs 12-19).

that the Secretary of State has jurisdiction to make a reference to the CC under Article 5(3) of the Order to address any media plurality concerns if the Secretary of State believes that the conditions set out in Article 5(3) of the Order are satisfied.

Sheldon Mills
Director, Mergers
Office of Fair Trading
30 December 2010

Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation

This is the non-confidential version.
Confidential information has been redacted.
Redactions are indicated by [✂]

31 December 2010

Report on public interest test

Contents

Section 1

Summary

Introduction

1.1 On 3 November 2010 News Corporation ("News Corp") notified the European Commission of its intention to acquire the shares in British Sky Broadcasting Group pic ("Sky") it does not already own (throughout the report we refer to this as the "proposed acquisition" or "the transaction"). This would increase its holding from approximately 39.1% to 100%.

1.2 On 4 November the Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. The notice specified the public interest consideration in section 58 of the Enterprise Act 2002 ('the Act') concerned with the sufficiency of plurality of persons with control of media enterprises. This is:

"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience". [1]

1.3 He asked Ofcom to investigate and to report to him by 31 December 2010 providing advice and recommendations on the specified public interest consideration, which may be relevant to the Secretary of State's decision on whether to refer the case to the Competition Commission.

1.4 It is not Ofcom's role to advise on whether concerns are conclusively established but rather to advise on whether there may be concerns such that a fuller second stage investigation is warranted. In our advisory role undertaking a first stage assessment within 40 working days, the threshold to be reached for Ofcom to advise the Secretary of State that the proposed acquisition may warrant fuller consideration by the Competition Commission is fairly low. *Ofcom needs to hold a reasonable belief, on the basis of the evidence available, that the proposed acquisition may operate or be expected to operate against the public interest*[2].

1.5 In fulfilling this role, we have had particular regard to the significance attached by Parliament to media plurality to the functioning of a healthy and informed democracy. The relevant Government minister said in 2003 that *"[media] plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda".*[3]

1.6 We have undertaken our own analysis and new primary research and taken into account submissions received from a range of stakeholders including:

- 20 commercial and professional organisations (including News Corp and Sky);
- 8 academics and industry observers;

[1] There has only been one previous instance of an intervention notice being issued in relation to this public interest consideration involving Sky's proposed acquisition of 17.5% of ITV ("Sky/ITV")
[2] Office of Fair Trading & Ors v IBA Health Ltd [2004] EWCA Civ 142 (19 February 2004)
[3] Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard

- 96 direct submissions from individuals; and
- 58,600 individuals via two online campaign groups.

1.7 We have taken account of the relevant DTI Guidance[4], the Competition Commission's report on the Sky/ITV case[5], and the Court of Appeal's judgment in the Sky/ITV case[6]. We have also considered other relevant regulatory provisions, in particular, the impartiality requirements under Ofcom's Broadcasting Code.

1.8 It is important to note that whilst a number of parties have suggested to us that the proposed transaction may also raise competition concerns, we are concerned only with the specific public interest consideration referred to us by the Secretary of State in his intervention notice. The effect of the transaction on competition was the subject of a separate investigation by the European Commission that resulted in the proposed acquisition being approved under the EU Merger Regulation[7].

1.9 In light of the potential issues raised by representations made to us, we have looked at the public interest consideration in two ways:

- the 'static' effects of the proposed acquisition – on plurality immediately after the transaction in terms of range and number of persons controlling media enterprises including their ability to influence opinions; and
- the 'dynamic' effects of the proposed acquisition – issues that may arise over time, within a forward view of how plurality may develop.

1.10 In considering plurality and the need for there to be sufficient plurality, we have considered the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda[8],

1.11 In doing so we have had regard to the Government statement during the debate of the plurality provisions (see paragraph 1.5 above) and the Secretary of State's guidance on the media public interest merger provisions, which states that the public interest consideration *'is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality'*[9].

1.12 Ofcom has a wide discretion in relation to the assessment of sufficient plurality. Following the Court of Appeal decision in Sky/ITV, what is required is "a qualitative assessment of the position resulting, or likely to result", from the proposed

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[4] DTI Guidance: the Enterprise Act 2002: Public Interest Intervention in Media Relevant merger situations, May 2004
[5] Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007,("Competition Commission")
[6] British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform [2010] EWCA Civ 2 ("Court of Appeal")
[7]http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1767&format=HTML&aged=0&language=EN&guiLanguage=en
[8] Competition Commission report, paragraph 5.7 and Court of Appeal paragraph 90 on range and number.
[9] DTI Guidance, paragraph 7.7

- *No sub-group audiences* - there are some variations in news consumption among age and socio-economic groups, but we have no substantive evidence suggesting there are specific concerns for sub-group audiences. We do not believe that any particular sub-groups would be more significantly affected than the population as a whole as a result of this proposed acquisition.

Plurality of persons with control of media enterprises

1.16 Ofcom's consideration of plurality takes into account the fact that News Corp already owns approximately 39.1% of Sky. However, the proposed acquisition would give it a 100% ownership of shares in Sky so that Sky would become a wholly owned subsidiary of News Corp. Currently, News Corp's stake in Sky, while representing material influence over Sky, does not enable News Corp to pass general and special resolutions alone given the presence of other shareholders and independent directors.[14]

1.17 Full control would allow News Corp to take decisions involving Sky which are in the exclusive commercial interests of News Corp. In light of the fact that the proposed transaction would give News Corp total control of Sky, we consider it would result in a reduction in the number of persons with control of media enterprises and that Sky would cease to be a distinct media enterprise.

1.18 In addition, we also consider the number and range of views across different media enterprises in the context of their ability to influence, and the range of views *within* media enterprises.

1.19 This is the approach adopted by the Competition Commission in Sky/ITV where it termed the former external plurality and the latter internal plurality, although in that case the Competition Commission was considering a situation involving Sky's acquisition of 17.9% shareholding in ITV as compared to 100% in this case.[15]

External plurality

1.20 Representations have been made to us that after the proposed transaction there would be sufficient plurality by reference to the total number and range of media enterprises available. However, as set out in paragraphs 1.10 and 1.11, we consider that in assessing sufficient plurality we should look not simply at the number and range of media enterprises, but also at their relative ability to influence and inform public opinion.

1.21 We have looked at ability to influence and inform opinion by reference to a number of factors since there is no single standard industry measure which can be used consistently across-media platforms. These are:

- *Audience share and reach within individual platforms*[16]. Where possible, we have used recognised industry measures for each media platform to assess the current situation and the potential effect of the proposed transaction.

[14] In Sky/ITV, we assumed that News Corp's 39% shareholding gave it a level of control over Sky for the purposes of including newspapers in our assessment, but we did not have to consider in that context the question of News Corp having full control of Sky.
[15] Competition Commission report, paragraph 5.11
[16] Audience share is the percentage of total consumption accounted for by a specific news provider. Audience reach is the percentage of the total audience which is exposed to a specific news provider

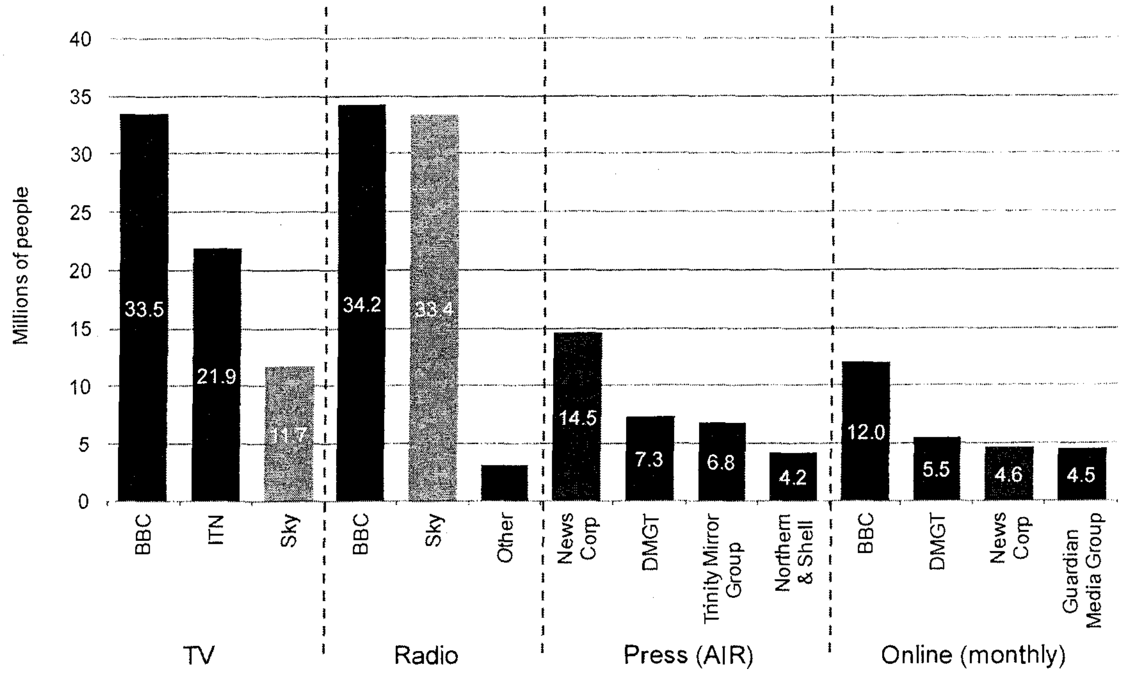
- *Analysis of consumers' consumption of news* - based on minutes of use by a typical consumer in a day.

- *Primary research on consumers' claimed use of different media.* This new market research provides us with the only available measure to compare the use and reach of different news sources across different media, something which is of particular importance in light of our identification of relevant audiences as cross-media audiences[17].

1.22 In considering the effect of the proposed acquisition on the relative positions of News Corp and Sky within individual platforms, we have looked both at their audience share and reach.

1.23 Comparison of either audience share or reach across platforms is not simple given the different ways this information is collected. However, a comparison of reach is helpful in understanding how many consumers may obtain news from News Corp or Sky news content today. We have looked at this measure both on a wholesale and retail basis[18]. The reach of News Corp and Sky cannot be added together following the proposed transaction as there will be an overlap among consumers who already use both News Corp and Sky content[19].

Figure 1: Reach across platform (millions of people) at wholesale level



Source: TV: October 2010, BARB, All Adults (16+), Radio: Q3 2010, RAJAR, All Adults (16+), Press: Kantar Media/NRS, all adults (16+), Online: October 2010, Nielsen / UKOM, all 2+. See footnote 84 *for source details. Methodologies for data collection differ by industry. Note, radio reach is for all radio listening, not radio news listening as RAJAR does not provide genre breakdowns.*

[17] This cross-platform metric is a 'share of references', derived by determining which media outlets, titles or channels consumers refer to when asked about their news and current affairs providers across media platforms. See footnotes 54 and 55 and Annex 1 for more details

[18] For retail, see Figure 16

[19] For more details, see paragraphs 4.11 to 4.38

1.24 Following representations made to us, we have also reviewed the effect of the proposed acquisition in terms of minutes of use of news media across platforms.

1.25 This suggests that the proposed acquisition would see News Corp consolidate its second place in terms of news consumption (rising from 14% to 24% including wholesale news provision). This compares to the BBC, which has news consumption of 44% of minutes and DMGT which is third with 9%. This approach provides a useful overview of cross-media news usage from a consumers' perspective. Whilst this assessment is an improvement on a straightforward analysis of availability, it is still limited: it does not take into account the varying ability of different media to influence opinion. This is set out in 5.24 to 5.32.

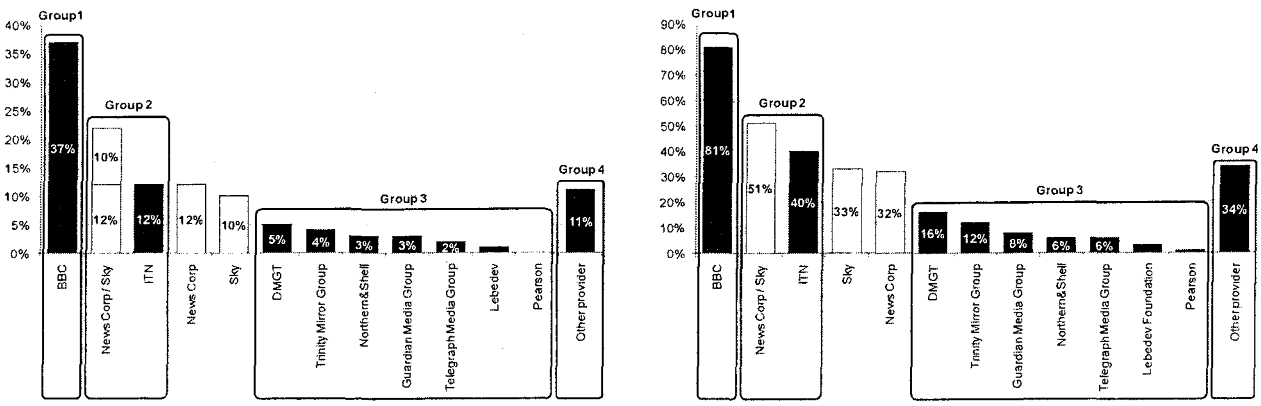
1.26 The results of Ofcom's new market research are summarised below. This research is based on a measure which takes into account the differential ability of alternative media and media organisations to influence opinion as it shows consumers' views of their main sources and all regular sources of news on a cross-media basis.

1.27 The data reproduced at Figure 2 relates to the wholesale provision of news, so it takes account for example of the provision of TV news by ITN to C4 and by Sky to Five.

Figure 2 - Effect of the proposed acquisition on news provision to audiences and ability to influence based on wholesale news provision

Percentage of regular news and current affairs consumers - 96% of GB population

Share of reference – all news sources (%) **Reach – all news sources** (% of population)



Source: Ofcom, cross-media audience research, 2010[20]. Represents 96% of the GB (excludes Northern Ireland) adult population aged 16+. See Annex 1 for details

1.28 This data suggests that providers of news and current affairs across-media platforms can be divided into four broad groups based on their relative share of references by consumers[21]:

- The BBC has the largest share, representing 37% of the total references.

[20] Share of all sources of news and current affairs used regularly (i.e. at least once a week) by adults in GB, by wholesale news provider.
[21] See paragraph 4.43 onwards for full details

- ITN (providing news via ITV and Channel 4), News Corp and Sky news currently constitute a second group of providers. Prior to the transaction each of these has a share of references of around 10%. It is noteworthy that, since its launch, Sky has built its presence in retail and wholesale news provision.
- A third group, made up mainly of the other physical and online newspaper providers have shares ranging from 5% to 1% of references. These include DMGT, Trinity Mirror Group and the Guardian Media Group.
- Finally, a large number and range of other providers represent a further 11% share in total, but individually, they have a small share of references

1.29 A similar story is apparent for the *reach* of different news providers – the number of individuals who use each news provider at least once a week.

1.30 In terms of reach, the BBC (in the form of TV, online or radio) is used by 81% of UK adults at least once a week. This compares to 40% for ITN, 33% for Sky News and 32% for News Corp. The next largest provider in terms of reach is DMGT with 16% of adults using it as a news provider at least once per week[22].

1.31 The reason why the BBC, ITN and Sky feature so prominently in this data is because of the continuing importance of TV news as a means of influencing opinion. This also accounts for the relatively high share of reference attributed to Sky News despite its relatively small share of the total television news audience. The reason for the prominence of News Corp is its strong position in newspapers, which makes it the only non-TV media enterprise with a similar level of influence to the major providers of TV news.

1.32 The effect of the proposed acquisition is to bring together one of the three main providers of TV news with the largest provider of newspapers. The effect on the relevant share of references and reach is indicated by our market research. In relation to the provision of wholesale news:

- The proposed transaction would result in Sky ceasing to be a distinct media enterprise, reducing the number of Group 2 providers from three to two in both share and reach terms. This is particularly marked in wholesale news provision.
- The proposed transaction would be a combination of the second and fourth largest providers based on our research into share of all references for news providers. For example, News Corp's potential ability to influence would increase with the addition of Sky News, increasing its share of references from 12% to 22%. News Corp's reach as a percentage of regular news consumers would increase from 32% to 51%.
- This does not suggest News Corp moves from Group 2 to Group 1[X] in our charts: it would not be of the same scale as the BBC in share or reach terms after the proposed transaction. However, it would be larger in relative ability to influence opinion than both ITN and the Group 3 providers at the wholesale level.

[22] See Figure 22 and Figure 23 in section 4

[X] A typographical error contained in the version of this report sent to the Secretary of State on 31 December 2010 has been subsequently corrected here. The original text was: "This does not suggest News Corp moves from Group 1 to Group 2 in our charts".

1.33 This analysis is based on all news sources measured in the survey (across TV, newspapers, online and radio) and is based on wholesale news provision not retail.

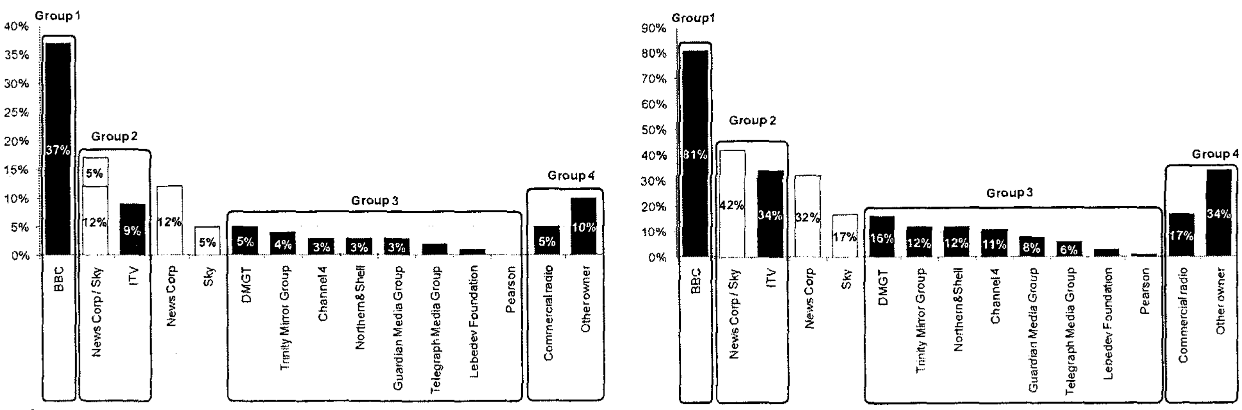
1.34 However, a similar picture is displayed when considering all sources of retail news provision, outlined below, and when considering the main source[23] of news at the retail level (see Figure 28 and Figure 30 in Section 4). In both cases, the BBC continues to be the largest provider, while the transaction increases News Corp's potential ability to influence.

Figure 3 - effect of the proposed acquisition on news provision to audiences and ability to influence based on retail news provision

Percentage of regular news and current affairs consumers - 96% of GB population

Share of reference – all news sources (%)

Reach – all news sources (% of population)



Source: Ofcom, cross-media audience research, 2010[24].

1.35 The BBC is the only Group 1 provider in our analysis, a consequence of its scale in television, radio and online news. As with all media enterprises, the BBC may have an *institutional* view which can shape its editorial decisions. However, the governance of the BBC is different from other broadcasters in that it has a Royal Charter that requires it to be "independent in all matters concerning the content of its output...and in the management of its affairs." Its strategic direction is set by the BBC Trust, which is held publicly accountable for the performance of its role in meeting the "public interest, particularly the interest of licence fee payers". The Trust must also maintain the independence of the executive, which oversees output. This is fundamentally different from other media enterprises, including News Corp, which typically have a controlling proprietor.

Internal plurality

1.36 For the reasons set out above, we consider that the proposed acquisition by News Corp, giving it 100% ownership of Sky's shareholding, would reduce the number of persons with control of media enterprises with Sky ceasing to be a distinct media enterprise. Although News Corp would have full control of Sky we have nonetheless

[24] Share of all sources of news and current affairs used regularly (i.e. at least once a week for all sources, except for weekly newspapers/magazines which are defined as at least once a month) by adults in GB, by retail news provider.

considered the actual extent of control that would be exercised and exercisable by News Corp. This is in line with the approach taken by the Court of Appeal[25].

1.37 We have received a number of submissions on how far internal plurality within the merged group would help in ensuring a range of opinion, and in particular whether Sky News could be seen to remain an independent voice to News Corp's other news outlets.

1.38 A number of the submissions received argue that there is a history of intervention in relation to the News Corp owned newspapers, and that there is no reason why this should not also occur in other media. News Corp submit that TV broadcasting has a different culture from newspapers, and that for a combination of a number of reasons such as editorial policy not being a matter for the board, audience expectations and the nature of TV news (see further Section 5), the transaction would not jeopardise the editorial independence of Sky News.

1.39 In light of the conflicting views that have been put to us on this issue and taking account of the fact that in this case News Corp would acquire full control of Sky, we do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs as part of a first stage review.

1.40 News Corp's submissions on internal plurality are made in the context of a regulatory framework which it argues will safeguard against the over-representation of one point of view. In particular News Corp have submitted that, in practice, the impartiality rules help to ensure that the owner of a television station could not intervene to require news items on their own television news service to receive lesser or greater prominence for political reasons.

1.41 Ofcom's Broadcasting Code requires that "news in whatever form, must be reported with due accuracy and presented with due impartiality". The requirement for "due impartiality" is not absolute and broadcasters' have a degree of editorial discretion in the selection of the news agenda. We recognise that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it.

1.42 In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises. The regulatory framework, while relevant to the plurality of news and, hence, the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news. This was the position adopted by the Competition Commission in Sky/ITV.

Multi-sourcing and online news provision

1.43 In arguing that there would be sufficient plurality following the proposed transaction, News Corp and Sky have made representations and provided evidence that multi-sourcing (or the use by consumers of multiple sources of news) and the use of online sources of news have both increased since the Communications Act was introduced in 2003, which they consider to be significant.

1.44 Although a minority of consumers (18%[26]) rely on a single media owner, the majority of consumers draw on a range of sources for news and current affairs. Our research

[25] Court of Appeal, paragraph 121

estimates that the average news consumer uses 2.9 news providers in a typical week. Data from submissions from News Corp puts this higher at 4 sources per week, but includes local and regional sources as well. The loss of Sky as a distinct media enterprise would not materially change this average number of news providers used by individual consumers.

1.45 However, although we believe multi-sourcing to be important, we do not believe we can rely on it to ensure sufficient plurality. This is because the process of forming public opinion does not just depend on individuals consuming news, and then each forming their own opinion without reference to other consumers. Rather, individuals consume news, debate and discuss it with others, and it is this process of both news consumption and debate which helps form public opinion. In our view, what matters more therefore are the number and range of news providers used by *all* consumers and their relative significance, rather than the number and range used by each individual.

1.46 We also recognise the increasing importance of online news provision today. Wider availability and use of the internet, and the extension of media enterprises' news offerings online, allow consumers to access news more easily from a range of different providers. Our audience research indicates that online usage appears to be complementing the use of traditional media for consumers. This can increase the availability of news sources, and result in consumers using a greater range of sources than may have historically been the case.

1.47 However, traditional media providers account for 10 of the top 15 online providers of news (eight newspaper groups plus the BBC and Sky), with the remainder predominantly being news aggregators rather than alternative sources of news. This suggests that today online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not present on traditional media. We recognise that this could change in the future, but the nature of any such change is uncertain.

1.48 We have considered plurality and the need for there to be sufficient plurality by looking at the number and range of persons with control of media enterprises in light of their ability to influence opinion. We have done so in accordance with the purpose of the public interest consideration. We have considered carefully all the representations made and evidence available to us, including submissions made in relation to the increase in multi-sourcing and online news provision. However, for the reasons summarised above and set out in full in Section 5, our view within this first stage review, is that we consider it reasonable to believe that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences.

Forward looking dynamic assessment

1.49 The longer term effects of the proposed transaction are inherently uncertain. Many of them will depend on how the wider media market develops, which is inherently difficult to predict given the extent of dynamic change within the sector. As a result, the longer-term implications of the transaction are harder to quantify in comparison to the static effects, and therefore more difficult to take into account.

[26] Ofcom cross media audience research, 2010

1.50 These generally relate to the economic position of the merged entity by comparison to the majority of other news providers in the market (outside of the BBC). Specific concerns included:

- Development and launch of integrated news products for convergent devices and media
- Cross promotion between News Corp news titles and channels.
- Bundling of news products with other media services.
- Winning new wholesale news contracts.

1.51 Few of these potential developments can be linked exclusively to the proposed transaction. In considering the counter-factual, many of these developments may come to pass regardless of the common ownership of News Corp and Sky. How far such forward looking developments would affect plurality would depend on a range of factors including the competitive responses of other players, how far new products are replicable, or the adoption of new services by consumers.

1.52 Potential consumer benefits could arise as a result of the proposed transaction. For example, News Corp and Sky have a track record of investing in news. News Corp is an innovative, well resourced company that can and does explore risky business models which may benefit both consumers and the wider industry if proven to work. We believe this is of particular significance in the context of current uncertainties as content providers seek to identify profitable business models online. However, it is unclear whether these consumer benefits may or may not result in positive effects for plurality.

1.53 We have received representations that suggest there could be public interest concerns in a forward view. We also note that media markets and news provision is changing dramatically, with the continued development, launch and adoption of new products and services. The proposed acquisition may affect these market developments given the strategic and financial assets of the combined entity. Representations made to us suggest such effects may be either positive for consumers or negative for plurality over time. If it was the case that, over time, plurality suffered as result of this proposed acquisition, this would reinforce our conclusions on the static analysis.

1.54 However, there is a high degree of uncertainty about these developments. We do not rely upon this forward looking analysis for our advice to the Secretary of State, but note that there are possible situations where both positive and negative effects from the proposed acquisition could emerge.

1.55 In this context, it is important to note there is no mechanism to address potential plurality concerns arising in the future on an ex post basis.

Our advice and recommendations

1.56 This report provides advice and recommendations to the Secretary of State on the specified public interest consideration in section 58 of the Enterprise Act 2002 concerned with the sufficiency of plurality of persons with control of media enterprises.

1.57 Ofcom's advice, based on the evidence and reasons set out in this report, is that it reasonably believes that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences In reaching this view we do not rely on the dynamic effects discussed in full in Section 6.

1.58 We believe there is, therefore, a need for a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest, and we advise the Secretary of State accordingly.

Concerns about wider market developments and sufficient plurality

1.59 The future market developments explored in this report suggest that the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. These market developments include the risk of market exit by current news providers, or a steady, organic growth in audience shares and increase in the ability to influence by any one provider.

1.60 These changes are, by their nature, evolutionary. However, a public interest consideration can only be triggered by a specific corporate transaction. The current statutory framework may therefore fail to deliver its public interest objectives if plurality in the UK is significantly reduced by developments that do not arise from a specific corporate transaction involving media enterprises.

1.61 While there is a clear statutory framework for remedying competition concerns which may develop following a merger or from general market developments,[27] the same is not true of concerns related to plurality. This means that if a transaction is found not to operate against the public interest in relation to plurality, there is no subsequent opportunity or mechanism to address or consider any plurality concerns that may emerge in the future.

1.62 This suggests that a more fundamental review and possible reform of the current statutory framework may be required. Any such review would be a matter for Parliament.

1.63 Any new mechanism would need to provide a means for intervention if market developments resulted in significant concerns about the sufficiency of plurality over time. At the same time, it must be transparent and proportionate, ensure freedom to innovate in response to market developments, to make risky investments and earn suitable rewards and must avoid creating negative or perverse incentives.

1.64 We therefore also recommend that the Government consider undertaking a wider review of the statutory framework to ensure sufficient plurality in the public interest. Specifically, we believe there may be value in providing for intervention where plurality concerns arise in the absence of any transaction involving media enterprises and which are not safeguarded by the current media ownership rules.

[27] These include the use of ex post powers under the Competition Act, as well as the possibility of a market investigation reference under the Enterprise Act.

Section 2

Introduction

The proposed acquisition and Ofcom's role

2.1 On 3 November 2010 News Corporation notified the European Commission of its intention to acquire the shares in British Sky Broadcasting Group plc it does not already own (throughout the report we refer to this as the "proposed acquisition" or "the transaction"). This would increase its holding from approximately 39.1% to 100%.

2.2 On 4 November the Secretary of State issued a European intervention notice in relation to the proposed acquisition. The notice specified the public interest consideration in section 58 of the Enterprise Act 2002 ('the Act') concerned with the sufficiency of plurality of persons with control of media enterprises. This is:

"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience".

2.3 Consequently, Ofcom must report to the Secretary of State by 31 December 2010 on this public interest consideration. Our report must provide advice and recommendations on the specified public interest consideration, which may be relevant to the Secretary of State's decision on whether to refer the case to the Competition Commission.

2.4 It is not Ofcom's role to advise on whether concerns are conclusively established but rather to advise on whether they may be concerns such that a fuller second stage investigation is warranted. In our advisory role undertaking a first stage assessment within 40 working days, the threshold to be reached for Ofcom to advise the Secretary of State that the proposed acquisition may warrant fuller consideration by the Competition Commission is fairly low. Ofcom needs to hold a reasonable belief, on the basis of the evidence available, that it may be the case that the proposed acquisition may operate or be expected to operate against the public interest[28].

Our approach

2.5 After receiving the European Intervention notice, we published a guidance note on our approach to the public interest test[29] and invited the parties and other stakeholders to comment on the proposed acquisition in a number of areas, including: content types; audiences; media platforms; control of media enterprises; and future developments in the media landscape[30]. We received submissions from a range of stakeholders, and have taken these into account in our advice. Representations were received from :

- 20 commercial and professional organisations (including News Corp and Sky);
- 8 academics and noted industry observers;

[28] Office of Fair Trading & Ors v IBA Health Ltd [2004] EWCA Civ 142 (19 February 2004)
[29] http://media.ofcom.org.uk/2010/11/04/guidance-note-for-public-interest-test/
[30] http://media.ofcom.org.uk/2010/11/05/invitation-to-comment-public-interest-test-proposed-acquisition-of-bskyb-by-news-corporation/

- 96 direct submissions from individuals; and
- 58,600 individuals via two online campaign groups.

2.6 In order to assess the public interest consideration defined by the Secretary of State, we have adopted a similar approach to that of the Competition Commission in the Sky/ITV case. We have therefore considered:

- The nature of the public interest test, including sufficient plurality, described below
- the relevant audience(s), defined in Section 3;
- the current market situation, including News Corp and Sky's contribution to news and current affairs and consumers' behaviours, outlined in Section 4
- the static effects of the proposed transaction, considered in Section 5;
- a forward view (dynamic) of the effect of the proposed transaction, in Section 6; and

2.7 We provide conclusions and recommendations in Section 7.

Sufficient plurality of persons with control of media enterprises

2.8 As explained in the Secretary of State's guidance on the media public interest merger provisions, the public interest consideration outlined in 2.2 above *'is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality'*[31].

2.9 Ofcom has a wide discretion in relation to our assessment of sufficient plurality. What is required is "a qualitative assessment of the position resulting, or likely to result", from the proposed acquisition[32]. This is inevitably a matter of judgment, which we exercise with regard to the considerable importance Parliament has attached to the preservation of plurality of controllers of media enterprises[33]. The relevant Government minister said in 2003 *"[media] plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda"*[34].

2.10 News Corp argued that plurality has increased since Parliament last legislated in relation to it, the inference being that it must now be more than sufficient such that the proposed transaction (even if it reduces plurality) cannot be said to operate

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[31] DTI Guidance: the Enterprise Act 2002: Public Interest Intervention in Media Relevant merger situations, May 2004, paragraph 7.7
[32] Court of Appeal *British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2 ("*Court of Appeal*"), at paragraph 87.
[33] Ibid at paragraph 104.
[34] Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard

against the public interest. On the other hand, many respondents argued that plurality is already insufficient and that the proposed transaction would exacerbate the problem[35].

2.11 When examining the effects of the proposed acquisition on the sufficiency of plurality of persons in control of the media, we adopt the same approach taken by the CC in the Sky/ITV case:

"Whilst recognising that it would not be sufficient for plurality purposes to rely on a single provider (for example, the BBC), we do not consider it necessary to take a view on precisely how many owners would constitute a 'sufficient' level of plurality of persons. Rather, we have looked qualitatively at sufficiency. We have considered sufficiency by reference to the current levels of plurality, having regard to any change in plurality that arises as a result of the acquisition."[36]

2.12 We therefore commence our analysis by reference to the current levels of plurality. We consider how the proposed transaction may affect the level of plurality in the market today, and whether this may raise risks for the public interest in terms of a potential reduction in media plurality such that a fuller second stage investigation is warranted.

2.13 In undertaking our assessment, we consider a number of broad points that underpin our advice and recommendations. These include:

- defining the relevant audiences for the proposed acquisition;
- media enterprises;
- control of media enterprises and assessing the effects of any change on plurality;
- assessing external and internal plurality;
- the timeframe for forward-looking analysis; and
- plurality and other regulatory measures.

<u>Defining the relevant audiences for the proposed acquisition</u>

2.14 In relation to the audiences served by the merging parties, (which includes readers[37]), the Act gives us a wide discretion to consider them all together, separately, parts of them or in groups, as we consider appropriate[38].

2.15 In this case we consider that relevant audiences should be defined according to:

- <u>Content types</u>: Parliament did not define specific content genres as being important to plurality. We need to consider which content types are most relevant to the proposed acquisition and plurality.

[35] See e.g. responses from 38 Degrees, Campaign for Press & Broadcasting Freedom paragraphs 4.1 to 4.3 and 5.1, NUJ pages 3 and 4, Robert Beveridge page 2 and Prof Steven Barnett page 6.
[36] Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007,("Competition Commission"), paragraph 5.15.
[37] Section 58A(8) of the Act.
[38] Section 58A(6) and (7) of the Act

- Geographical location: the audience affected by the proposed acquisition may be UK-wide or confined to particular geographical areas. This depends primarily on the geographical scope of the activities of the media enterprises involved in the transaction.

- Media platforms: audiences should also be defined according to the media used to access relevant content types provided by the merging parties.

- Sub-groups: in defining audiences we have also had regard as to whether particular sub-groups (for example according to age, socio-economic groups, ethnicity or other criteria) may be more affected than others by the proposed transaction.

2.16 Section 3 of this report discusses our audience definition.

Media enterprises

2.17 For the purposes of this assessment a "media enterprise" consists in or involves broadcasting or the supply of newspapers[39]. Broadcasting means, very broadly, the provision of radio and television services[40]. A "newspaper" is a daily, Sunday or local newspaper circulating wholly or mainly in the UK or part of the UK[41]. However, media enterprises typically publish content online, reflecting the public's growing access to and popularity of the internet. When we are considering the "sufficiency" of plurality of media enterprises, we have had regard to the content they, and others, publish online.

2.18 In many of the representations we received, stakeholders have commented on the role of the internet, including online news providers who are not also UK TV news broadcasters or newspaper groups. In terms of the Enterprise Act, these are not defined as media enterprises. However, we consider the internet and wider online news provision to be relevant in any consideration of the sufficiency of plurality in the provision of news and current affairs and we have taken it into account.

2.19 Some representations submitted that wholesale news provision also falls outside the scope of the public interest consideration. As noted by the Competition Commission, in providing wholesale news to channels and publishers, both wholesaler and channel operator share some degree of editorial influence.

"Within the strategic framework provided by the channel operator, the news provider (e.g. ITN, Sky News) is responsible for day-to-day editorial control, such as selecting the stories to be presented on a given bulletin and the way in which they are to be presented..the channel operator remains ultimately accountable (including to the regulator) for the news that is presented on its channels".[42]

2.20 Sky's provision of news ('Sky News') to other media enterprises may not, of itself, bring Sky within the definition of "media enterprise" for the purpose of the statutory test. However, it is relevant to the question of the contribution made by those other media enterprises to plurality and therefore to the degree of any concerns arising from the proposed transaction. In any event, Sky is a "media enterprise" and it

[39] Sections 58A(1) and 58A(2) of the Act.
[40] Services for which a Broadcasting Act licence is required, see section 44(9) of the Act.
[41] Section 44(10) of the Act.
[42] Competition Commission, 2007, par 5.55 (c) and (d).

indirectly serves a variety of audiences besides its retail audiences, through wholesale news provision.

2.21 Typically, while national news outlets may source news from upstream providers like news wires, the national news outlet generally retains editorial control and plays a significant role in shaping the position and tone of their output. This is qualitatively different from wholesale news provision by ITN and Sky News to TV and radio retailers, the scope of the latter to make day-to-day editorial decisions on the content is far smaller.

2.22 In the analysis which follows, we present data on the proposed transaction both with wholesale content provision included, and with it excluded. In considering wholesale content provision, we have only included those wholesalers who typically provide a refined product in relation to which there is little scope for editorial adjustment by the retailer. This means we have included ITN and Sky News, but excluded, for example, the news wires.

Control of media enterprises and assessing the effects of any change on plurality

2.23 Ofcom's consideration of plurality takes into account the fact that News Corp already holds approximately 39.1% of Sky, noting the proposed acquisition would move it to having full control. In Sky/ITV, the Court of Appeal determined how we should approach a situation like this within the framework of the Enterprise Act 2002 (the "Act").

2.24 Our starting point is that the proposed acquisition reduces the number of persons having control of media enterprises[43]. Full control will allow News Corp to do a number of things it cannot do at present, for example, to take decisions which are in the exclusive commercial interests of News Corp.

2.25 However, the Court of Appeal has made it clear that in order to assess plurality and sufficiency of plurality, it is right to look not just at the number of persons having control, but also at the range[44] of persons having control, before and after the transaction. We must also "*take into account the actual level of control exercised and exercisable over a relevant enterprise by another*" and make an assessment which is qualitative not quantitative[45].

2.26 In this report we have categorised these considerations under number and range, and included an assessment of the sources of news and current affairs available to consumers.

2.27 In addition, we believe a consideration of the relative 'ability to influence' of media enterprises, particularly evidenced by audience share, reach and trust, is important to any assessment of the effect of the proposed acquisition on plurality. This is because, as the DTI guidance outlines, what constitutes a sufficient number of owners controlling media enterprises in a given case may be affected by the relative audience shares that these enterprises hold[46]. Should a transaction increase significantly the ability of one media enterprise to influence relative to others, this would suggest a greater concentration affecting sufficiency of plurality.

[43] Section 58A(4) of the Act, see also Court of Appeal at paragraph 121.
[44] In our report, we use range to cover the concepts of 'range and variety' – see Court of Appeal paragraph 90
[45] Sky/ITV, at paragraph 121.
[46] DTI Guidance: the Enterprise Act 2002: Public Interest Intervention in Media Relevant merger situations, May 2004, paragraph 7.10

Assessing external and internal plurality

2.28 In carrying out this assessment, we adopt the same approach as the Competition Commission did in Sky/ITV. We look at the range of opinions and views across the various groups of media enterprises (*external plurality*), and at the range of opinions and views within a group of media enterprises (*internal plurality*).

The timeframe for forward-looking analysis

2.29 We noted that representations made by interested parties were concerned with both effects arising directly by virtue of the transaction taking place, but also with effects of the acquisition considered in a wider context of market evolution. In our analysis we have sought to make a distinction between these.

2.30 Section 4 of this report discusses what we refer to as a *static analysis* of the effects of the proposed acquisition. This focuses on short-term effects on plurality that would arise directly from the transaction.

2.31 Section 5 illustrates our *dynamic analysis*. This considers the possible effects on plurality in a forward-look view of the market, considering possible changes to plurality affected by the transaction over a period of time.

Plurality and other regulatory measures

2.32 The public interest consideration is one of a number of regulatory mechanisms which can have a bearing on plurality.

2.33 Parliament has previously put in place media ownership rules for television, radio and newspapers. Ofcom has a statutory duty[47] to undertake a review of these rules every three years. Although the purposes of the media ownership rules are similar to those of the public interest consideration, the scope of the media ownership rules is narrower, focusing in particular on ownership of Channel 3 licences alongside other media outlets.

2.34 Ofcom's Broadcasting Code contains impartiality provisions, requiring that news is reported with due accuracy and presented with due impartiality[48]. For example, views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes. We consider linkages between these regulations and the effect of the proposed acquisition on plurality in Section 5 of this report.

2.35 Plurality is distinct from competition considerations and therefore competition policy. Parliament has acknowledged the role that competition law plays in protecting consumer interests where concentrations of market power are concerned but such a framework alone would not guarantee plurality[49].

2.36 A parallel but distinct review of any competition issues resulting from the proposed acquisition is being conducted by the European Commission[50].

[47] The Public Bodies Bill proposes to amend the Communications Act 2003 to remove this duty.
[48] Section 5 of Ofcom's Broadcasting Code, which broadcasters are required to comply with under the terms of their licences (http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/)
[49] See for instance Hansard HL Debate, 2 July 2003, c 913, and Hansard HL Debate, 5 June 2003, c 1435
[50] http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1767&type=HTML

Section 3

Audience definition

3.1 In considering what audiences are relevant for this test we have focused on UK-wide audiences for cross-media news and current affairs including TV, radio, newspapers and the internet. The paragraphs below set out our thinking in relation to the constituent elements of this audience definition, as set out in section 2:

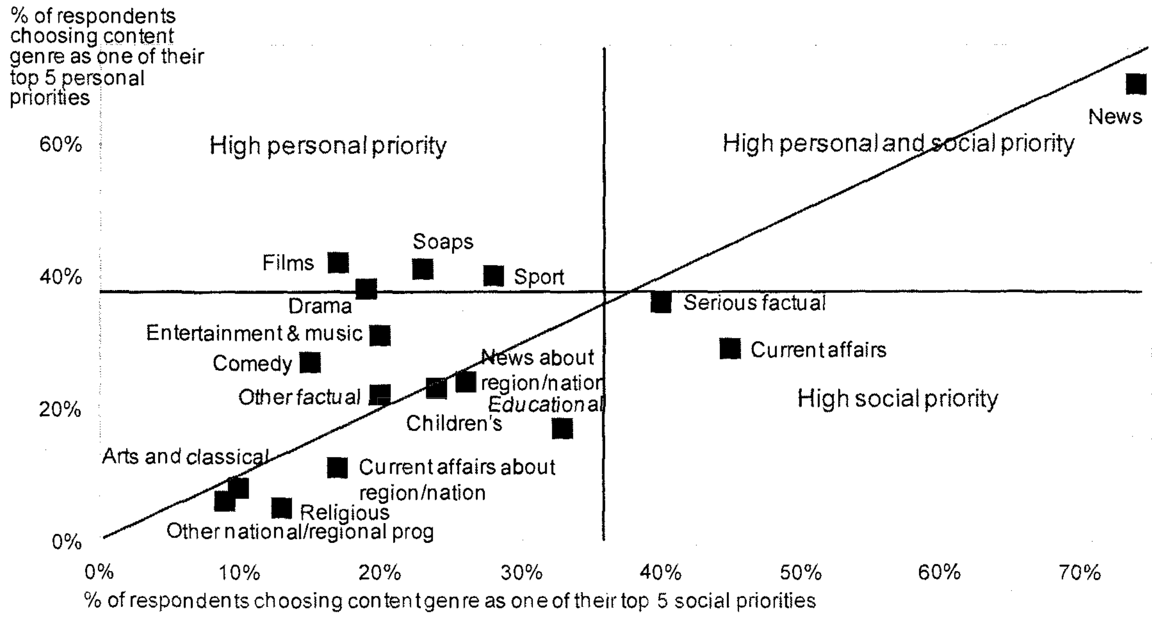
- Content types
- Geographical location
- Media platforms
- Subgroups

Content types: news and current affairs

3.2 Representations from merging parties and third parties focused on the provision of news content. This is consistent with the approach we took in the Sky/ITV case in 2007, where we concluded that Parliament's focus on how media enterprises influence opinion and set the political agenda suggested that news was the most important content type. Within news we include international, national and regional news stories.

3.3 Other categories of content can also be relevant to the public interest consideration. In broadcasting, the term 'current affairs' relates to programmes providing in-depth discussions of current events of particular political, economic or social importance. These programmes play an important role in providing consumers with information and analysis about society, and therefore in the formation of public opinion. Previous Ofcom research highlights that 45% of consumers chose current affairs as one of their top 5 priorities for the main 5 TV channels in terms of social importance. This placed it in second place behind news (74% of respondents chose news as one of their top 5 social priorities).

Figure 4 - Mapping social and personal importance for content genres on main TV channels



Source: PSB Review survey Q29 and Q30 2,260 interviews with UK adults aged 16+, October - December 2007

3.4 In the Sky / ITV case, the Competition Commission focused its analysis on national news, but it also acknowledged that genres such as current affairs were connected with the formation of public opinion.

3.5 Newspapers are not solely devoted to the reporting of news, but also provide content based on in-depth discussions and opinionated commentary. Representations made to us have highlighted the importance of these features in informing and influencing opinions and therefore contributing to democracy[51].

3.6 In TV and radio broadcasting current affairs programming provides content that is to some extent comparable to the features of newspapers discussed above. In the context of our cross-media analysis for this case, we believe that current affairs broadcasts are relevant to our assessment.

3.7 Our content type definition therefore uses the terms 'news and current affairs' to refer to programmes and articles provided across all the relevant media platforms that inform the public and contribute to democracy through the reporting, discussion and commentary of current events. As a result, we have only considered the Sky News channel in this analysis, as opposed to other factual channels carried on the Sky platform that could have some current affairs related content (for example National Geographic or the History channel). We have also excluded sports news programming.

Geography: UK wide audiences

3.8 The two parties' main focus for news and current affairs within the UK is the provision of news and current affairs to a UK wide audience, with little provision of news at the

[51] Sky submission, Slaughter & May, NUJ, Enders

regional or local level. We therefore believe that the relevant geographic audience for the public interest consideration is UK-wide.

3.9 On TV, we have considered all national TV news and current affairs providers. On radio, we have considered station groups that have national or near-national coverage. This includes all national analogue licensees, but also groups like Bauer Media that, through a network of local stations, achieve near-national coverage and a substantial audience share. In addition, we note that many of the local stations provide news at a local level that is sourced from a single, UK-wide provider (IRN).

3.10 We note that, within newspaper and online platforms, there is a mix of UK-wide and regional titles and news provision. Amongst online services, international titles also feature as a prominent source of news for consumers. Both regional and international titles and channels can make a contribution to public opinion and therefore the democratic process. However, UK-wide news and current affairs providers can be expected to have a wider reach and greater relevance to UK democracy given a UK specific agenda.

3.11 We have excluded from our analysis regional newspaper groups because they do not provide news to a UK-wide audience, and will have lower circulations and readerships for individual titles compared to national newspaper groups. Some regional titles, notably within newspapers, may have a reach large enough to influence nation-wide opinion. These include publications like the Evening Standard in London and regional variations of Metro. Both are free papers, and one an evening paper. Our investigation has not afforded us the time to examine in detail how far such publications may contribute to plurality nation-wide. We have therefore excluded them from our audience definition. If there is a subsequent reference to the Competition Commission, this may be an area for further analysis.[52]

3.12 We also note that press titles that are only available in the devolved nations (Scotland, Wales and Northern Ireland) will influence public opinion in those nations, and hence contribute to the democratic process. However, we have received no submissions and found no evidence that suggests audiences in the nations would be more significantly affected by the proposed acquisition than the UK-wide audience.

3.13 These factors combined suggest that there is no need to define a sub-national audience for the purposes of our assessment of the public interest consideration.

Media platforms: cross-media

3.14 Prior to the transaction News Corp provides news and current affairs in newspapers and online, whilst Sky provides news and current affairs directly on TV and online, and indirectly over radio as a result of wholesale news provision to commercial radio through a contract with IRN. The only areas of overlap are therefore in relation to online audiences.

3.15 Post-acquisition, the two parties combined would provide news and current affairs directly on TV, in newspapers and online; and indirectly over radio. With the exception of online, neither News Corp nor Sky is both present on a single platform.

[52] Our market research included regional and local news providers within the questions asked as it was scoped before a final decision was taken on the audience definition. Local and regional providers referred to by consumers are therefore included in results under 'other'. This has the effect of diluting the share of references for the nation-wide news providers. For the reach of news providers, it has no effect.

3.16 We have not considered the effect of the transaction on the plurality available to audiences for online news only as these are not defined as media enterprises in the Enterprise Act. We have included online within cross-media audiences for the reasons outlined in paragraph 2.18.

3.17 We therefore consider that relevant audiences should be considered cross-media, including TV, newspapers, radio and online.

No audience subgroups

3.18 We have analysed consumer markets at the UK-wide level by age, socio-economic group and by the news title that consumers claim to be their 'main' source of news. As we illustrate below in 4.56 to 4.58, we note that there are some variations in news consumption among age and socio-economic groups, especially in relation to the use of news sources on the internet, but we do not think these variances suggest a need to define sub-group audiences.

3.19 No representations suggested there were specific concerns for ethnically defined sub-groups. Some concerns were raised about consumers who solely source news and current affairs from a combination of News Corp and Sky, but we note that this group is likely to be very small (see paragraph 5.109 and 5.112).

3.20 Our view is therefore that no particular sub-groups would be more significantly affected than the population as a whole as a result of this proposed acquisition. We do not consider there is a need to define separate audiences on the basis of geography, age, socio-economic group or ethnicity.

Section 4

The current situation

4.1 In this section we examine how audiences access and consume relevant content types within and across platforms as context for our advice and recommendations.

4.2 In considering the situation pre-transaction, we have had regard to the following issues:

- how news is gathered;
- the importance that consumers attach to different media platforms when sourcing news;
- how consumers access and consume news and current affairs within media;
- how consumers access and consume news and current affairs across TV, newspapers, radio and online;
- how consumers rely on different and multiple sources, within and across-media; and
- consumers' trust and critical evaluation of the news they consume.

4.3 Annex 1 discusses the data sources used in this report

How news is gathered

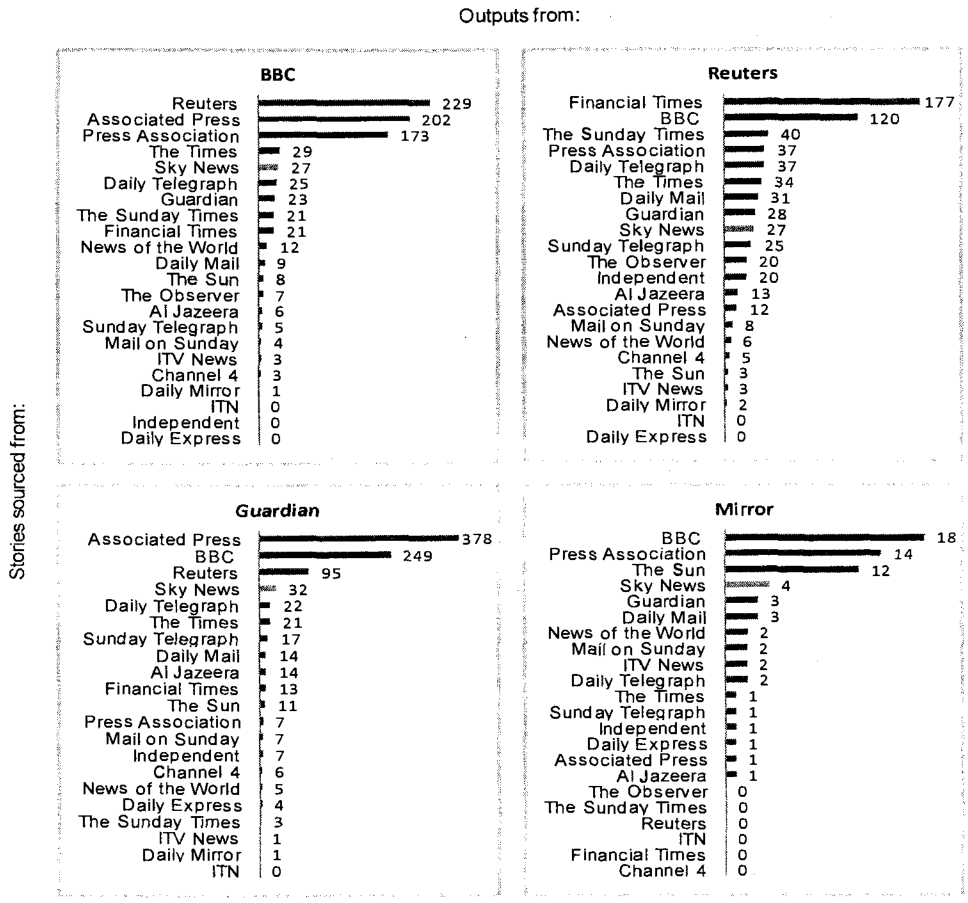
4.4 Today, consumers are provided news content by channels and publishers from two sources: content produced in-house (retail content); and content sourced from third parties (wholesale content). For example, ITV and Channel 4 source news content and programming from ITN and Five from Sky. ITN and Sky are acting as 'wholesale' news providers, while ITV, Channel 4 and Five can be considered as the 'retailer'. The BBC and national newspaper groups on the other hand produce a significant amount of news content in-house, fulfilling both wholesale and retail roles.

4.5 However, this is a simplification of the actual process for news gathering and aggregation. In practice, news providers source stories and content from a range of areas, including for example news wires. For example, News Corp's submission set out the range of sources for news stories used by different media providers, as illustrated in Figure 5 below[53].

[53] The citations analysis was submitted to Ofcom by News Corp and undertaken by Perspective. It is based on stories tracked by Google News for 6 month period 1 June 2010 to 30 November 2010 that were available at 8-17 December 2010. The following stories / cross references were excluded:

- those about a media outlet rather than citing it (eg coverage of the BBC Licence Fee settlement was not counted as a citation of the BBC);
- historically referenced stories (e.g. quotes in a biography); and
- stories from newspaper reviews / gossip columns.

Figure 5 - Original sources of news stories appearing in outputs of a selection of media enterprises (BBC, Reuters, Guardian, Mirror), June to November 2010



Source: News Corp submission - Perspective report, Setting the news agenda, 15 December 2010

4.6 [✂]. We consider that news agencies play an important role in news gathering, but that whilst this gives them some ability to influence the news agenda, there are a number of other sources of influence.

4.7 A source may be influential in that it "breaks" stories, for example, by carrying out its own investigation. Alternatively, a source may be important because it is capable of bringing a story wide publicity. A story broken by a regional news outlet may be picked up by a national one. A story given enough coverage by an outlet with enough influence may become so important that all news outlets must cover it or lose credibility. All these roles matter in any consideration of plurality.

4.8 In the time available to us we have not been able to assess the relative importance of these different roles. Overall, our view is that the ability to influence opinion is held mainly by those media enterprises that can exert meaningful editorial control over the news and current affairs output of media enterprises. Therefore, and as noted above, we have included wholesale news providers in our analysis, but not the content provided by upstream suppliers of individual stories.

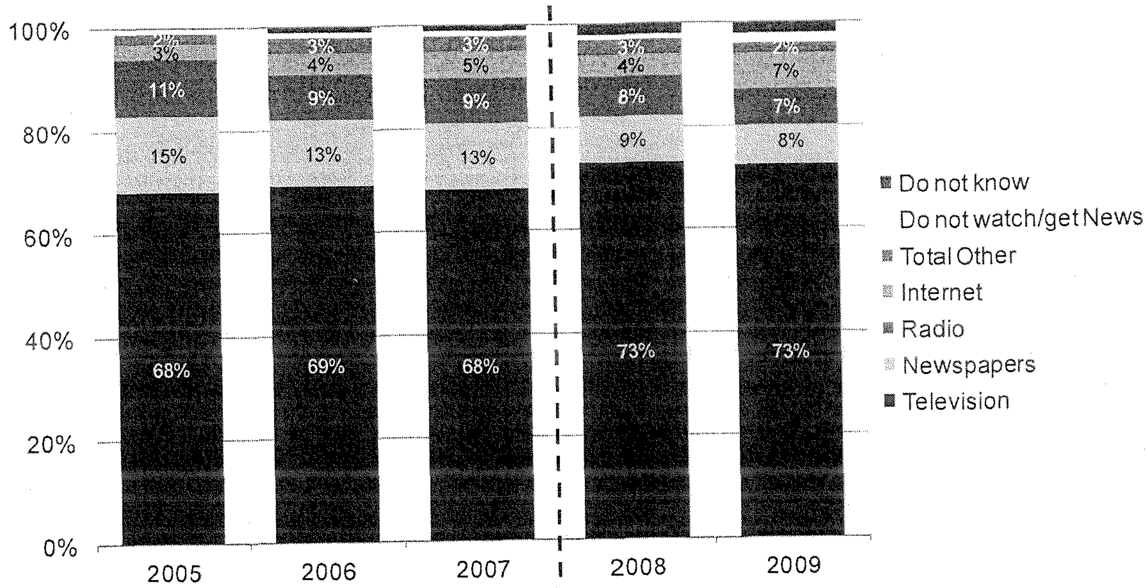
Main sources of news and current affairs by medium

4.9 When asked to identify their main source of UK news, consumers do not appear to attach equal weight to all platforms. Ofcom's media tracking study has consistently identified the television as the most popular 'main' source of UK news for a large proportion of the UK adult population aged 15+ (73% of all respondents, according to our media tracking study, 2009). Older people are more likely to cite the television as their main news source, as are people in the C2DE socio-economic group. Newspapers are cited by a further 8% of the UK adult population as their main source, with radio at 7% and online 7%[54].

4.10 Our media tracker research suggests that the proportion of the population nominating online as their main UK news source looks to have risen over time (up by four percentage points from 3% in 2005), probably reflecting the growing take-up and access to broadband services across the UK. The results suggest that during that same period TV has maintained or even enhanced its importance and that the growth in online to date appears to be mainly at the cost of newspapers, and radio.

[54] Our recent cross media audience research (CMAR) showed a similar pattern in the proportion of people naming each media platform as their main source of news, although actual figures differ. The results were 63% for television, 14% for newspapers, 10% for radio and 10% for total internet. Differences in results between the two surveys are likely to be due to a range of methodological differences including: (1) Question asked: main source of UK and international news and current affairs (CMAR), main source of UK news (media tracker). CMAR splits out internet on computer and internet on mobile phone whereas Media tracker did not. (2) Time period: November 2010 (CMAR) April and October 2009 rolled data (media tracker). (3) Sampling: CMAR quotas for age ranges including 65+, and starts at age 16, and covers Great Britain, media tracker quotas for age ranges including 55+, and starts at age 15, and covers UK. (4) Question order: CMAR questions focused solely on UK and international news and current affairs and were the first questions asked of respondents, the media tracker question is asked towards the end of a 40 minute survey on a range of media related subjects, including questions on main source of local news.

Figure 6 - Main source of news by platform - 2005-2009



Source: Ofcom Media Tracker. Base: All UK Adults aged 15+. 'Total Other' = Teletext, Magazines, Talking to other people, Other. Note: data is not fully comparable over time except for 2009 vs 2008 due to method changes

News and current affairs consumption on individual media

Television

4.11 Our recent cross-media audience research (2010) found that 79% of adults stated that they regularly use TV as a source of news[55], with 29% of regular news consumers saying that they source their news only from TV on a weekly basis. TV therefore represents a particularly important source of news to a large proportion of the population.

4.12 TV viewing of national news, as classified on BARB, has remained fairly constant at around 20 minutes per day per UK adult aged 16+ over the last few years. There has been a slight decline since 2002, when the average daily viewing was 20.9 minutes per day, compared to 20.0 minutes per day in 2009.[56].

4.13 The vast majority of news in the UK (at the retail level) is provided by five media owners, BBC, ITV, Channel 4, Five and Sky. In addition, there are a number of specialist news channels such as France 24, Euro News and Al Jazeera, Fox News and CNN. However, these specialist news channels do not have a UK news agenda and are only watched by a small minority of audiences[57]

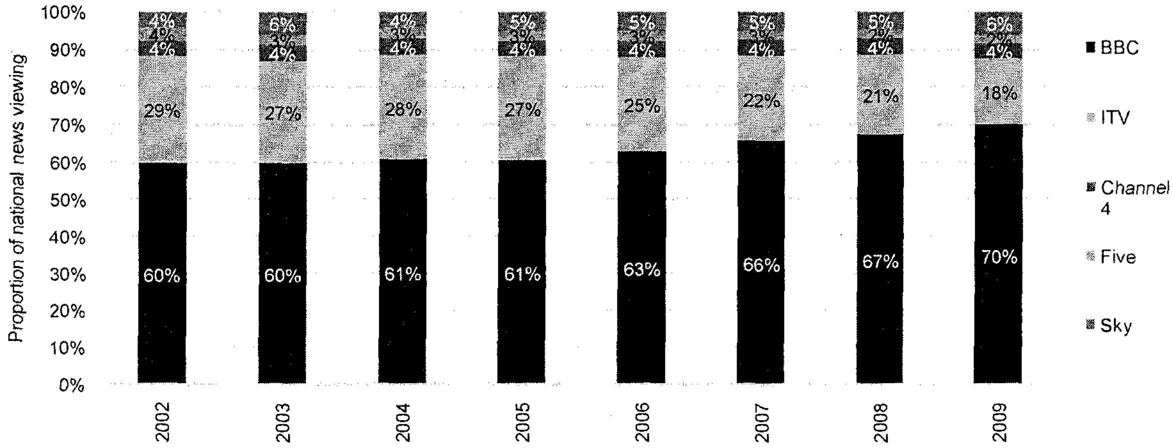
[55] Respondents were provided a list of different media types and then asked the question "From the list below, please tell me which of these you use regularly for UK/International news and current affairs, by regularly I mean at least once a week."
[56] Source: BARB, Network plus.
[57] With the exception of Euro News and Fox News, the remaining specialist news channels are not measured or reported by BARB. We estimate these non-BARB reported channels represent a very small proportion of total national/international news viewing. BARB Network plus figures for 2009 show that Euro News achieved a total share among all UK adults 16+ of 0.01% and Fox News

4.14 At the wholesale level, both Sky and ITN have contracts to supply news content to Five and ITV / Channel 4 respectively. As discussed above, we have therefore considered the impact of the transaction at both the wholesale (news content provider)[58] and retail (news broadcaster)[59] level.

4.15 Figure 7 below provides a breakdown of the audience share for national TV news viewing (based on the BARB subgenre of national and international news) for each of the five main providers, according to BARB[60]. At the retail level, there are five providers: the BBC is the most watched provider (70%), ITV second (18%), followed by Sky with 6% share (based on Sky news channel), Channel 4 at 4% and Five at 2%.

4.16 This analysis also shows that, over time, the BBC share of news viewing has increased, while ITV's share has declined and Sky's share of news viewing has remained relatively stable. At the wholesale level, there are only three principal providers of TV news content. The BBC is the leading provider of TV news, accounting for a 70% share of national news viewing, ITN is second with 22% and Sky is third with 8% (Sky news channel and Five combined) in 2009.

Figure 7 - Share of viewing to 'national and international news' on TV by media retailer, 2002 - 2009



Source: BARB, All adults (16+), Network Plus, 2002-2009. National News genre. BBC = BBC One, BBC Two, BBC News; ITV; C4; Five; Sky = Sky News channel.

4.17 According to BARB, on a weekly basis, 38.6 million adults (79.4% of the adult population, 16+) watched at least 3 consecutive minutes of television news in October 2010.

achieved a total share of 0.02%. Total minutes viewed per day for Euro News channel overall averaged at 0.02 per adult and 0.04 for Fox News.

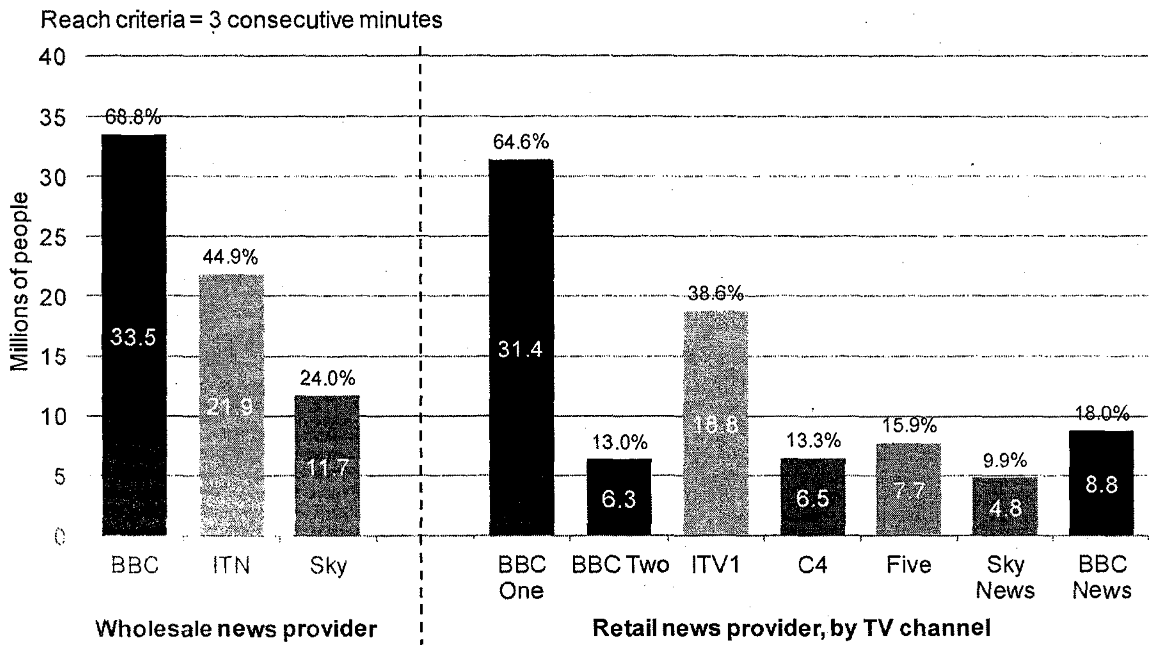
[58] That is, Five's audiences will be attributed to Sky, and Channel 4/ITV audiences to ITN.

[59] That is, audiences will be attributed to Five, Channel 4 and ITV as separate media enterprises.

[60] This analysis excludes 'other' viewing to the national and international BARB subgenre, which represents less than 1% of the total genre from 2002 to 2009. In 2009 'other' news viewing represented 0.3% share of the total category. Fox News does not appear in this figure, as its schedule is not classified as news in BARB. Programme genre classification is optional.

4.18 In terms of audience reach[61], the BBC continues to maintain a significant presence with 33.5 million adults (or 69% of the adult population) watching at least 3 consecutive minutes of news on a weekly basis in October 2010. At the wholesale level, ITN reached 21.9 million UK adults (45%) in a typical week in October 2010. At the wholesale level, Sky's news content reached 11.7 million (24%) adults (i.e. Sky news channel and Five news combined). Sky's reach was 4.8 million (10%) adults when considered at the retail level (excluding wholesale provision through Five).

Figure 8 - Average weekly reach for TV 'National News' (October 2010)



Source BARB, All adults (16+), All homes, October 2010. National News genre. Reach criteria = 3 consecutive minutes at least once in the week. Full weeks used. BBC = BBC One, BBC Two, BBC News; ITN = ITV1, C4; Sky = Sky News, Five.

Newspapers

4.19 Our cross-media audience research (2010) found that 44% of adults say that they regularly use newspapers as a source of news, with 6% of regular news consumers only sourcing their news from newspapers on a weekly basis.

4.20 Newspaper providers have, over the last decade, experienced a decline in circulation for both daily and Sunday newspapers, with total national newspaper circulation falling from around 13 million for daily newspapers and 14 million for Sunday newspapers in 2000 to 10 million copies in 2009 for both daily and Sunday newspapers[62]. Newspaper readership is also in decline, with the number of people reading a Sunday title falling by almost 5% per annum over the nine years to 2009, while daily readership has fallen at an average annualised rate of almost 3% over the same period[63].

[61] Reach is defined as any viewing to the national news genre for 3+ consecutive minutes, in this case on a weekly basis in the month of October 2010.
[62] Source: Audit Bureau of Circulations / MediaTel / Ofcom calculations
[63] Source: National Readership Survey / MediaTel / Ofcom calculations.

4.21 There are eight main providers of national newspapers, publishing 20 national daily and Sunday titles between them, accounting for 100% of total paid-for circulation[64]. As Figure 9 below demonstrates, News Corp has the largest national newspaper group; its titles, which include the Sun, The Times, The Sunday Times and the News of the World, account for over a third (35.7%[65]) of combined daily and Sunday national newspaper circulation. DMGT (Daily Mail) has the next largest share of the market by circulation (20.8%[66]), followed by Northern & Shell (Daily Express, Daily Star), with 14.2%[67].

Figure 9 - National newspaper market share by publisher, 2000-2009

Source: Audit Bureau of Circulations / MediaTel / Ofcom calculations
Note: Publisher data is based on current ownership and is not retrospective. Excludes regional newspapers

4.22 The National Readership survey provides industry data on the readership of newspaper titles, in terms of Average Issue Readership (AIR). This is defined as anyone who has read or looked at a newspaper title for two minutes or more within the issue period of the newspaper. For example, for daily newspapers the respondent is asked if they have read a title yesterday. These results provide an equivalent metric to the television reach figures provided above in estimating the number of people who have read a particular title.

4.23 Figure 10 below shows that News Corp has the highest readership of all newspaper groups, with 14.5 million adults aged 16+ (or 29% of the adult population) reading at least one of their titles. News Corp's readership is approximately double that of DMGT (7.3 million, 14.8%) and Trinity Mirror Group (6.8 million, 13.9%), the second and third largest newspaper providers[68].

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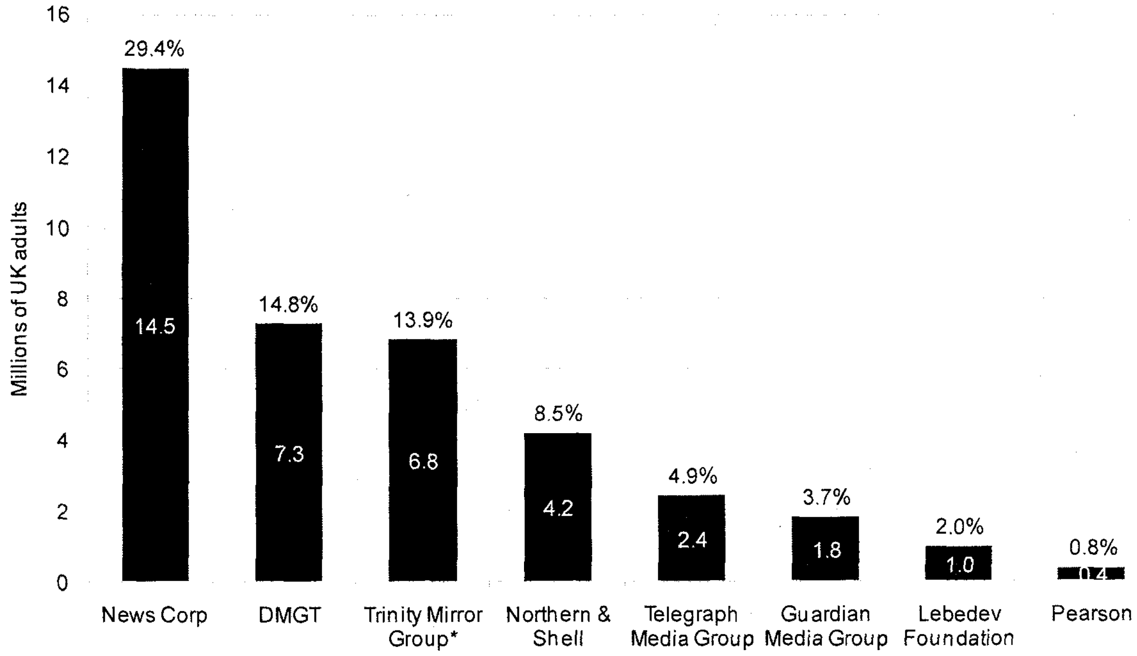
[64] There are a number of other newspaper titles in the UK, however, these have been excluded from our analysis as they have a regional or non-UK wide (e.g. Scottish) news focus. Four remaining national newspapers have also been excluded – Daily Sport, Saturday Sport, Sunday Sport and Racing Post – as they do not carry a material amount of national news.
[65] News International accounts for 34.8% of circulation for daily newspapers, and 41.3% of circulation for Sunday newspapers.
[66] DMGT account for 20.9% of circulation for daily newspapers, and 20.1% of circulation for Sunday newspapers. ABC/MediaTel/Ofcom calculations
[67] Northern & Shell account for 15% of circulation for daily newspapers, and 17.5% of circulation for Sunday newspapers. ABC/MediaTel/Ofcom calculations
[68] National Readership Survey 2010 - (October 2009 - September 2010). Based on net average issue readership, 6 day period for daily titles.

Figure 10 - Readership for national newspaper groups



Source: Ofcom / Kantar Media analysis based on NRS data 2010 (October 2009 - September 2010). All adults 16+.
Note: Daily and Sunday national newspapers only, excluding regional newspapers. Net reach is based on average issue readership (AIR). For daily papers this is 6-day AIR. Trinity Mirror includes Daily Record in Scotland.

Online services

4.24 Our cross-media audience research (2010) found that 26% of adults regularly use the internet as a source of news[69]. Internet take-up, currently at 76% of UK homes, continues to grow[70], with an increasing number of people using the internet as a source of news (as displayed in Figure 6 above).

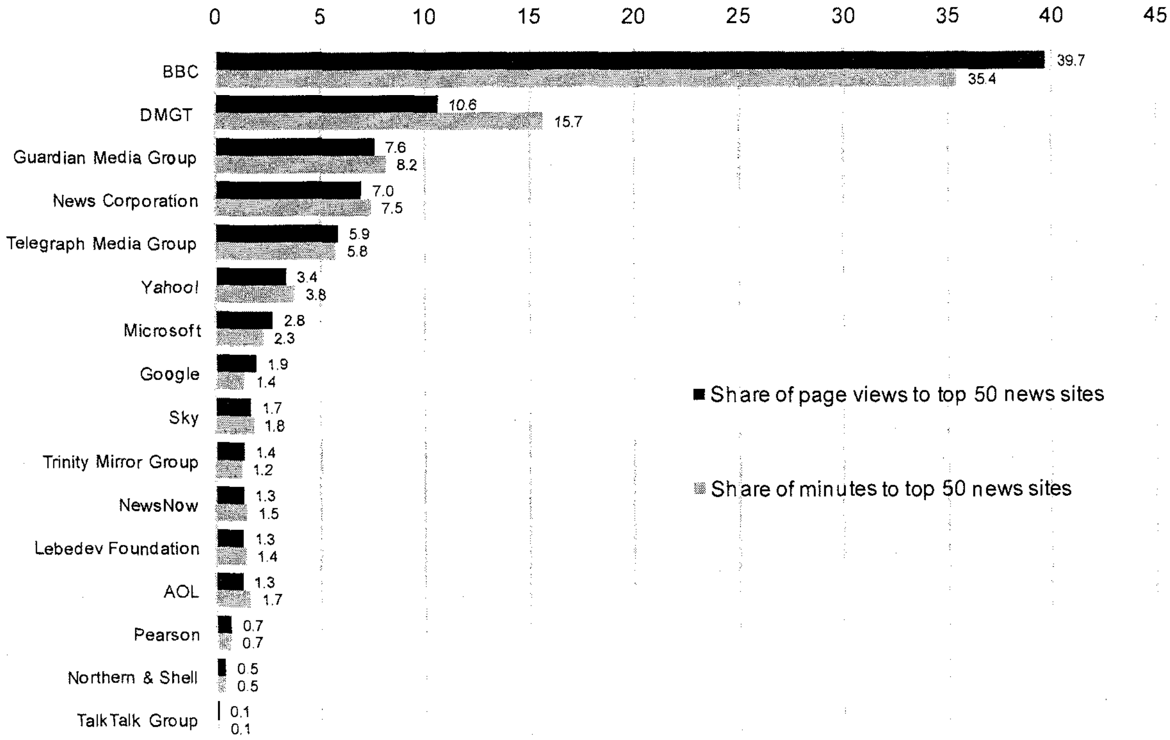
4.25 The internet is the only platform on which both Sky and News Corp directly overlap. As Figure 11[71] below shows, News Corp is currently the fourth largest online news

[69] This is comprised of 24% for internet on computer and also 5% for internet on mobile phone, which when combined and de-duplicated is 26%.
[70] Ofcom Consumer Experience Report 2010, p. 23-24.
[71] Our figures for the share and reach of each owner exclude regional and international titles for each owner. However such titles are included in the total number of page views and minutes from which the percentages are calculated (i.e. the denominator includes page views and minutes to regional/ international sites). This has the effect of understating the share and reach figures for media owners who have regional and international titles. Including international and regional titles in our reach and share figures would have the following effects:

- DMGT's share of minutes increases from 15.7% to 18.7%, and its reach from 9.1% to 11.8%.
- GMG's share of minutes increases from 8.2% to 8.5% while its reach increases from 7.4% to 7.8%.
- News Corp's, share of minutes increases from 7.5% to 7.8% when international titles and the Scottish Sun are included, while its reach increases from 7.7% to 8.2%.
- Other media providers including Trinity Mirror and The Lebedev Foundation also show slight increases in population share and reach when regional/international titles are included.

provider in terms of both page views (7.0%) and minutes (7.5%), while Sky currently is tenth (with 1.7% and 1.8% for page views and minutes respectively). The BBC leads the usage of online news sites with a 39.7% share of page views and 35.4% share of minutes of use.

Figure 11 - Share of Page Views and Minutes for Top 50 News Sites by wholesale news provider (%)



Source: Nielsen, home and work panel, applications included, all people aged 2+, October 2010.[72].

4.26 Nielsen provides a standard metric of population reach, which is defined as the proportion of the total UK population aged 2+ who have visited a site. In terms of population reach, News Corp was the third largest internet news provider, reaching 4.6 million individuals (or 7.7% of the UK population, aged 2+[73]) with its online news content in October 2010, while Sky reached 1.6 million individuals (2.6% of the population). The largest provider was the BBC, reaching 12 million individuals (19.8%), followed by DMGT reaching 5.5 million individuals (9.1%). This data shows

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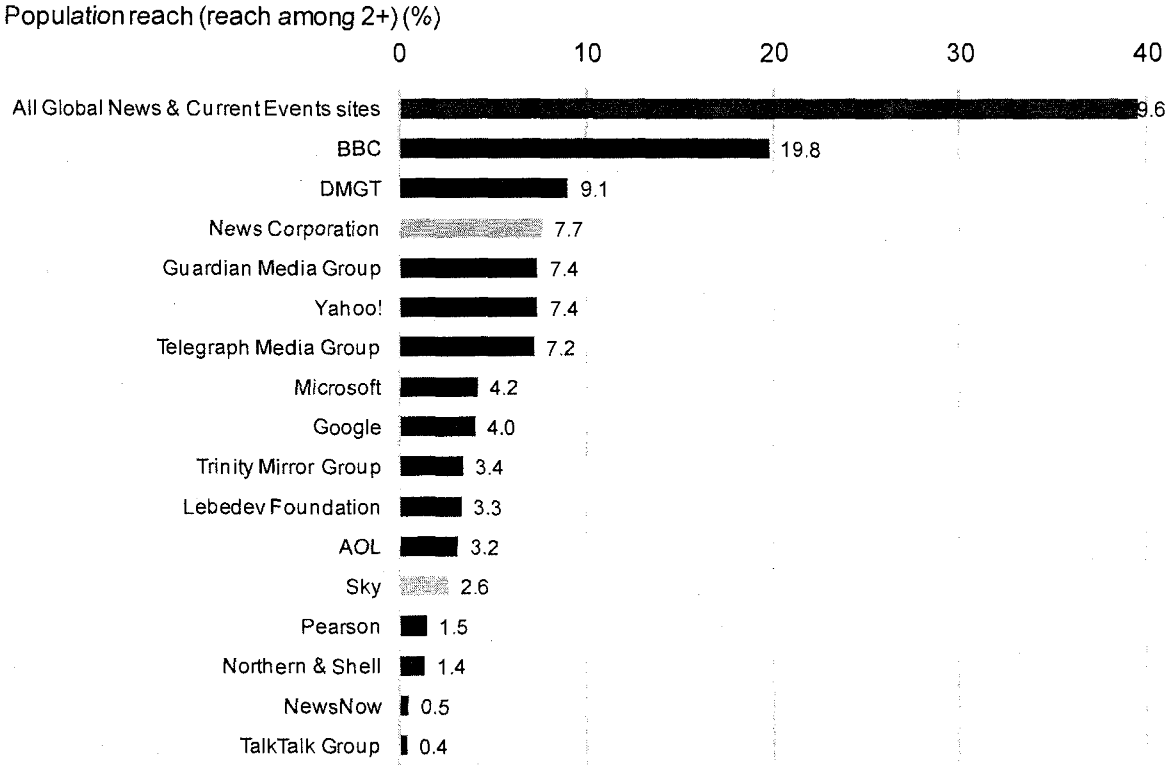
- The chart would also include some standalone regional or international providers such as the New York Times and Gannett.

[72] Market share calculated as a percentage of the top 44 sites in Nielsen's 'Current Events & Global News' subcategory combined with six other relevant sites (FT.com, Wall Street Journal, Reuters, Metro.co.uk, Northcliffe Newspaper Group, Archant Regional Network). Nielsen is investigating a decline in its internet use data around duration metrics and the potential impact of this on unique audience metrics. Consequently, until these investigations are concluded, Nielsen internet data for 2010 is likely to represent a lower bound and should be treated as indicative only.
[73] Data collected by UKOM/Nielsen is based on a total UK population aged 2+. This differs from the data used to assess other platforms in this report which are based on the adult population 16+. As a result, the percentage of population figures quoted for online reach will be proportionally lower than those quoted as percentage of the adult population for other platforms.

a greater balance in the relative reach of the nation-wide newspaper providers compared to print news.

Figure 12 - Online Population Reach for Top 50 sites by Owner (%)



Source: Nielsen, home and work panel, applications included, all people aged 2+, October 2010.[74] [75]

4.27 In its submission, News Corp argued that the high degree of fragmentation in the online news sector ensures plurality in online news provision. The FTI Report, attached to the News Corp submission, states that "Online has hundreds (and potentially millions) of news voices (and media, formats, and services). Moreover, there are several other players in this space, primarily the BBC, that enjoy a much stronger market position than Sky and News Corporation".

4.28 We have found that there is a multitude of internet sites providing users with access to news content online. However, the extent to which these internet news providers add to plurality over and above the plurality which is delivered via other platforms is less clear. For the most part, internet news providers tend either to have a presence on another platform already (e.g. TV, newspapers); are news aggregators (e.g. Google News. Yahoo); or do not have a UK focussed news agenda (e.g. New York Times).

[74] Nielsen is investigating a decline in its internet use data around duration metrics and the potential impact of this on Unique Audience metrics. Consequently, until these investigations are concluded, Nielsen internet data for 2010 is likely to represent a lower bound and should be treated as indicative only.

[75] This information is after The Times introduced a paywall. However, the way the information is collected, measurement is taken on access to the home page of news providers' sites, which does not sit behind a paywall for The Times. Since introduction of the paywall on The Times site, News Corp has reported numbers of consumers using its services.

4.29 There is anecdotal evidence that the level of syndication of news on the internet is high[76], suggesting that the majority of news stories reported by each individual site are essentially replicated from a small number of original news stories. Despite this, news aggregators may, to some extent, add to plurality by exerting a degree of editorial influence in deciding which stories are given prominence, and, in the case of aggregators, may increase users' exposure to multiple sources of news. This is explored in more detail in Section 5.

4.30 There is also evidence that multi-sourcing (where consumers source news from a range of providers within or across platforms) may be higher among consumers of online news than other platforms. The Perspective report submitted by News Corp included an analysis of Comscore data which found that the average online multi-sourcing among online news consumers was 3.46 sources within the platform[77]. The issue of multi-sourcing and its effect on the consumption of news is explored in more detail in paragraphs 4.59 to 4.80.

4.31 We note that higher levels of multi-sourcing online may be focused on specific demographics and socio-economic groups given the variations in online take-up and usage. Just under a quarter (24%) of UK households do not have access to the internet[78]. As noted earlier, 26% of adults say that they regularly consume news online[79]. However, only 6% of those aged 65 and over said that they consumed news online on a regular basis[80]. Within socio-economic groups, online news consumption is higher for those in ABC1 socio economic group (34%) than those in C2DE group (15%).

Radio

4.32 Our cross-media audience research (2010) found that 32% of adults say that they regularly use radio as a source of news. Among regular news consumers only 3% say that they source their news only from radio. This compares to 29% who only source news from TV, 6% for newspapers and 5% for online. Furthermore, Ofcom's Media Tracker (2009) found that 7% of UK adults consider radio to be their main source of UK news. As a main source of news, radio appears to be relatively less important than some of the other media.

4.33 Sky does not have a retail presence in the radio sector; rather, it wholesales its news content to commercial radio providers. Following the awarding of the IRN contract to Sky in March 2009 (previously held by ITN), it now supplies news content to virtually all commercial radio stations in the UK.

4.34 According to RAJAR, nearly 46.8 million adults (aged 16+) listened to the radio on a weekly basis (5 minutes consecutive listening) in the third quarter of 2010. This

[76] Desk research from the Nieman Foundation at Harvard University found that of the 121 unique articles listed on Google News for one news item on February 20th 2010, only 13 (11%) had some amount of original reporting and only 7 (6%) consisted primarily of original reporting. (http://www.niemanlab.org/2010/02/the-googlechina-hacking-case-how-many-news-outlets-do-the-original-reporting-on-a-big-story/)

[77] National Resdership Survey, BARB, Comscore, Perspective Analysis, in Perspective Report p33

[78] UK Internet Take-up is 76% of households, as published in our Consumer Experience Report (December 2010)

[79] Ofcom Cross-media audience research. Note: Regular defined as at least once a week. 24% for internet on computer, but also 5% for internet on mobile phone, which when combined and de-duplicated comes out as 26%.

[80] In addition, this figure was 36% among 16-24, 39% among 25-34, 32% among those aged 35-44, 29% among those aged 45-54, and 17% in the 55-64 age group.

equates to 90% of the UK adult population. RAJAR does not provide a breakdown of listening by programme type. However, we estimate that a large proportion of this listening is not to news content because news content is scheduled only periodically on radio networks.

4.35 As outlined above, the radio listening figures from RAJAR are based on listening to all radio, and are not specific to listening to news content. At the wholesale level, Sky is one of only two main providers of news content to radio listeners. The radio stations that it provides news to account for 43.6% of all radio listening[81], with the BBC accounting for 54.2%, according to RAJAR. At the retail level, the BBC share of listening remains the same (54.2%) and is then followed by a range of smaller radio providers, most notably Global (16.6%) and Bauer (11.1%).

Figure 13: **Radio listening shares and wholesale provision**

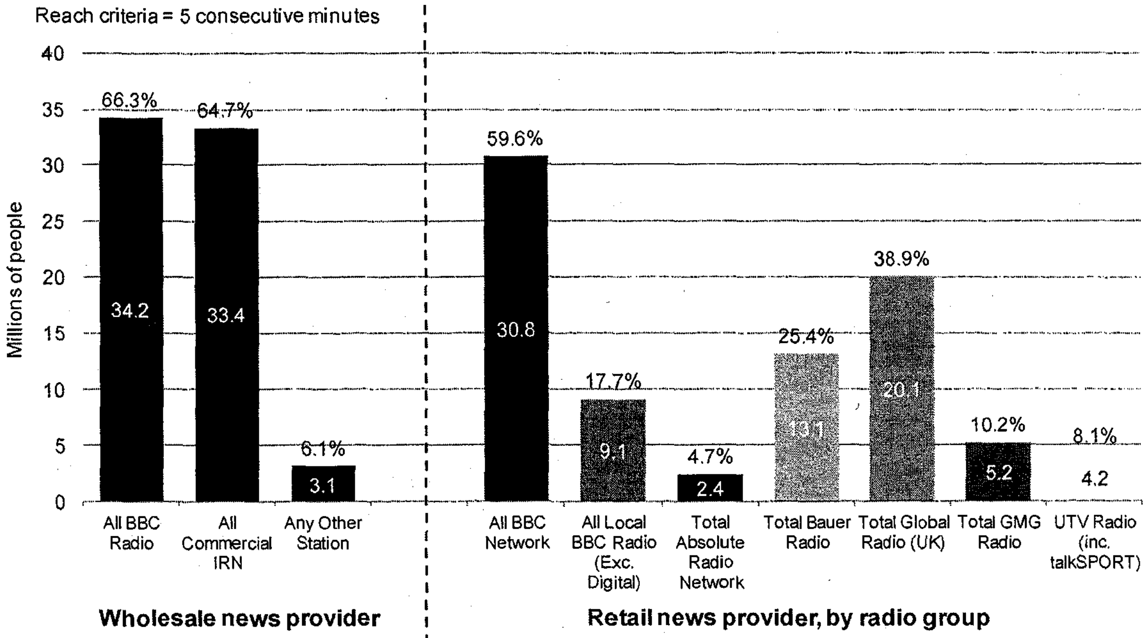
Group	***Share of radio listening***	***News supplier***
BBC Network Stations	45.2%	BBC
BBC Local/Regional	9.0%	BBC
Total BBC	**54.2%**	
Global Radio (UK)	16.6%	Sky
Bauer Radio	11.1%	Sky
GMG Radio	4.1%	Sky
UTV Radio (inc. TalkSPORT)	3.3%	Sky
Absolute Radio Network	1.7%	Sky
Other commercial	6.8%	Sky
Total Commercial	**43.6%**	
Other listening	2.2%	
Total other listening	**2.2%**	

Source: Ofcom, RAJAR Q3 2010, all adults 16+
Note: Figures are for total listening, not radio news listening, as RAJAR does not provide genre breakdowns.

4.36 Figure 14 below sets out the proportion of adults aged 16+ who listened to at least 5 consecutive minutes of radio (audience reach) for each provider of radio news at both the wholesale and retail level. This demonstrates that, through its supply of news content at the wholesale level Sky has the potential to reach 33.4 million adults or 64.7% of the adult population. This compares to the BBC's reach of 34.2 million (66.3%) adults. It has not been possible to calculate reach on the basis of radio news listening alone, and the amount of national news broadcast will vary by outlet, it is likely that estimating reach on the basis of all radio listening overstates the level of reach achieved in respect of national news listening. No industry data is available to estimate the share or reach of radio news.

[81] As noted earlier, in the absence of data on radio news listening (as RAJAR does not provide genre breakdowns) we have used total radio listening when considering the relative positions of each media provider on the radio platform.

Figure 14 - Radio Average Weekly Reach – Q3 2010



Source: RAJAR, All Adults (16+), Q3 2010[82]. Note, this is not radio news listening, but all radio listening as RAJAR does not provide genre breakdowns.

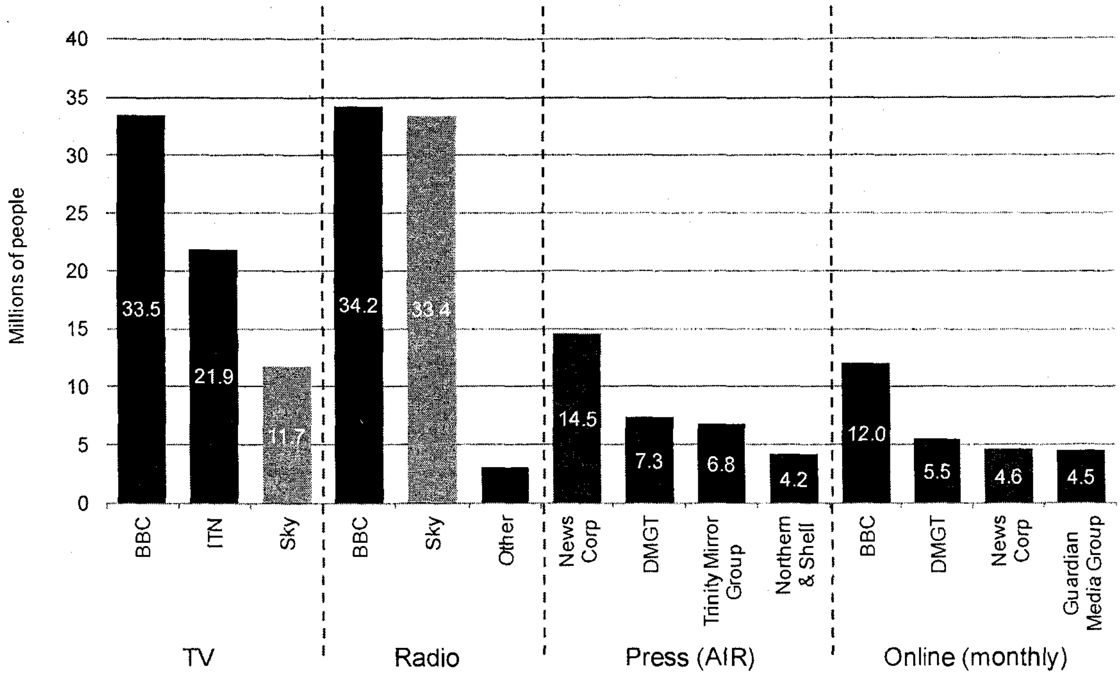
Summary of platform by platform analysis

4.37 With a strong presence on three of the four media platforms (TV, Radio and online), the BBC is the largest and most far reaching provider of news and current affairs to consumers in the UK. While ITN and ITV are only present on two platforms (TV, online), they currently hold a strong overall position given their presence on TV (as the second largest provider) which is the most commonly used platform for news and current affairs consumption. Sky is present on three platforms at the wholesale level (two at the retail level) which includes the TV platform. As a result it achieves a relatively high reach in terms of proportion of the adult population. At the wholesale level, Sky also has a strong presence in the provision of news content to radio broadcasters. News Corp is currently present on two platforms (newspapers, online), and holds a strong position in respect of newspapers, achieving a reach double that of its nearest rival, DMGT. A number of other media providers are also present on one or two platforms.[83]

4.38 Figure 15 and Figure 16 provide a graphical comparison of the parties' reach within each platform. While the standard industry measure of reach is different for each platform and cannot be combined, viewing each measure as a proportion of the adult population does provide a picture of the main news media providers' relative importance (in terms of reach) across all four media platforms.

[82] 'Any other station' will include listening to (but not limited to) stations not measured by RAJAR (e.g. small community radio stations), hospital radio stations, army base radio stations.
[83] In most cases, the second platform is online as a result of the creation of a news website to complement their offering on another platform.

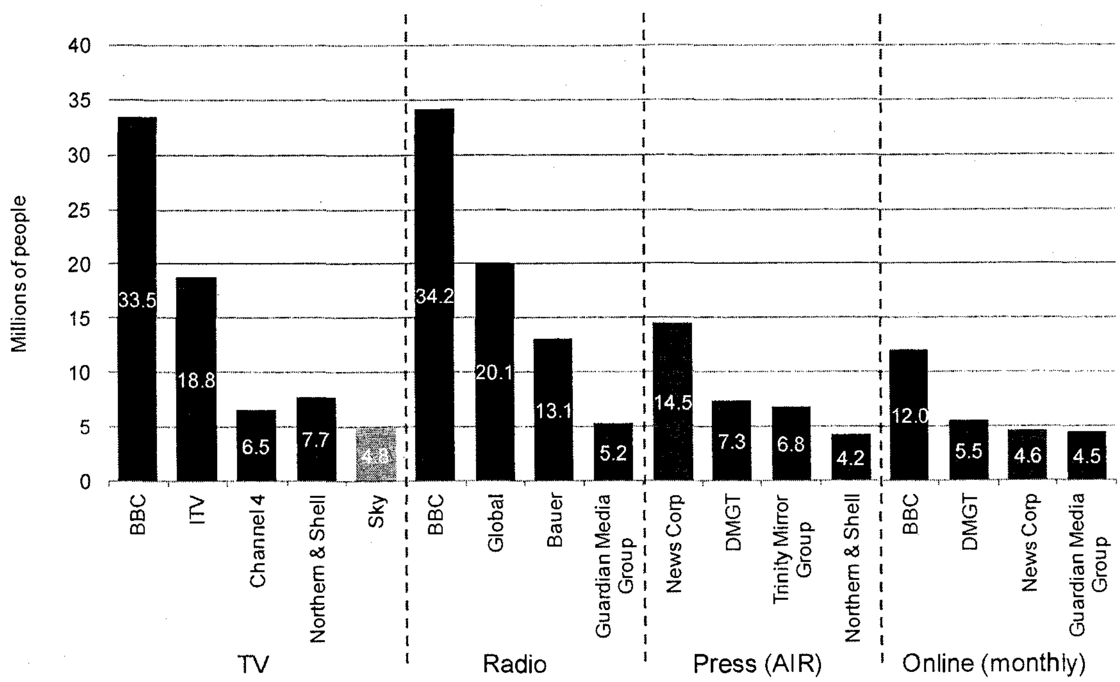
Figure 15 - Reach across platform (millions of people) at wholesale level



Source: TV: October 2010, BARB, All Adults (16+), Radio: Q3 2010, RAJAR, All Adults (16+), Press: Kantar Media/NRS, all adults (16+), Online: October 2010, Nielsen / UKOM[84], all 2+. Methodologies for data collection differ by industry.

[84] **TV**: National and international news subgenre only. BBC = BBC One, BBC Two, BBC News. ITN = ITV1, C4. Sky = Sky News, Five. Reach criteria = 3 consecutive minutes of viewing in an average week, October 2010. **Radio**: Listening to all radio – as RAJAR does not provide programme genre analysis. 'Any other ' includes listening to stations not individually measured by RAJAR and non BBC or Commercial stations. Reach criteria = 5 consecutive minutes of listening once in the week. **Press**: 6 day average issue readership (AIR) for dailies, Oct 2009 – Sept 2010, excludes regional titles. Reach criteria = read or looked into a publication within its publication period for at least 2 minutes. News Corp = The Sun, News of the World, Times, Sunday Times; DMGT = Daily Mail, Mail on Sunday; Trinity Mirror = Daily Mirror, Sunday Mirror, The People, Daily Record (in Scotland); Northern & Shell = Daily Star, Daily Express, Daily Star Sunday, Sunday Express. **Online**: Home and work panel, applications included, all aged 2+. Analysis based on top 50 news sites only. Figures are monthly unduplicated audiences. Unduplicated audience figures exclude regional and international titles, and sites outside the top 50. BBC = BBC News + BBC Homepage, DMGT = MailOnline, News Corp = The Sun + News of the World + The Times/Sunday Times, Guardian Media Group = Guardian.co.uk.

Figure 16 - Reach across platform (millions of people) at retail level



Source: TV: BARB, All Adults (16+), Oct 2010, Radio: RAJAR, All Adults (16+), Q3 2010, Press: Kantar Media/NRS, all adults (15+), Online: Nielsen / UKOM, Oct 2010, all 2+.[85]

News and current affairs consumption cross-media

4.39 In the absence of a single metric to measure the consumption of news consistently across platforms, Ofcom commissioned audience research into the claimed consumption patterns of user across TV, radio, press and online. Details of this research can be found in Annex 1. The research asked respondents to name their sources of UK and international news and current affairs from a prompted list that included regional and local sources, such as regional newspapers or regional radio stations (see footnote 52). From this data we were able to establish a common metric (share of references[86]) to measure cross-media news and current affairs consumption in terms of:

- 'main source of news' – respondents were also asked to name their single main source of news that they used regularly (e.g. a specific TV channel, website,

[85] TV 'National News' genre only. Reach criteria = 3 consecutive minutes of viewing once in the week Radio: Top 4 groups charted. Reach criteria = 5 consecutive minutes of listening once in the week Press: Press: 12 month average issue readership (AIR) Oct 2009 – Sept 2010, excludes regional titles. Reach criteria = read a publication within its publication period for at least 2 minutes. Online: Home and work panel, applications included, all aged 2+. Analysis based on top 50 news sites only. Figures are monthly unduplicated audiences. Unduplicated audience figures exclude regional and international titles, and sites outside the top 50.

[86] In Ofcom's cross-media audience research (2010) a 'reference' is a news brand/title that is cited by a consumer as a source of regular (i.e. at least once a week for all sources, except for weekly newspapers and magazines where it is defined as at least once a month) UK or international news or current affairs for them. A media provider's total references are calculated as responses for each individual news source across the platforms of TV, radio, newspapers and internet. These are for example, BBC One, Sky News, The Daily Mail, etc. If a respondent uses more than one source from a particular media provider it counts each time. The share of each media provider is then calculated as the aggregated number of references for that media provider, expressed as a proportion of all references.

newspaper or radio station). This enabled us to aggregate this data by media owner (retailer) and media provider (wholesaler) to establish the share by media owner or provider based on consumers' single main source of news[87]; and

- 'all regular sources of news' – by provider (retailer e.g. title, channel) and wholesaler (media provider). This includes all sources of news and current affairs named by consumers that they used regularly. It therefore includes both the main source of news named and 'secondary' sources named, thereby including the effects of multi-sourcing on the share of media providers.

4.40 Respondents were able to name any source of news, including both nation-wide and local or regional news providers as part of this research. In the results, local or regional providers have been aggregated into 'other' but individually accounted for a small share of responses.

4.41 Furthermore we were able to calculate the proportion of people who said that they had used at least one media source by media owner (retailer) and by media provider (wholesaler), in order to produce a cross-media reach metric based on regular news consumers. For example, if a respondent said they had used both a BBC website and BBC One, they counted once in the cross-media reach for the BBC. See Annex 1 for more details.

4.42 This research has enabled us to examine the relative shares and reach of different news and current affairs providers, in respect of their importance to consumers both as a main source of news, and as a regular source of news more generally.

Share of references

4.43 The analysis provides us with four different measures of audience share for each provider: the "main source of news", and "all regular sources of news", at both the retail and wholesale level. The results of our research are summarised in Figure 17 and displayed in Figure 18 to Figure 21 below for regular use (at least once a week).

Figure 17: Summary results from market research on share of references

	'Share of references'			
	'Main source of news'		'All regular sources of news	
	Wholesale	Retail	Wholesale	Retail
BBC	54%	54%	37%	37%
ITN / ITV	14%	12%	12%	9%
News Corp	6%	6%	12%	12%
Sky	9%	7%	10%	5%
Others	See Figure 18	See Figure 19	See Figure 20	See Figure 21

[87] For the purposes of assessing share of references at the wholesale level, where news is provided through a wholesale contract, the reference is attributed to the wholesale provider of news content. At the retail level, the reference is attributed to the owner of the news source named.

Figure 18 - **Share of references for single main source of news, at wholesale level** (Base: regular users of news, 96% of GB population)

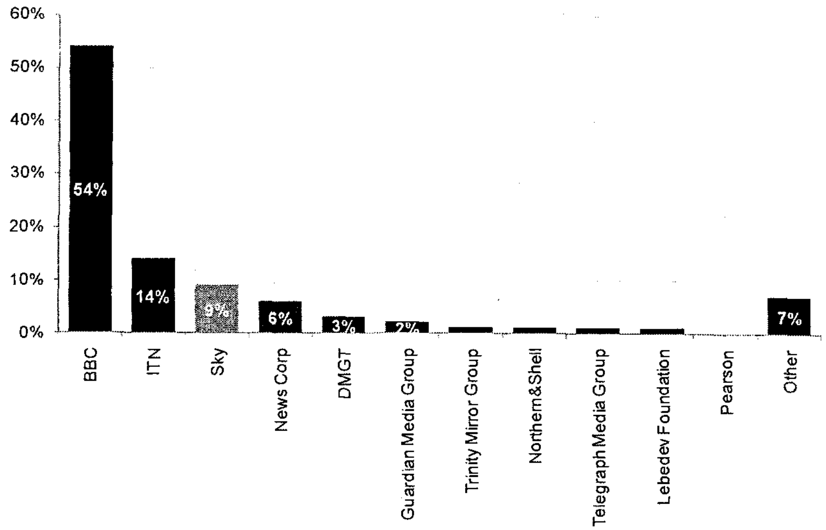


Figure 19 - **Share of references for single main source of news, at retail level** (Base: regular users of news, 96% of GB population)

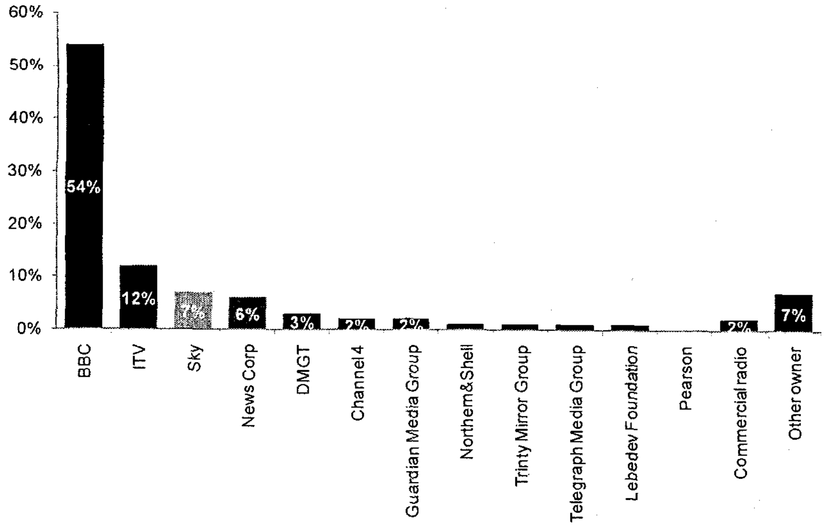


Figure 20 - **Share of references for all sources of news, at wholesale level** (Base: regular users of news, 96% of GB population)

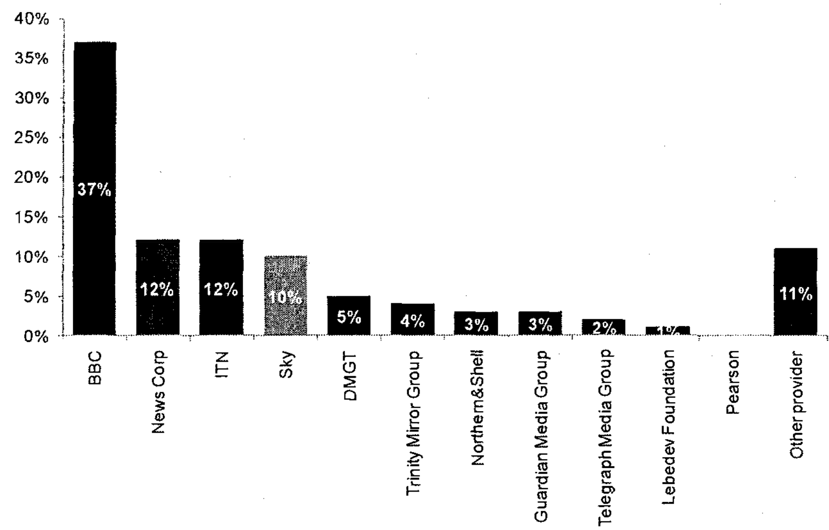
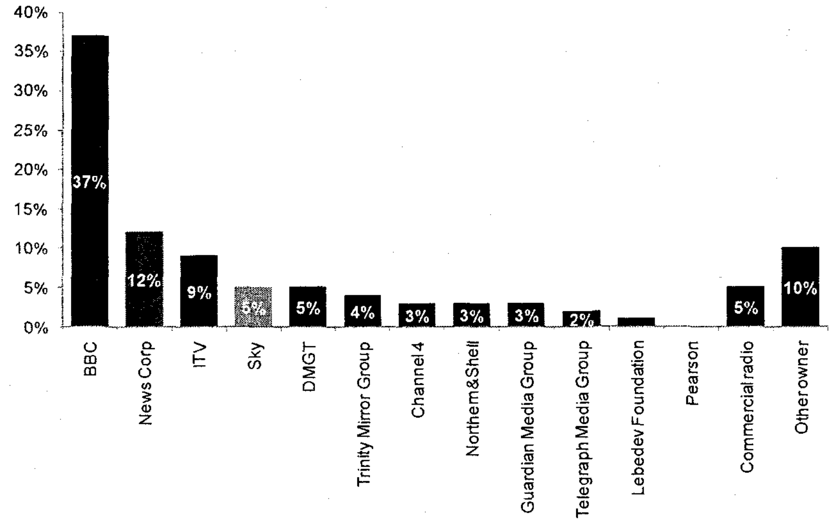


Figure 21 - **Share of references for all sources of news, at retail level** (Base: regular users of news, 96% of GB population)



4.44 Our analysis indicates that the BBC is the single most named source of news and current affairs for respondents, both in terms of share of references for main source of news (54%) and share of references for all sources of news (37%). While the BBC is not present on all four platforms, it continues to account for a large proportion of cross-media consumption, primarily due to its position in TV news viewing, the platform most cited by consumers as being their main source of news. As noted earlier, the BBC's position in the provision of TV news has increased over the last eight years. It also possesses a strong online news service and is the leading source of radio news for listeners.

4.45 Together ITN and ITV hold a relatively strong position in the provision of news to cross-media audiences at the wholesale and retail levels respectively. In respect of the wholesale provision of news, ITN is the second largest wholesale provider in terms of main source of news with 14% of respondents naming ITV or Channel 4 as their main source of news. ITN is second (joint with News Corp) most cited of all sources of news with 12%. Similarly, ITV is a strong provider of news at the retail (media owner) level as the third largest provider, with 12% of respondents indicating it was their main source of news and 9% of responses indicating it was a regular source of news. The prominence of ITV and ITN is primarily due to their presence on the TV platform, particularly given they are currently only present on one other platform (online). As noted earlier, ITV's share of TV news viewing has been falling over the last eight years.

4.46 While only present on two of four platforms today (newspapers, online) News Corp has a strong position relative to other remaining media providers, with 6% of respondents naming it as a main source of news (fourth overall) and 12% of responses citing it as a regular source of news (second overall)[88]. News Corp's position in respect of cross-media consumption is primarily due to its leading presence in the newspaper platform.

4.47 Due to its presence on the TV platform, Sky also has a relatively strong position relative to other providers. Sky's position is enhanced at the wholesale level, due to its wholesale contracts to supply TV and radio news content, where it is the third largest provider of news in cross-media terms. In this respect, 9% of respondents cited Sky as a main source of news, whereas it had a 10% share of references as a regular source of news. If considered at the retail level, Sky's is third with a 7% share of references for main source of news, and is equal fourth in share of references for all regular sources of news with 5%.

4.48 As would be expected, a number of other media providers also contribute to cross-media consumption, although for the most part they account for substantially smaller shares of references for main source of news and for all regular sources of news. The one exception to this is DMGT[89] which had the same share of all sources of

[88] There is no difference between wholesale and retail for News Corp as it self-provides news for its newspaper and online.

[89] The questions on news sources in the quantitative research were based on asking respondents to select from a list which news sources they used on a regular basis. Respondents were also asked if there were any other titles they used that were not on the list and these were also recorded. For the weekly newspapers, the list read: The Observer, The Sunday Telegraph, The Sunday Times, The Independent on Sunday, Sunday Mirror, News of the World, The Sunday Herald (shown in Scotland only), Wales on Sunday (shown in Wales only), Weekly magazines (e.g. The Economist, The Spectator, New Statesman, etc), Other weekend\weekly newspaper or weekly magazine (write in). Due to an error, the list omitted the following weekly newspapers: Mail on Sunday, Daily Star on Sunday, Sunday Express, The People. Data for these titles are therefore based on spontaneous responses from participants. In order to investigate the potential impact of this research effect, we

news (5%) as Sky at the retail level. However, only 3% of respondents named it as a main source of news (compared to 7% for Sky).

Reach

4.49 Our cross-media audience research also provided us with the data to calculate an estimate of the proportion of regular news consumers who say that they use at least one source of news on a regular basis for each media provider and owner across all platforms (offering a cross-media audience reach metric). For example, if a respondent said they had used both the BBC website and BBC One as regular sources of news, they were counted once in the cross-media reach for the BBC.

4.50 Submissions made to Ofcom offered alternative measures for audience reach. A number of submissions used reach figures sourced from Touchpoints, which provides a database for multimedia channel planning which gathers together figures from the industry standard measures for each of BARB for TV, RAJAR for radio, UKOM for online and NRS for print to generate a single source through data fusion. This suggested the combined reach of News Corp / Sky would be 52% of the UK population[90].

4.51 We have not had sufficient time to fully validate the Touchpoints findings in addition to our own research and use of individual industry data. This is within the context of there being no one industry recognised single source of media measurement across platform. In addition, each of the individual industry measures for TV, radio, newspapers and online have differing definitions for the genre of news, as well as different methods for measuring consumption, as well as variation in age ranges, and definitions of consumers.

4.52 The quantitative research we commissioned offers instead a consistent definition of news and current affairs, and of consumption for each platform. Although it has from limitations (for example, our market research is based on a weighted sample of respondents that is smaller than those generally used to compile standard industry metrics) we believe that it provides useful data in analysing reach on a cross-media

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undertook a modelling exercise for all the weekly newspapers and normalised estimates based on the national readership distribution from the national readership survey. The results showed a minimal effect on total share of references:

- Retail level results: BBC 36%, ITV1 9%, News Corp 13%, Sky 5%, Channel 4 3%, Northern Shell, 4%, Associated Newspapers 6%, Trinity Mirror Group 5%, Telegraph Media Group 2%, Guardian Media Group 3%, Independent Print 1%, Pearson (less than 1%), Commercial radio 5%, other owner 9%.
- Wholesale level results: BBC 36%, ITN 12%, News Corp 13%, Sky 10%, Northern Shell 3%, Associated Newspapers 6%, Trinity Mirror Group 5%, Telegraph Media Group 2%, Guardian Media Group 3%, Independent Print 1%, Pearson less than 1%, Other owner 10%

[90] Source: Slaughter and May submission, based on Arena BLM Touchpoints Analysis. Covering News Corporation newspapers, BSkyB TV news channels, Five News, News Corporation and BSkyB websites and TalkSport (one of the main radio stations supplied by Sky News). It does not include reach BSkyB achieves through the supply of news to all commercial radio. Touchpoints provide a database for multimedia channel planning which gathers together figures from the industry standard measures for each of BARB for TV, RAJAR for radio, UKOM for online and NRS for print to generate a single source through data fusion. Due to the time constraints on the test, we did not have sufficient time to fully validate the Touchpoints findings, this also applies to other third party research quoted in this document. This is within the context of there being no one industry recognised single source of media measurement across platform. In addition, each of the individual industry measures for TV, Radio, Newspapers and online have differing definitions for the genre of news, as well as different methods for measuring consumption, as well as variation in age ranges, and definitions of consumers.

basis. Our platform-by-platform analysis outlined between paragraphs 4.11 and 4.38 considers the standard industry reach metrics specific to each platform.

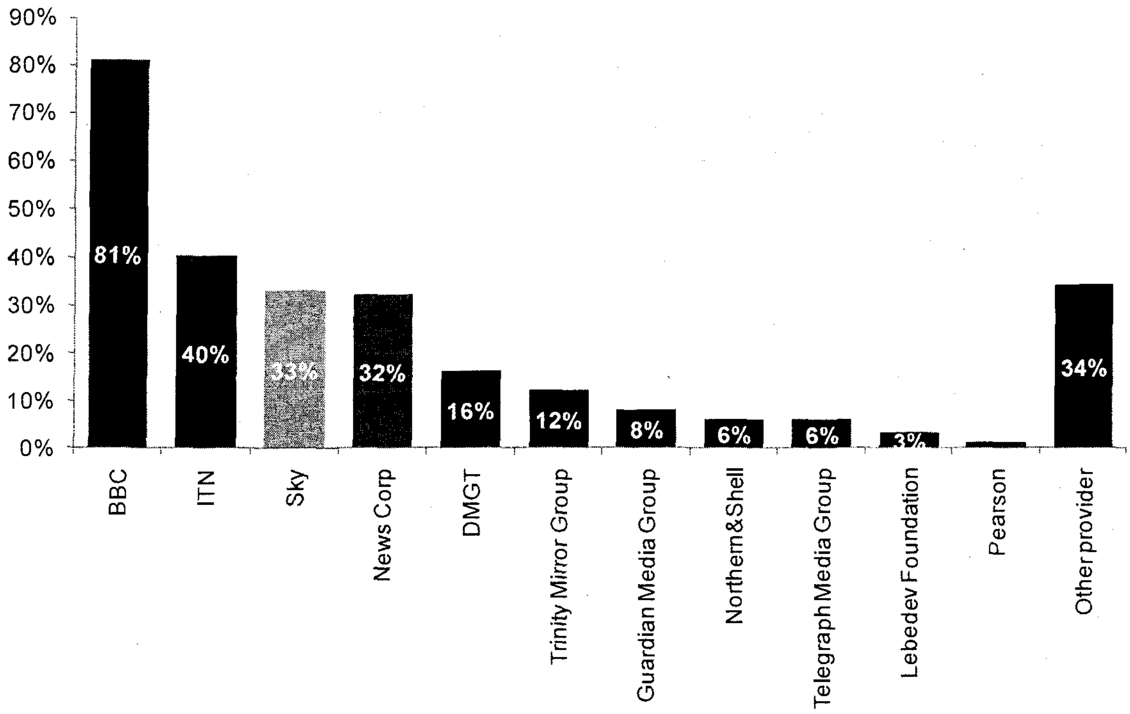
4.53 The results of our cross-media audience research are given in Figure 22 and Figure 23 below. This shows that 81% of consumers who use news regularly use the BBC as a news source at least once a week. This position does not vary between wholesale and retail as the BBC self-provides news.

4.54 At the wholesale level, ITN is second in cross-media audience reach, with 40% of consumers who use news regularly saying they use it as a regular source of news. Sky is third achieving a cross-media audience reach of 33%, followed by News Corp in fourth with 32%. There is then a longer tail of smaller providers comprising the other newspaper groups. 'Other providers' is a fragmented group of smaller providers named by respondents to the research.

4.55 At the retail level ITV is the second placed news provider with a reach of 34%. News Corp is third with 32% and Sky fourth with 17%. However, although the identity of the top four news providers remains the same, the gap between them and the other providers is much reduced, with DGMT and Trinity Mirror at fifth and sixth place with 16% and 12% respectively. In this chart, Channel Five is included within Northern and Shell. The retail assessment also includes commercial radio (covering the reach of all commercial radio stations) and other providers. The difference between the wholesale and retail data on reach is mainly due to the significant reach of TV news on Channel 4 and Channel Five.

Figure 22 - Cross-media audience reach of consumers who use news regularly, wholesale level

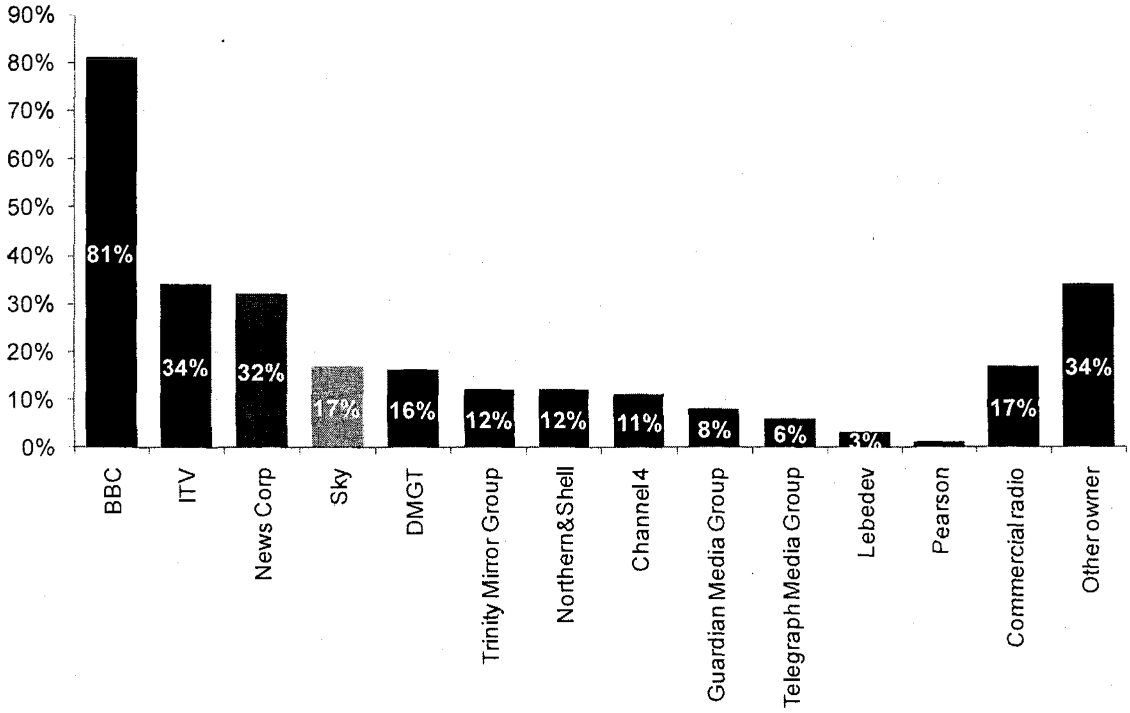
Percentage of consumers using news regularly



Source: Ofcom cross-media audience research, 2010

Figure 23 - Cross-media audience reach of consumers who use news regularly, retail level

Percentage of consumers using news regularly



Source: Ofcom cross-media audience research, 2010

Demographic and socio-economic variations in cross-media use of news and current affairs

4.56 Our cross-media audience research highlighted some variation in the news and current affairs sources that people from different age or socio-economic groups use to access news and current affairs.

4.57 The most notable variations are as follows:

- Older consumers are less likely to use the internet as a source of news. While on average across the population 26% of people said that they regularly used the internet to access news, for the 65+ age group this was 6%[91]. Regular use of the internet as a source of news and current affairs also varies according to socio-economic group, with 34% of those in the ABC1 group comparing to 15% of those in the C2DE group[92]. Both of these are consistent with general internet take-up and usage trends within these groups.

- Younger consumers are less likely to say that they use radio as a source of news and current affairs. While the proportion of the population as a whole who used the radio to access news on a regular basis was 32% on average, for 16-24 year olds, this was 21%. Younger consumers were also less likely to cite television

[91] Cross media audience research 2010, Base: All adults in GB (2018), Q1A: platforms used regularly (at least once a week) for news. Note: Regular defined as at least once a week.
[92] Ibid.

(66%) versus 79% for all adults, and more likely to cite the internet (36%) versus 26% for all adults.

- Older consumers aged 55+ are more likely to cite newspapers as a source of news (50% of those aged 55-64 and 54% of those aged 65+) versus 44% for all adults.

- Platform-level multi-sourcing also varies to some extent. According to our cross-media audience research, people aged 55-64 were less likely to use just one platform for news (36% compared to 42% for all adults) whereas those aged 16-24 were more likely (46%), as were those in the C2DE socio-economic group (50%). Research cited by the merging parties showed broadly consistent socio-economic variations regarding multi-sourcing.

4.58 In the time available, we did not consider these variations to be significant enough to warrant the definition of separate audiences according to age or socio-economic groupings.

Consumers' use of multiple sources of news and current affairs

4.59 Of relevance to plurality for news and current affairs is an understanding of how consumers may draw on multiple sources for news and current affairs. We refer to this by using the term 'multi-sourcing'.

4.60 It is important to note that the audience shares which we present above for the 'main source of news' are unlikely to capture the effects of multi-sourcing. However, the analysis which we present of audience shares for 'all sources of news' does capture the effects of multi-sourcing, albeit implicitly.

4.61 We have received detailed representations on how many sources consumer use for news and current affairs[93]. Consumers may use multiple sources of news in three ways:

- sourcing news from one provider on more than one platform;
- sourcing news from more than one provider on the same platform;
- sourcing news from more than one provider on more than one platform.

4.62 We look here at multi-sourcing across all providers and platforms. We have also looked in particular at consumers who source news today from both News Corp and Sky.

4.63 The possible implications of consumers using multiple sources for news and current affairs in the context of the proposed transaction are explored in section 5.

Use of multiple media platforms

4.64 We estimate that a large proportion of the UK adult population uses more than one media platform to access news and current affairs.

4.65 Our cross-media audience research showed that 42% of regular news consumers rely on a single media platform for news and current affairs while 58% use two or

[93] See for example News Corp's response to the Invitation to Comment paragraphs 6.7-6.8 and [✂].

more platforms on a weekly basis (32% use two platforms, 19% three platforms and 7% four platforms). This suggests that the average number of platforms used to access news in a typical week is 1.9.

4.66 Evidence submitted by News Corp suggests instead that the average number of 'types of media' used 'regularly' is closer to 4[94]. We note that FTI / Mintel consider local/regional newspapers as a type of media distinct from national newspapers, and similarly local/regional radio as a distinct type of media from national radio. This means that the total number of different types of media in the FTI / Mintel analysis is six: TV, internet, national newspapers, local/regional newspapers, national radio, and local/regional radio. Our analysis, instead, focuses on four media platforms: TV, radio, newspapers and internet. In addition, the definition of news for the multi-sourcing data may be broader than our definition for the public interest consideration, including: national and international news; sports; entertainment news; current affairs; and politics.

4.67 We are not persuaded in any event that these different approaches and the inclusion of different media are likely to make a significant difference to the overall understanding of consumers' use of multiple sources of news.

4.68 Among the alternative platform combinations available, our research found that 29% of regular news consumers claimed to rely on television alone for news content. Television coupled with newspapers was the next most popular combination (16% of respondents). Television, radio and newspapers came third (12%), followed by TV/radio together (7%) and TV/radio/newspapers/internet combined (7%). These five consumption modes accounted for over 70% of regular news consumers as measured in our quantitative research.

Multi-sourcing within each platform

4.69 News Corp submitted evidence on how consumers use a range of different sources within and across platforms:

- FTI's report provides information on the proportion of consumers who use a mix of different platforms for news, drawing from TV, radio, newspapers, online and magazines. This suggests that around 8% of consumers use no sources of news, with around 17% using one source, 24% two sources, just under 25% using three sources, around 18% using four sources and around 8% using 5 sources. FTI noted more than 50% of consumers use 3 or more media platforms.

- Within platforms FTI provided data suggesting that on average each week consumers use 1.1 channels for TV news, 2.2 channels for radio, 1.4 titles for newspapers and 3.5 websites for online[95].

- Perspective also provided data on multi-sourcing for news within platforms, slightly differing from FTI's, stating that consumers use 1.26 newspaper titles, 2.2 TV channels and 3.5 websites[96].

[94] This estimate is based upon an analysis by FTI for News Corp of data published by Mintel in *Consumer Perception of News Media*, Sept 2010. In the time available, we have not been able to validate this evidence. Differences between our and FTI's estimate may be due to numerous methodological factors.
[95] News Corp submission, Annex 1 by FTI (Table 5.1)
[96] News Corp submission, Annex 1 by FTI (Table 5.1), Annex 2 by Perspective (Figure 23)

4.70 Our cross-media audience research[97] also provides evidence on the level of multi-sourcing within each platform. Its estimates are broadly similar to News Corp's for multi-sourcing within TV and newspapers. It indicates that for UK news and current affairs consumption: regular[98] TV news viewers use on average 1.7 channels per week; regular daily newspaper readers use on average 1.3 titles per week; and regular weekly newspaper readers use on average 1.1 titles per month.

4.71 However, our research suggests lower levels of multi-sourcing within the radio and internet platforms compared with the News Corp submission. We recognise that the difference in results may be due in part to limitations of our survey methodology causing an underestimate on our part of the level of multi-sourcing on the radio and internet[99]. On the other hand, we have not been able to validate the evidence submitted by News Corp in the time available.

4.72 If a reference to the Competition Commission were made, we would recommend further investigation of the level of media-brand multi-sourcing within the radio and internet platforms as a relevant factor in understanding how consumers use of news and current affairs media and how this affects plurality.

Multi-sourcing across platforms

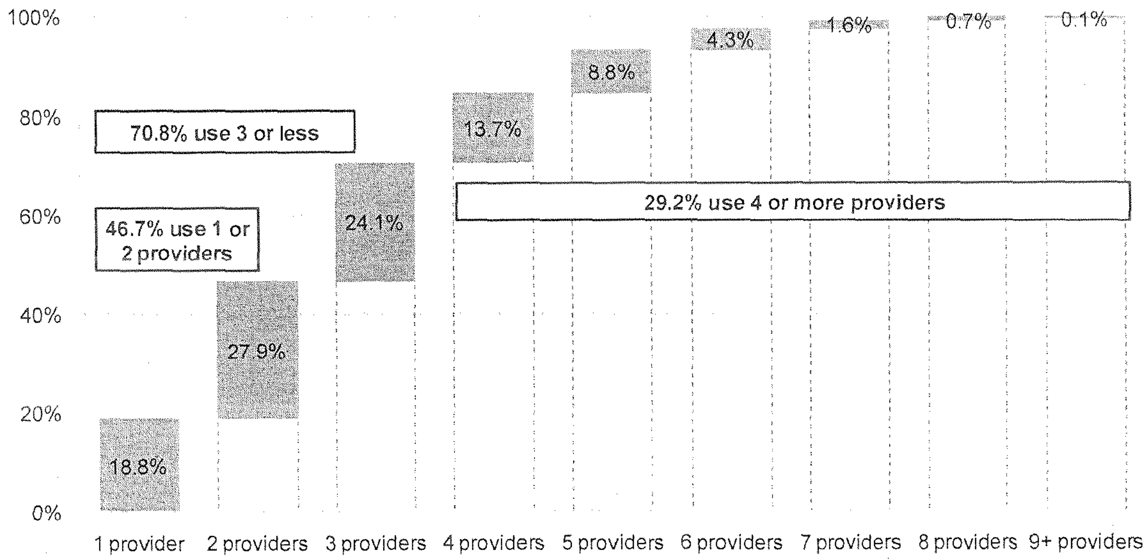
4.73 Our cross-media audience research provides evidence on the number of providers from which consumers source their news across all platforms. Figure 24 suggests that many regular news and current affairs consumers tend to source their news and current affairs from a relatively limited number of providers. Looking at wholesale provision, 71% of regular news and current affairs consumers use three or fewer providers in a typical week, and 47% only use one or two. However, a significant proportion (29%) uses four or more providers at least weekly. On average, consumers who use news and current affairs regularly use 2.9 providers in a typical week.

[97] Source: Ofcom cross-media audience research (2010). Base : regular users of news platforms (TV=1784, Newspapers=1281, Radio=942 , Internet=705) Q3a/b, Q4a/b, Q5a/b, Q6a/b. Q7a/b

[98] We use 'regular' to refer to consumption of UK news and current affairs on a weekly basis on a specific platform.

[99] The questionnaire we used in our research lists groupings of some radio stations as a single brand. For example, all BBC national radio stations are grouped as one brand. And while we list a number of different news websites, we grouped 'other' websites together in our questionnaire. This means, for example, we classify all the different blogs as one source and all other websites not listed in our questionnaire as one source.

Figure 24 - Distribution of multi-sourcing by wholesale provider among all regular news consumers



Source: Ofcom cross-media audience research (2010)
Note: Figures refer to at least weekly use for TV channels, radio stations, websites and daily newspapers, and at least monthly for weekly/Sunday newspapers of wholesale providers of news and current affairs across all platforms. Figures count News Corp and Sky as separate providers. Figures may underestimate the amount of multi-sourcing because "other" sources are grouped as one.

4.74 By considering retail provision, multi-sourcing levels do not appear materially different. According to our research results, consumers who use news and current affairs regularly access on average 2.8[100] retail news providers, with 19.2% consumers relying on one source, 48.9% on two or less, 72.9% on three or less, and 27.1% on four or more.

4.75 The high levels of single-sourcing are partly driven by a large proportion (11%) of regular news consumers solely relying on the BBC to access news and current affairs.

Multi-sourcing by Sky and News Corp consumers

4.76 Our cross-media audience research also indicates that regular users of Sky and News Corp sources are more likely to use multiple sources than the average regular news consumer. We found that both Sky and News Corp users access on average content from 4 different wholesale news providers in a typical week. This compares to an average of 2.9 for the general regular news consumer.

4.77 When looking at the distribution of multi-sourcing by wholesale news, we found that 62% of regular Sky news consumers use four or more providers on at least a weekly basis. Around 38% use three or fewer, 17% use one or two, and only 7% of Sky consumers solely rely on Sky.

[100] Results from our market research show only a very small different in multi-sorcing between the wholesale and retail levels – 2.89 and 2.81 respectively

4.78 News Corp consumers have a similar distribution when it comes to multi-sourcing, with 54% accessing news and current affairs from 4 or more providers. We also found that only 2% of News Corp consumers rely solely on News Corp sources.

4.79 Across the population as a whole, we found that few regular news consumers rely solely on Sky titles or solely on News Corp titles: at the retail level, 2% rely solely on news from Sky; and 1% rely solely on news from News Corp[101]; these shares do not change materially if considering wholesale news provision.

4.80 Our market research data is broadly consistent with the available industry data for television. On television, BARB data highlights that out of all the viewers of national news provided by Sky in October 2010, 4% only watched Sky's news services whereas 76% watched news from two other providers in that month. A further 20% watched news from one other provider[102].

Critical evaluation and trust of the media

4.81 How consumers engage with the media may affect the ability of a media owner to influence public opinion. In particular, some consumers may critically assess the quality of the news that they consume and try to understand the agenda and key issues behind it.

4.82 For example, research from Mintel indicates that around a third of internet users aged 16+ tend not to trust the news that they see, hear or read in the media [103], and that just over half[104] of consumers say that they often check more than one source to confirm news stories that they have read.

4.83 Where consumers do seek to question the news they may themselves limit the ability of a media owner to influence public opinion. How far this can successfully guard against the risk that one controller of media enterprises may have too much influence remains unclear. Consumers may find it difficult to stay abreast of all the key events and underlying key issues in the news; this could take a significant amount of time and effort to research.

4.84 In any case, Ofcom research indicates that a large proportion of consumers do place a significant trust in TV news. Both news programmes on BBC One and Sky News demonstrate high levels of trust. Around 84% of regular Sky News viewers rate Sky News highly on the provision of trustworthy news. Similarly, 80% of regular BBC One viewers rate BBC One highly on the provision of trustworthy news[105]. On the same trust metric, TV news from other public service broadcasters had lower rates among their regular viewers, ITV and Channel 4 at 70%, and 61% respectively.

4.85 Many consumers do however understand that newspapers are more prone to expressing a particular position than TV news. Ofcom research indicates that 36% of consumers believe newspapers are either impartial or neutral[106]. This compares with 56% of consumers who believe newspapers are biased. By comparison, 72% of consumers believe TV is either impartial or neutral and 22% believe it is biased.

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[101] Source: Ofcom cross-media audience research (2010). Base: All regular news consumers (1923), All GB adults (2018) Q3a/4a/5a/6a/7a combined.
[102] Source: BARB, Network, based on 3 consecutive minutes, October 2010
[103] Consumer Perceptions of News Media - UK - September 2010, Mintel, Figure 55 (internet survey)
[104] Consumer Perceptions of News Media - UK - September 2010, Mintel, Figure 55 (internet survey)
[105] Source: Ofcom PSB Tracker, 2009. Consumers provided ratings of 7, 8, 9 or 10 out of a score of 1 to 10 where 1 is not at all trustworthy and 10 is completely trustworthy.
[106] Ofcom Media Tracker, 2009 [Q105. All adults 15+]

4.86 Consumers may also consider some platforms and specific media brands more influential than others. For example, the News Corp submission[107] reported that in the press, *The Times* has the most positive perceptions among consumers; it is seen as authoritative, traditional, reliable, and responsible. In comparison, it reported that the Sun is viewed as sensationalist, biased and lightweight.

4.87 More generally, consumers may seek out different types of content depending on the media they use. For example, the Mintel research indicates that 58% of popular tabloid readers are interested in politics/current affairs compared to 81% of broadsheet readers[108]. These different perceptions and interests could suggest different degrees of influence of different media brands. While quantitative metrics on media usage provides some indication of relative influence between different media players, they are not perfect measures. Some media players may be more influential than these metrics would suggest, whereas the opposite may hold true for others.

[107] News Corp submission, Annex 1 by FTI (p62) using Consumer Perceptions of News Media - UK - September 2010, Mintel (internet survey)
[108] Consumer Perceptions of News Media - UK - September 2010, Mintel, Figure 62 (internet survey)

Section 5

Effects of the proposed acquisition - static analysis

5.1 In this section we have looked at the effects of the proposed acquisition on plurality immediately after the transaction in terms of range and number of persons controlling media enterprises including their ability to influence opinions. We refer to these as "static" effects.

5.2 In performing our static analysis we have had regard to:

- whether the proposed transaction constitutes a change of control;
- external plurality: we have considered the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda.[109]
- internal plurality: we examined how far the range of views expressed within media enterprises may ensure sufficient plurality following the proposed transaction, including the effects of the impartiality rules for broadcast news, the culture of newsrooms and audience expectations; and
- multi-sourcing and online news provision: we considered the effect of consumers' use of multiple media and the increase in online news provision.

Change of control

5.3 The proposed transaction involves News Corp, which currently holds 39.14% of Sky, acquiring the remaining shares it does not own, to give it 100% control of Sky. This would represent a move from part ownership to full ownership Currently, News Corp's stake in Sky, while representing material influence over Sky, does not enable News Corp to pass general and special resolutions alone given the presence of other shareholders and independent directors.[110]

5.4 The degree to which News Corp can influence the corporate policy and strategic direction of Sky, given its current shareholding, will depend on a number of factors:

- Voter turnout and share of votes cast – at present News Corp's voting rights are limited to [✂]%[111] which, based on past voter turnout over the last five years, equates to between [✂]%-[✂]% of votes cast. On this basis News Corp is currently not able, on its own, to achieve a simple majority of votes cast which, for example, would be necessary to appoint or remove the Board. New Corp's voting rights would, however, allow it to block special resolutions which, amongst other things, would be required to alter Sky's Articles of Association, reduce Sky's share capital, and decide on the voluntary winding up of Sky.

[109] Competition Commission report, paragraph 5.7,Court of Appeal paragraph 90 on range and number and DTI Guidance paragraph 7.7 on ability to influence.
[110] In Sky/ITV, we assumed that News Corp's 39% shareholding gave it a level of control over Sky for the purposes of including newspapers in our assessment, but we did not have to consider in that context the question of News Corp having full control of Sky.
[111] [✂]

- Board representation – the Sky board currently includes a majority of independent directors (8 of 14). Four of the six non-independent directors, are affiliated with, but not appointed by, News Corp. The remaining two directors are executive directors and are therefore classed as non-independent directors.[112]

- UKLA listing rules and corporate governance arrangements – a number of rules govern and safeguard transactions between Sky and News Corp. . In particular, Board approval is required for Sky to enter into certain arrangements with News Corp or any of its affiliates.

- Special rights – News Corp does not currently enjoy any special voting rights in respect of its shareholding in Sky, nor does it have the right to appoint a director to the Sky board.[113]

5.5 Taking these factors together the presence of the remaining shareholders and independent directors is such that News Corp does not have full control over Sky.

5.6 Following the proposed acquisition, News Corp would have 100% ownership giving it full control of Sky, which would enable News Corp to take decisions that are in the exclusive commercial interests of News Corp.

5.7 News Corp may also gain a greater ability to exert influence over editorial decisions, for example through the appointment or dismissal of the editor of Sky News (see later paragraphs 5.54 to 5.103 on our assessment of internal plurality).

Plurality of persons with control of media enterprises

5.8 In considering plurality and sufficiency of plurality, we consider the number and range of views *across* different media enterprises in the context of their ability to influence, and the range of views *within* media enterprises. This is the approach adopted by the Competition Commission in Sky/ITV where it termed the former external plurality, and the latter internal plurality, although in that case the Competition Commission was considering a situation involving Sky's acquisition of 17.9% shareholding in ITV as compared to 100% in this case.[114]

5.9 In looking at the number and range, we did not look simply at the number and range of media enterprises, but also at their relative ability to influence and inform public opinion. In doing so we have had regard to the purpose of plurality provisions[115] and as explained in the Secretary of State's guidance on the media public interest merger provisions, which states that the public interest consideration *'is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross media public interest consideration,*

[112] For the purposes of Sky's Corporate Governance Code, all executive directors are treated as not being independent of the company.
[113] The presence of directors on the Sky Board who are affiliated with News Corp would indicate that News Corp does have some influence over the appointment of directors; however, this influence arises from their position as a major shareholder in Sky and not through any special rights.
[114] Competition Commission report, paragraph 5.11
[115] Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard

therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality'[116].

External plurality

5.10 Representations have been made to us that after the proposed transaction there would be sufficient plurality by reference to the total number and range of media enterprises available.

5.11 An analysis of this type would not take account of the ability to influence opinion. It would simply indicate the number and range of persons with control of media enterprises providing news and current affairs without considering use by consumers.

5.12 [✂]

5.13 [✂] [117]

5.14 At the most extreme, adopting a count of the number and range of owners of media enterprises without taking account of their ability to influence opinion would mean that all news and current affairs providers would be included as contributing to plurality simply by being available regardless of whether they were used by several million or zero consumers.

5.15 We do not consider these submissions or this approach to be credible. Assuming a reasonable minimum scale, the number and range of persons controlling media enterprises at the retail level with a minimum scale falls from 16 to 15. At the wholesale level, the number and range of persons controlling media enterprises would decrease from 11 to 10[118].

5.16 In any event, as explained above, we consider that in assessing plurality and sufficient plurality we should look not simply at the number and range of media enterprises, but also at their relative ability to influence and inform public opinion.

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[116] DTI Guidance, paragraph 7.7

[117] [✂]

[118] For wholesale, this figure has been calculated under the following assumptions:

- Specialist TV news broadcasters (e.g. France 24, Al Jazeera, CNN, Euronews, Fox News, RT, CNBC, Bloomberg, CCTV, Star News, Press TV and NDTV) are excluded as they do not have a UK news agenda, are targeted at a small minority of the UK news audience. We estimate that they account for less than 1% of total national news viewing. This would limit their ability to influence
- The TV and Radio news content provided by Sky at a wholesale level to third party broadcasters is treated as 'controlled' by Sky for the purposes of the 'count'; and
- Online only news providers are excluded, as these are not defined as media enterprises under the Enterprise Act 2002. It should be noted that in almost all cases online news providers either (i) already have a presence on another platform (e.g. newspapers, TV) and are therefore included in the 'count' of media enterprises, or (ii) are online news aggregators or (iii) do not have a UK news agenda.

At the retail level, The figure has been calculated using the same assumptions as those at the wholesale level, with the following exception - the TV and Radio news content provided by Sky at a wholesale level to third party broadcasters is instead treated as 'controlled' by the third party broadcaster. Furthermore, we have exclude radio providers that account for less than 1% of total radio listening given their limited ability to influence opinion

5.17 We have looked at ability to influence and inform opinion by reference to a number of factors since there is no single standard industry measure which can be used consistently across media platforms. These are:

- *Audience share and reach within individual platforms*[119]. Where possible, we have used recognised industry measures for each media platform to assess the current situation and the potential effect of the proposed transaction.
- *Analysis of consumers' consumption of news* - based on minutes of use by a typical consumer in a day.
- *Primary research on consumers' claimed use of different media*. This new market research provides us with the only available measure to compare the use and reach of different news sources across different media, something which is of particular importance in light of our identification of relevant audiences as cross-media audiences[120]

5.18 While each of these measures may not individually capture all the different features of cross media consumption and the effects of the proposed transaction, they provide useful insight.

In combination the parties would have a significant presence across platforms

5.19 This transaction does not result in a change in the number, range or relative ability to influence within three of the individual platforms - TV, radio and newspapers. There would be a change within online news provision, with a reduction in the number of voices and a concentration in audiences as both News Corp and Sky provide news on this platform.

5.20 However, the relevant audience for this public interest test is cross media. Taking into consideration the parties' positions across all media platforms, the transaction may be expected to have an impact on the number and range of persons owning media enterprises across media platforms.

5.21 As discussed in Section 4, News Corp is currently present on two media platforms (newspapers and online), while Sky is present on three platforms at the wholesale level (TV, radio and online) and two platforms at the retail level (TV and online).

5.22 Following the transaction, News Corp would be the only news and media provider present on all four media platforms at the wholesale level (TV, newspapers, online and radio). At the retail level, it would be one of three providers of UK-wide news and current affairs on three of four platforms (alongside the BBC on TV, radio and online and Northern & Shell on TV, newspapers and online). Considering the respective positions of the parties in terms of reach on each platform (see Figure 22 and Figure 23), post-transaction, News Corp would have a significant presence[121] across all media platforms.

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119 Audience share is the percentage of total consumption accounted for by a specific news provider. Audience reach is the percentage of the total audience which is exposed to a specific news provider

120 This cross-platform metric is a 'share of references', derived by determining which media outlets, titles or channels consumers mention when asked about their news and current affairs providers across media platforms. See Annex 1 for more details

121 Post-transaction, at the wholesale level, News Corp would be the largest (of eight) newspaper provider, the third largest (of three) TV news provider, the second (of two) largest provider of radio news content, and one of the top five online news providers.

5.23 Most importantly, the transaction will provide News Corp with full control of a presence on the TV platform. Access to TV for news delivery is of particular importance – this is the platform to which consumers rely on most, with 73% stating it is their main source of UK news compared to 8% for radio, 7% for newspapers and 7% for online news[122].

Share of cross media news consumption – shares of minutes of news consumed

5.24 In order to understand the potential ability to influence public opinion, we have considered the parties position in respect of their share of 'news minutes' consumed. Ofcom estimates that the average person spends approximately one hour per person per day consuming news content across media platforms. Using data from industry standard data sources (BARB / RAJAR / NRS / Nielsen) we can display the distribution of this time by platform and media owner[123].

5.25 This provides a common measure upon which to compare consumption by media provider across all platforms. Such analysis does have some drawbacks. In particular, it assumes that one minute of news consumption is equal in terms of ability to influence across all media[124], and that the underlying standard industry measures being converted into minutes are directly comparable[125]. Both of these assumptions are likely to be flawed to some degree.

5.26 Nonetheless, we considered that this measure provides a useful overview of the parties' relative positions and ability to influence public opinion through cross-media news and current affairs consumption, particularly when viewed in conjunction with other cross media data.

5.27 The results of our analysis of cross media share of consumption based on share of minutes consumed per head, per day by news provider are set out in Figure 25 and Figure 26.

5.28 Following the transaction, at the wholesale level, our analysis suggests News Corp will account for 23.7% of all minutes of news consumption – a 9.8 percentage point increment. At the retail level, News Corp's share of minutes would be 16.3% (a 2.4 percentage point increment) given the exclusion of Sky News's current wholesale provision of news to Five and commercial radio. By comparison, the BBC continues to account for the largest proportion of news minutes consumed (43.5%). The third placed provider would be DMGT at 9.4% of minutes, with others substantially lower.

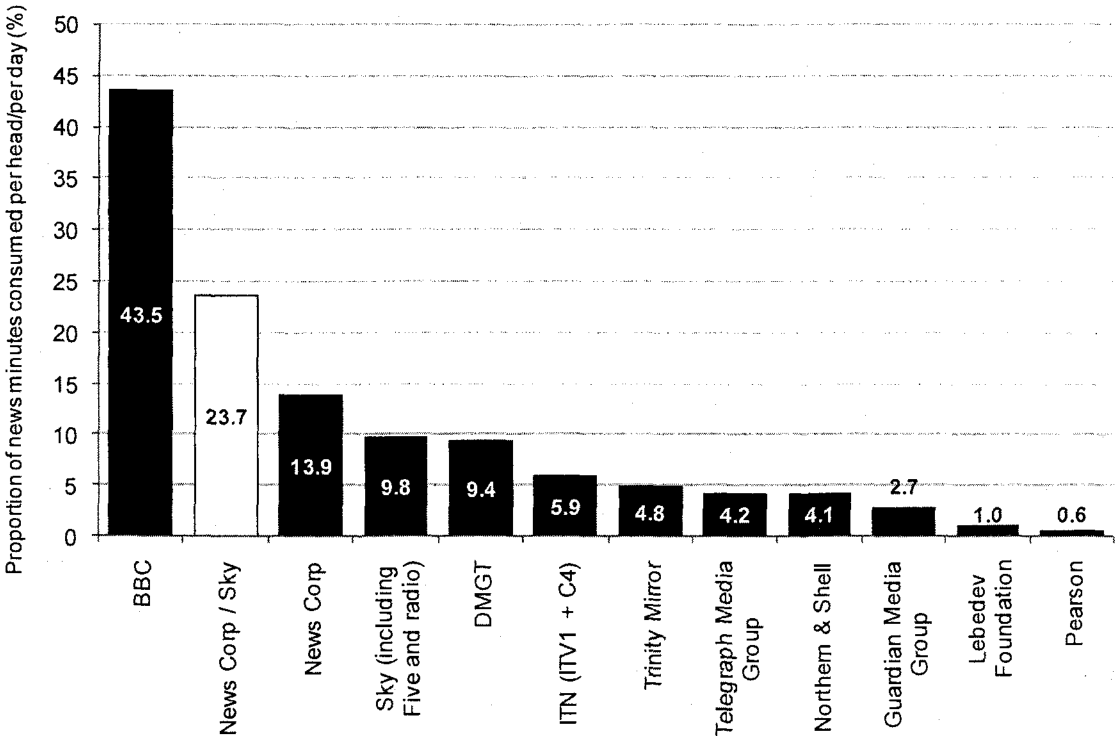
[122] Respondents were provided a list of different media types and then asked the question "From the list below, please tell me which of these you use regularly for UK/International news and current affairs, by regularly I mean at least once a week."

[123] For this analysis we have estimated radio news listening based on RAJAR figures and Ofcom assumptions. This differs to the treatment of reach earlier that displayed all radio listening, unadjusted.

[124] For example, one minute of TV national news consumption in this analysis is equivalent to one minute of reading a newspaper.

[125] It is important to bear in mind that each industry measure has its own methodology for measuring consumption. For example, television and online measurement are both based on a continuous panel of people and a metered form of measurement. Radio and print, on the other hand, are based on respondents' claimed consumption reported in a diary or survey. Furthermore, there is no consistent measure of news consumption across platforms.

Figure 25: Share of news consumption by media enterprise at the wholesale level



Source: see footnote 126

5.29 It should be noted that the share of minutes attributed to Sky could, to some degree, understate its impact on consumers as a TV viewing minute is attributed the same value as a minute spent on other media platforms. However, the same will be true of the relative importance of ITV and Channel 4 in this analysis.

5.30 In practice, we would expect that a TV news minute would hold greater weight in terms of ability to influence than other media given television's impact as a medium. Specifically, TV news broadcasts are designed to deliver information and messages effectively in a relatively short time period compared to that available to newspapers. This suggests TV news broadcasts may be somewhat underweighted in this analysis. At the same time, newspapers may be overweighted given the time spent on reading. The analysis also highlights how a relatively limited amount of time may be spent by consumers using online news media.

5.31 [✂].

Figure 26 - Proportion (%) of news minutes consumed per head/per day by platform and provider[126]

	Papers[1]	TV[2]	Radio[3]	Online[4]	Total
Sky (including radio)	0.0	2.4	6.7	0.0	9.1
Five	0.0	0.7	0.0	0.0	0.7
News Corp	13.8	0.0	0.0	0.1	13.9
News Corp / Sky	**13.8**	**3.1**	**6.7**	**0.1**	**23.7**
BBC	**0.0**	**24.9**	**18.3**	**0.3**	**43.5**
ITV 1	0.0	4.8	0.0	0.0	4.8
Channel 4	0.0	1.1	0.0	0.0	1.1
ITN (ITV1 + C4)	**0.0**	**5.9**	**0.0**	**0.0**	**5.9**
DMGT	9.2	0.0	0.0	0.2	9.4
Trinity Mirror	4.8	0.0	0.0	0.0	4.8
Telegraph Media Group	4.2	0.0	0.0	0.1	4.2
Northern & Shell	4.1	0.0	0.0	0.0	4.1
Guardian Media Group	2.6	0.0	0.0	0.1	2.7
Lebedev Foundation	1.0	0.0	0.0	0.0	1.0
Pearson	0.6	0.0	0.0	0.0	0.6
Total	**40.3**	**33.9**	**25.1**	**0.7**	**100.0**

Source: see footnote 126

5.32 Overall, we consider that this measure provides a useful insight into the level of news consumed from each media provider. The analysis indicates that News Corp currently holds a strong position with respect to the consumption of news content across all media. This will be further strengthened by their acquisition of Sky, creating a significant gap between the top two providers (the other being the BBC) and the remaining news providers. On this measure, the effect of the proposed transaction varies when the impact on wholesale or retail news provision is considered.

[126] Note of data sources:

- Papers: Ofcom analysis based on NRS data supplied by Kantar Media. Audience base is 16+, and the data covers the period October 2009 – September 2010.
- TV: Ofcom analysis. Total minutes of television viewing sourced from BARB, all Adults (16+), all homes. National and international news subgenre category only in BARB. The base for minutes/head is the adult UK population. Note that news output on Sky represents Sky News channel's output that is categorised as national/international news in BARB. For the BBC, it includes news on BBC One, BBC Two and BBC News. October 2010.
- Radio: Ofcom analysis. Total minutes of radio listening sourced from RAJAR, based on all adults (16+), Q3 2010. Minutes spread across the total adult population 16+. As RAJAR does not provide programme genres, we have had to estimate the amount of listening to the news genre on radio. We have weighted minutes of listening to commercial radio and BBC radio services according to an assessment of the proportion of the schedule dedicated to news output. The weighting is 5% for all stations except BBC Radio 4, which has been weighted at 27% and BBC Radio Five Live (19%). Note that this doesn't include minutes of unallocated radio listening which, by its nature, cannot be apportioned to news and non-news content.
- Online: Ofcom analysis. Sourced from Nielsen, all internet users aged 2+ in October 2010. The base for minutes/head is Ofcom's estimate of the population aged 2+.

Relative share and reach of the combined entity across media

5.33 Our market research has enabled us to examine the parties' position, relative to other nation-wide news providers, in respect of their importance to consumers both as a main source of news, and as a regular source of news more generally. This measure provides the most direct comparison across media for sources of news, with consumers identifying both their main and regular sources of news.

5.34 Figure 27 to Figure 30 show News Corp's position relative to other providers following the transaction in relation to both wholesale and retail provision of news.

5.35 Most notably, post transaction News Corp would be of roughly equal size to ITN and ITV as the second largest main source of news at both the wholesale and retail level. Similarly, News Corp's position as the second largest provider in respect of all sources of news is also further strengthened, increasing the gap between it and ITV/ITN.

5.36 Examining this analysis in more detail at the wholesale level, News Corp would be the equal second largest single main source of news with a share of 15% of respondents, marginally ahead of ITN (14%) and behind the BBC (54%). Sky News, which was the third player pre-acquisition, would no longer exist as a distinct media enterprise from an external plurality perspective. There would then be a notable drop in share to the next largest providers.

5.37 All of these other players have a substantially smaller share given their focus on one or two of the four platforms and most notably their lack of presence on the TV platform. In addition, the proposed transaction would result in News Corp achieving a share of references for all regular sources of news of 22%, second to the BBC (37%), and ahead of ITN (12%), DMGT (5%)[127], and the Trinity Mirror Group (4%).

[127] See footnote 85 for a discussion of the possible effects of the omission of the following titles from the prompted list of newspaper titles in our questionnaire: Mail on Sunday, Daily Star on Sunday, Sunday Express, The People.

Figure 27 - Share of references for single main source of news, at wholesale level (post –transaction) (Base – all regular news users)

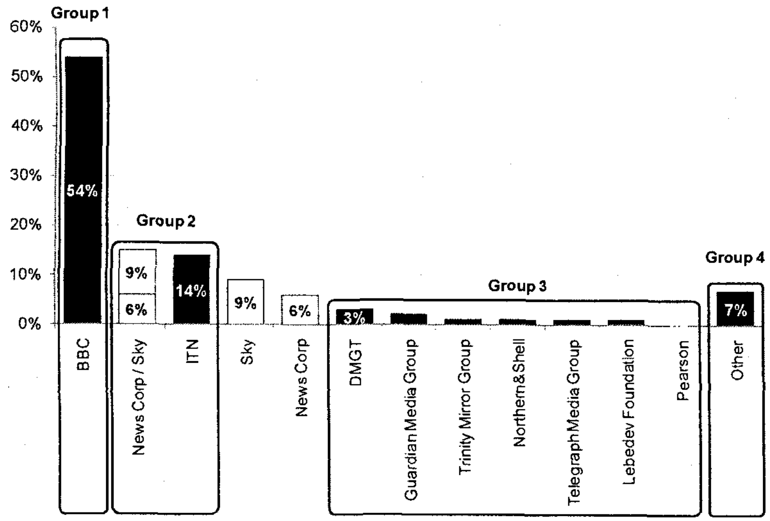


Figure 29 - Share of references for all news sources, at wholesale level (post –transaction) (Base – all regular news users)

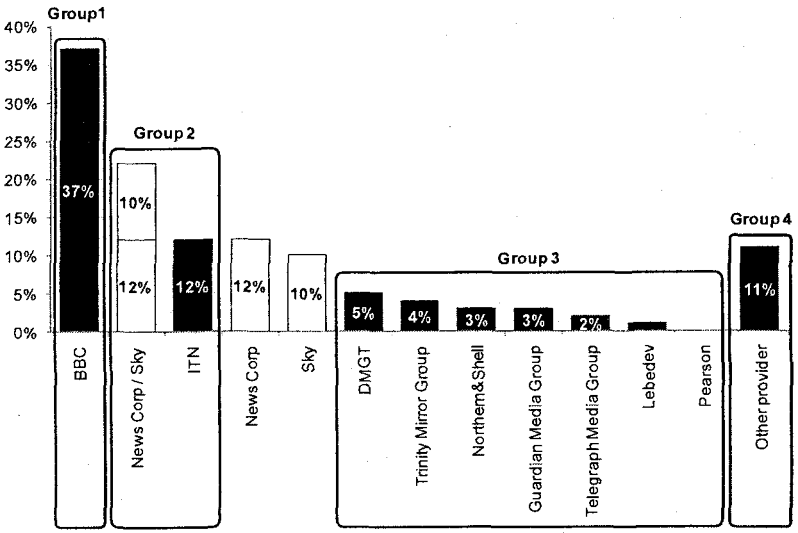


Figure 28 - Share of references for single main source of news, at retail level (post –transaction) (Base – all regular news users)

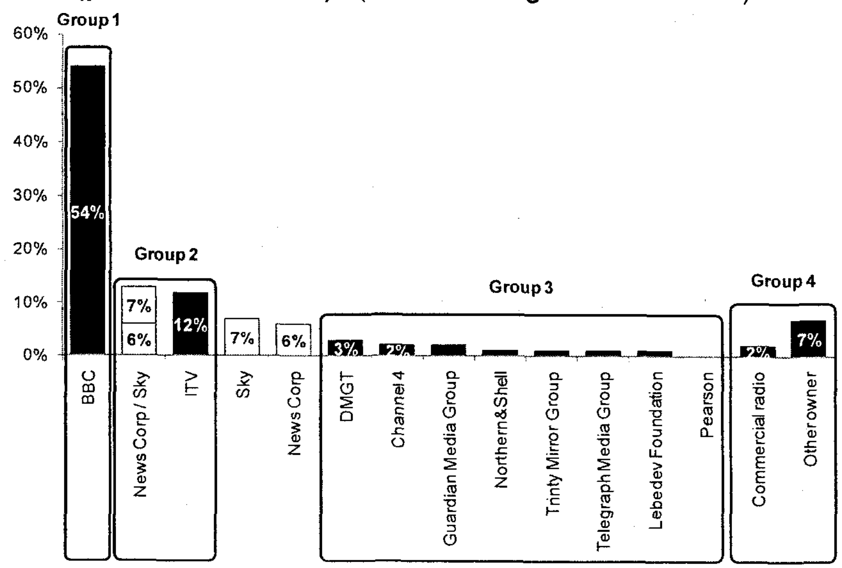
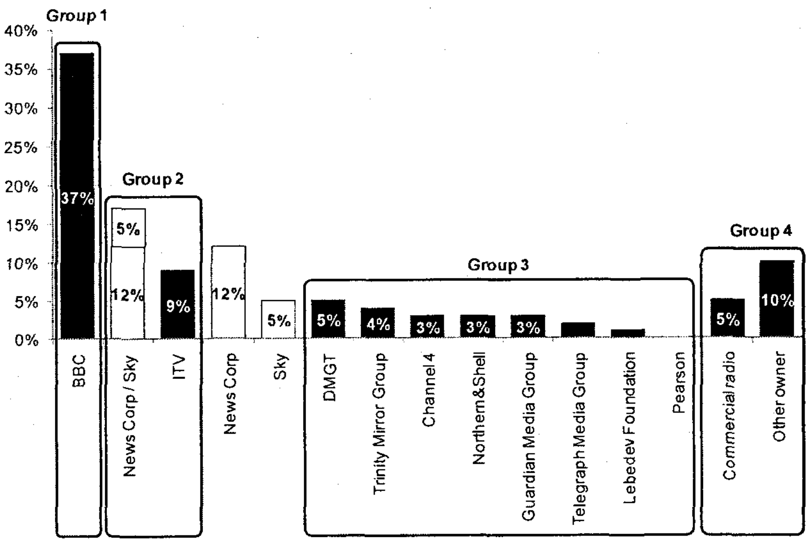


Figure 30 - Share of references for all news sources, at retail level (post – transaction) (Base – all regular news users)



5.38 At the retail level, a combined News Corp/Sky would become the equal second largest single main source of news with a share of 13% of respondents, behind the BBC (54%) and marginally ahead of ITV (12%), DMGT (3%), and Channel 4 (2%) and the Guardian Media Group (2%). News Corp would also strengthen its position as the second largest provider by share of reference for all regular use of news sources (17%).

5.39 This compares to the BBC (first with 37%) and ITV (third with 9%), DMGT (fourth with 5%) and a range of other smaller providers. In both cases, Sky News which was third and fourth in terms of main source and all sources would cease to exist as a distinct media enterprise provider of news in terms of external plurality.

5.40 Overall, the proposed transaction would result in the loss of the fourth largest provider of news content and would serve to strengthen News Corp's position as the second largest provider of news content, second to the BBC. Furthermore, it would further widen the gap between News Corp and ITV / ITN and the remaining news providers across all media platforms. Such a change to the relative ability to influence public opinion may suggest public interest concerns.

5.41 As noted earlier, our cross media audience research also provided us with the means to estimate cross media audience reach for each media provider. The results of this analysis are given in Figure 31 and Figure 32. The BBC continues to lead with a cross media audience reach of 81% of regular news consumers. However, after the transaction, News Corp will overtake ITV/ITN as the second largest provider in terms of cross media audience reach with 51% at the wholesale level and 42% at the retail level.

5.42 Both News Corp and ITV/ITN achieve substantially higher levels of cross media audience reach (more than double) relative to the remaining media providers. At the wholesale level, the transaction also results in the loss of one of four media providers today who achieve a cross media audience reach of greater than 30%[128].

5.43 By looking at these measures, we consider that post-transaction, providers of news and current affairs can be divided into four groups based on their relative share and reach, indicating relative ability to influence.

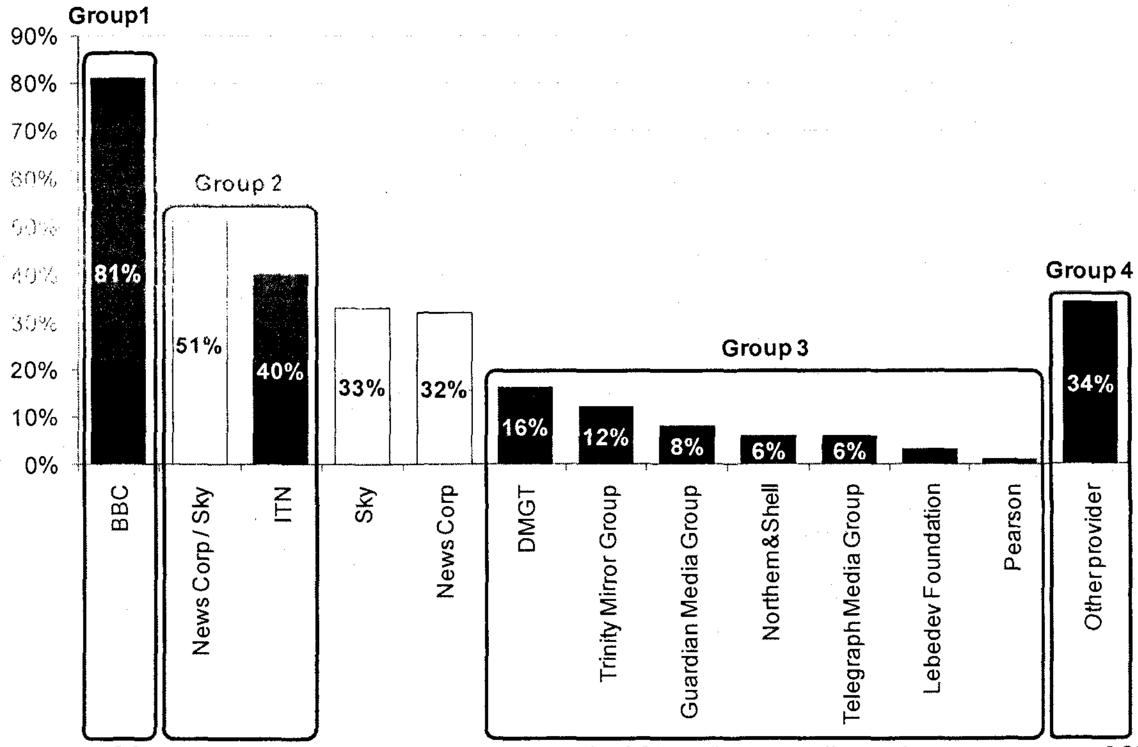
- In the first group, the BBC has the largest share both in terms of share of main source of news (54%) and share of references to all sources of news by regular news users (37%), as well as the largest reach of all news providers (81%).
- News Corp/ Sky and ITN (at wholesale level) or ITV (at retail level) tend to constitute a second group of providers with a share of main source of above 10%, and share of references to all sources of news above 9%. Post-transaction, these players have a reach in excess of 30%.
- A third group, made up mainly of the other physical and online newspaper providers who have shares of 5% or less in terms of share of references to all sources of news used regularly and share of main source of news and a reach of

[128] At the retail level, the number of providers with a cross media audience reach of greater than 20% remains the same.

16% or less. These include DMGT[129], Trinity Mirror and the Guardian Media Group.

5.44 Finally, there are a large number of other providers who were referenced by respondents but which, individually, have small share of references.

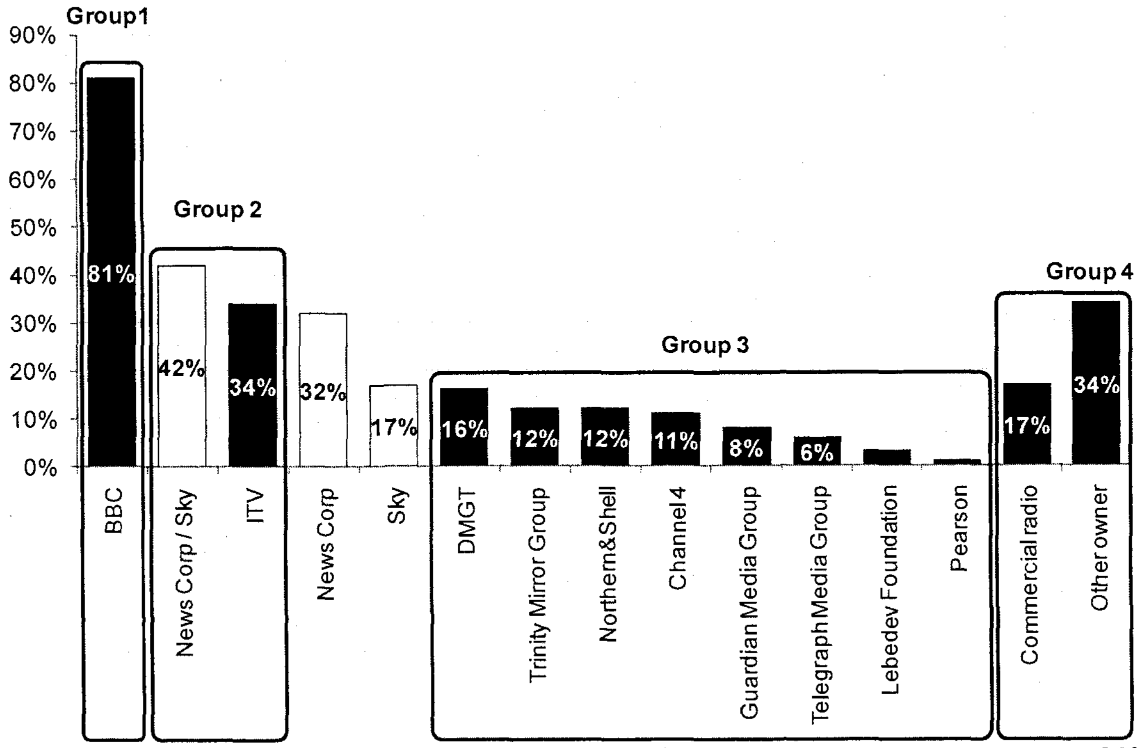
Figure 31 - Cross-media audience reach for news, wholesale level (post-transaction)



Source: Ofcom cross-media audience research, 2010. Base – all regular news users, 96% of GB population

[129] Associated Newspapers does achieve a share of 5% on the basis of all sources of news at the retail level.

Figure 32 - Cross-media audience reach for news, retail level (post-transaction)



Source: Ofcom cross-media audience research, 2010. Base – all regular news users, 96% of GB population

Summary of analysis of external plurality

5.45 We have looked at the number and range of persons with control of media enterprises taking account of their ability to influence and inform opinion by reference to a number of different measures in order to assess the impact of the transaction on the parties' position with respect to cross media consumption.

5.46 While Sky News' audience share as highlighted by TV industry data is relatively low, it has a significant ability to influence public opinion and the news agenda in audience terms given its presence and reach on TV and having built a strong presence in retail and wholesale news provision. As a result, today it makes a strong and positive contribution to plurality. Similarly, News Corp contributes to plurality as a result of its presence in newspapers and online. The proposed transaction would result in Sky ceasing to be a distinct media enterprise from News Corp.

5.47 Share of minutes is a less directly comparable measure. However, it provides a useful complementary measure. Our view based on our new market research and set out above is supported by the analysis of share of minutes, which demonstrates that, following the transaction, News Corp would consolidate its position as the second largest provider of news and current affairs behind the BBC, creating a significant gap between these top two providers and the remaining news providers. This analysis also shows that online may account for a relatively limited amount of time for news consumption, especially in relation to newspapers which are seen to represent a significant share of total news minutes.

5.48 Based on our market research, the effect of the proposed acquisition is to bring together one of the three main providers of TV news with the largest provider of newspapers. The effect on the relevant share of references and reach is indicated by our market research. In relation to the provision of wholesale news:

- The proposed transaction would result in Sky ceasing to be a distinct media enterprise, reducing the number of Group 2 providers from three to two in both share and reach terms. This is particularly marked in wholesale news provision.
- The proposed transaction would be a combination of the second and fourth largest providers based on our research into share of all references for news providers. For example, News Corp's potential ability to influence would increase with the addition of Sky News, increasing its share of references from 12% to 22%. News Corp's reach as a percentage of regular news consumers would increase from 32% to 51%.
- This does not suggest News Corp moves from Group 2 to Group 1[X] in our charts: it would not be of the same scale as the BBC in share or reach terms after the proposed transaction. However, it would be larger in relative ability to influence opinion than both ITN and the Group 3 providers at the wholesale level.

5.49 This analysis is based on all news sources measured in the survey (across TV, newspapers, online and radio) and is based on wholesale news provision not retail.

5.50 However, a similar picture is displayed when considering all sources of retail news provision, outlined below, and when considering the main source[130] of news at the retail level (see Figure 28 and Figure 30). In both cases, the BBC continues to be the largest provider, while the transaction increases News Corp's potential ability to influence.

5.51 We note that the acquisition would not affect the BBC's status as the strongest provider of news and current affairs in the UK. As with all media enterprises, the BBC may have an institutional view which can shape its editorial decisions. However, the governance of the BBC is different from other broadcasters in that it has a Royal Charter that requires it to be "independent in all matters concerning the content of its output...and in the management of its affairs." Its strategic direction is set by the BBC Trust, which is held publicly accountable for the performance of its role in meeting the "public interest, particularly the interest of licence fee payers". The Trust must also maintain the independence of the executive, which oversees output. This is fundamentally different from other media enterprises, including News Corp, which typically have a controlling proprietor.

5.52 We therefore consider that the proposed transaction will result in an increase in News Corp's ability to influence public opinion, as measured by share of news and current affairs consumption in the context of a cross media market. Taken in combination, this indicates a change in the concentration of media ownership which is likely to affect sufficient plurality.

[X] A typographical error contained in the version of this report sent to the Secretary of State on 31 December 2010 has been subsequently corrected here. The original text was: "This does not suggest News Corp moves from Group 1 to Group 2 in our charts".

Internal plurality

5.53 For the reasons set out above, we consider that the proposed acquisition by News Corp giving it 100% ownership of Sky's shareholding would reduce the number of persons with control of media enterprises, with Sky ceasing to be a distinct media enterprise. Although News Corp would have full control of Sky we have nonetheless considered the actual extent of control that would be exercised and exercisable by News Corp.

5.54 We have received a number of submissions on how far internal plurality within the merged group would help in ensuring a range of opinions; in particular whether Sky News could be seen to remain an independent voice to News Corp's other news outlets. Some respondents to our invitation to comment submitted that it was inappropriate to consider internal plurality at all in circumstances where the proposed acquisition led to 100% control. However, the Court of Appeal has stated that the right approach is to "*take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence...or rather one of actual common ownership or control*"[131].

5.55 The Competition Commission noted in Sky/ITV that "[*BSkyB's board] had no role in the day-to-day editorial control of Sky News content on television or online. We received no evidence from third parties to suggest that senior executives at BSkyB or its parent companies exerted influence on the Sky News agenda'.* [132]

5.56 We note comments made by Rupert Murdoch to the Ownership of the News report by the House of Lords Select Committee on Communications where he noted: *'the only reason that Sky News was not more like Fox News was because 'nobody at Sky listens to me'*[133]*)*. We also note News Corps' submission that despite the degree of control it currently has over Sky, it does not currently exert such control to influence editorial decisions of Sky News.

5.57 Therefore, in terms of editorial decisions, in looking at the position today, we have considered Sky News as a media enterprise which is distinct from News Corp regardless of the 39.14% ownership.

5.58 We received a mixed set of responses on how far internal plurality may remain once News Corp owns 100% of Sky. This section considers:

- Concerns that internal plurality for Sky News will not be maintained.
- Arguments that a range of existing mechanisms will ensure internal plurality will be maintained

Concerns in relation to internal plurality

5.59 The main concern raised has been that, given the proposed acquisition will result in full ownership of Sky by News Corp, internal plurality for Sky News cannot be

[131] British Sky Broadcasting Group PLC, Virgin Media Inc v The Competition Commission and Secretary of State for BERR and others, [2010] EWCA Civ 2, at paragraph 121.
[132] Paragraph 5.57, Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007
[133] House of Lords Select Committee on Communications, Ownership of the News, 2008, Appendix 4, paragraph 47

guaranteed. Representations argue that this is because the proposed acquisition will result in the loss of independent shareholders and the removal of the existing independent directors who currently help protect the independence and diversity of Sky News. Following the proposed transaction, News Corp would have greater direct control and influence over the editorial staff of Sky News.

5.60 One important issue here is the fact that, post transaction, News Corp would be able to appoint and dismiss the editor of Sky News. It has also been argued that:

- the economics of news provision means some level of operational integration is likely, providing new coordination mechanisms for Sky and News Corp; and
- media proprietors have a tendency to intervene in editorial decisions, most notably in the newspaper industry.

Operational integration

5.61 The economics of news provision is dominated by the substantial fixed costs of newsgathering and distribution. We received representations arguing that the acquisition would provide News Corp with the opportunity to reduce some of these fixed costs by integrating aspects of the news operations of Sky News and News Corp's news titles, including News International's UK newspapers[134]. Integration could range from consolidation of certain back-office functions, e.g. HR or IT support, to full newsroom integration with shared journalists, foreign bureaux and/or editorial control.

5.62 We recognise that some synergies can be realised without any need for a merger. There are examples today of commercial deals between rival titles designed to deliver such synergies. For example, The Daily Telegraph currently uses News International's printing press facilities. We also note that David Elstein submitted that Sky and News Corp could integrate their newsrooms regardless of the proposed acquisition, if they were so inclined.

5.63 We also recognise that operational integration of editorial functions associated with different titles could be counter-productive, in circumstances where those different titles have different target audiences, and where it is therefore commercially advantageous for the different titles to maintain distinct voices. We note in this context that News Corp has not integrated news functions of its existing titles and channels either in the UK or internationally. We note News Corp's submission [✂] noted the views from Perspective's report on the difficulties posed from different cultures of TV and press newsroom. We also note that David Elstein submitted that Sky and News Corp could integrate their newsrooms regardless of any proposed acquisition, if they were so inclined.

5.64 Nevertheless, we believe that the transaction would make it possible to exploit a range of operational synergies between News Corp and Sky. [✂].

5.65 Overall, we consider that some level of operational integration is likely to follow as a result of the transaction. Even if this does not result in newsroom integration, it may still result in an enhanced ability to co-ordinate the news gathering and distribution activities of different distribution channels, and therefore an enhanced ability for the News Corp to exercise influence.

[134] See e.g. responses from BT (page 5); Campaign for Press & Broadcasting Freedom (page 5); Northern & Shell Network Limited (throughout).

Media proprietors' influence

5.66 Numerous submissions to Ofcom alleged that Rupert Murdoch has a history of intervening in the editorial decisions and political slant of the News Corps newspapers, and that after the proposed acquisition this editorial influence would be extended to Sky News thus reducing the level of plurality within the media enterprise[135].

5.67 A range of anecdotal evidence was provided to this point in relation to News Corp, however, it should be noted that claims of such influence are not limited to News Corp – it is a common theme for many media enterprises, most notably in the press.

5.68 As set out in the Competition Commissions report[136] there are fewer regulatory restrictions on newspapers than on television news and, in particular, newspapers are able and expected to take an explicit editorial position in relation to topical issues. The risk is that a 'traditional newspaper proprietor' may seek to adopt a similar approach to TV news.

5.69 Among News Corporation titles, it has been argued that Rupert Murdoch adopts different roles and exerts different levels of influence. This issue was considered by the Competition Commission in Sky/ITV where it noted that:

News International also told us that Mr Rupert Murdoch and the News International Executive Chairman had regular discussions with the Editor of The Sun on a range of editorial matters, from page design to editorial policy, whereas, in relation to The Times and The Sunday Times, the position on news coverage, editorial stance and appointment of editors is governed by the terms of the DTI consent of 27 January 1981 relating to the transfer of these titles to their current ownership[137].

5.70 The Competition Commission in Sky/ITV concluded that there was a considerably greater degree of involvement by Mr Rupert Murdoch in relation to *The Sun* than some other News International newspapers, such as *The Times.*

5.71 This was further supported by evidence submitted by Rupert Murdoch to the House of Lords Select Committee on Communications report on The Ownership of the News[138] In this evidence Rupert Murdoch described himself as a '*traditional proprietor*' for *The Sun* and *News of the World* exercising editorial control on major issues, like which political party to back in a general election or which policy to support on Europe. However he argued that 'the law' prevents him from instructing the editors of *The Times* and *The Sunday Times* and that the independent board is there to ensure he cannot interfere.

5.72 However we also received submissions which argued, for example, that during Andrew Neil's tenure as editor of *The Sunday Times* Rupert Murdoch sought to intervene in the editorial content of the paper in areas that related to Rupert Murdoch's business interests.

[135] See e.g. responses from Slaughter and May paragraphs 7.11-7.18; Campaign for Press and Broadcasting Freedom note 7; International Consumer Policy Bureau, entire document; Professor Steven Barnett, sections 2(i)-(ii).
[136] Paragraph 5.58 Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007
[137] Paragraph 5.6 Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007
[138] House of Lords Select Committee on Communications report on The Ownership of the News paragraph 128

5.73 This influence does not always have to be overt. The House of Lords report "The Ownership of the News" quotes Andrew Neil:

> *"There are many ways in which you can influence a newspaper without giving a downright instruction. Throughout the 11 years that I was Editor of The Sunday Times, I never got an instruction to take a particular line, I never got an instruction to put something on the front page and I do not think I even got an instruction not to do something, but I was never left in any doubt what he wanted"*

5.74 Some of the submissions we received noted that intervention also took place when the news agenda coincided with News Corps wider business interests. A submission referred to Andrew Neil, who said that the division between *The Sun* and the *Times*' editorial independence as declared by Rupert Murdoch was blurred over issues which specifically related to the business interests of News Corporation, rather than day-to-day coverage or major political issues.[139]

5.75 Andrew Neil also reports that while editor he was subject to interference on news items which affected Rupert Murdoch's business.[140]

5.76 We also note submissions from Sky and the conclusions of the Competition Commission, that there is no evidence of editorial influence being exerted on Sky News by the Sky Board or by shareholders. David Elstein noted in his submission that in his own experience there was never any pressure applied to Sky News. However, we also note that the evidence of past behaviour may not necessarily be a reliable indicator of future behaviour.

Submissions that there are a number of existing mechanisms that would ensure internal plurality

5.77 We received submissions making four main arguments suggesting internal plurality would remain following the proposed acquisition:

- Increasing the level of control to full control will not translate in to the loss of Sky News's editorial independence as Sky News' editorial policy is not a matter for the Board.
- Existing regulatory safeguards, notably impartiality requirements on TV broadcast news would protect internal plurality and ensure no undue influence on the news agenda and public opinion from media owners.
- The existing impartiality requirements and history of TV news has resulted in audience expectations of impartial TV news broadcasts, a high level of trust in TV news and a distinct culture among TV news journalists and newsrooms. Combined, these all help protect plurality.
- The nature of TV news, especially rolling news services like Sky's, is such that the news agenda is defined by breaking news, not by what stories a broadcaster chooses or chooses not to cover. This is different from the role played by newspapers, which adopt a more investigative approach to finding and exploring stories, as well as containing opinion and comment.

[139] Slaughter and May submission 7.12, p16-17
[140] House of Lords Select Committee on Communications, Ownership of the News 2008, paragraph 188

Sky's editorial policy is not a matter for the Board

5.78 News Corp submitted that Sky's editorial policy was not a matter for Board determination. Editorial policy has not been debated at Board level and News Corp has not sought to influence the editorial policy of Sky News. Further they argued that there is no evidence that the independent directors have had to "defend" the editorial policy of Sky News against influence by News Corp executives. News Corp stated that the regulatory requirements of impartiality in Ofcom's Broadcasting Code and the strong culture of independence in TV newsrooms (see below) are significant safeguards.

5.79 However, notwithstanding the regulatory framework and culture, we note that the current behaviour of News Corp as a minority shareholder in Sky is not necessarily a clear indicator of its future behaviour should it have full control of Sky. The degree of control exercisable by News Corp as a full owner is clearly potentially different from its current minority shareholding, for example, News Corp would be able to appoint or dismiss the senior editorial team, including editor, at Sky News.

Impartiality requirements

5.80 Section 5 of the Broadcasting Code is intended *'to ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality'* and *'to ensure that the special impartiality requirements of the [Communications] Act are complied with'*[141].

5.81 We received submissions that argued that the impartiality rules in Ofcom's Broadcasting Code:

- reduce the scope for influence by owners of television channels over editorial decisions concerning broadcast news; and
- are not limited to preventing the biased presentation of news stories, but also prevent partiality for political reasons in editorial decisions on the selection of and prominence given to stories which are broadcast.

5.82 We have considered whether existing provisions on impartiality and due prominence would allay any internal plurality concerns arising from this transaction.

5.83 The requirement for broadcasters to present the news with "due impartiality" is of course not absolute and broadcasters have a degree of editorial discretion in the selection of the news agenda. These rules would not necessarily prevent an individual with control of a media organisation from influencing the news agenda through the selection or omission of stories. There could be cases where the deliberate exclusion of stories could potentially be a breach of the Broadcasting Code. However, in practice, the effect of partial selection or omission of news stories would be a subtle one which it could be difficult, through regulation, to identify and/or prove.

5.84 The potential limitations of impartiality regulation and the role that selection of stories can have in setting the agenda have been highlighted to us by a number of submissions and were indeed noted within the Sky Chairman's own MacTaggart lecture in 2009:

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[141] Ofcom, Broadcasting Code Section 5 http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/

'the system is concerned with imposing what it calls impartiality in broadcast news. It should hardly be necessary to point out that mere selection of stories and their place in the running order is itself a process full of unacknowledged partiality'.[142]

5.85 This is consistent with the position of the Competition Commission in Sky ITV:

Impartiality relates to the fair and balanced treatment of differing viewpoints in relation to particular news stories. However, it does not address the relative prominence given to each story. In our view, it is a matter of public interest that decisions about the relative importance of different news stories should be made by a range of independent people and reflect diverse perspectives"[143]

We found that the regulatory framework, while relevant to the plurality of news and, hence the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news "[144]

5.86 We agree with the Competition Commission's conclusion and in particular with its view that "*decisions about the relative importance of different news stories should be made by a range of independent people and reflect diverse perspectives"*[145].

5.87 We recognise that the impartiality rules are relevant and may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot by themselves necessarily ensure against it. Our view is that these provisions do not by themselves adequately address all potential concerns.

5.88 In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises. The regulatory framework, while relevant to the plurality of news and hence the public interest assessment, does not on its own ensure a sufficiency of plurality of news.

Audience expectations

5.89 We received submissions that argued audiences have particular expectations for television news to be impartial and balanced, citing Ofcom research which found that 87% of audiences thought impartiality was important in television news[146]. These submissions also suggested that the relatively low audience share of Fox News in the UK was evidence of a lack of demand for partial journalism in TV news in the UK.

5.90 While audience expectations may deter a media owner from attempting to influence editorial decisions, it is our view that the audience desire and expectation for impartial TV news would not be sufficient to ensure the continued delivery of impartial news and a plurality of views. They may act as a constraint – to an extent – on stories that are broadcast. However, these expectations are less likely to be relevant when considering which items are included in– or excluded from - the news agenda.

[142] James Murdoch, MacTaggart Lecture, 2009
[143] Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, paragraph 5.12
[144] Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, paragraph 5.38
[145] Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, paragraph 31
[146] Ofcom, New News Future News, Figure 5.4 p65

We believe that, while there could be commercial incentive to cater to audience demand for impartial news, the extent to which this would prevent any potential desire to interfere with the editorial independence of Sky News is unclear and hard to quantify.

5.91 In addition, while in some cases audiences (and the regulator) would be able to identify more obvious partial news as a result of story selection (for example on very high profile political issues), other cases would be harder to identify (for example, non-selection of stories detrimental to the commercial or personal interests of a media owner).

5.92 Therefore, we do not consider that audience expectations of TV news could be relied on to protect plurality.

Culture of TV newsrooms

5.93 We have received submissions that safeguards already exist within the internal culture of all TV newsrooms, including Sky News. At the core of these is the argument that TV news has a different culture from newspapers, and that this culture would be resistant to editorial interference. Evidence submitted included:

- Comments on the nature of TV news compared to newspapers for example television news, with its different technical and logistical skills, tends to recruit from within itself rather than from newspaper journalists which suggests that this cements the separate culture.
- There is already a strong culture of independence among TV news editors, in part due to the expectation of impartiality and also as a result of the approach of the BBC in this area. The culture of independence was noted by the Competition Commission in Sky/ITV: *"the evidence that we received suggested to us that there was a strong commitment to editorial independence across television news broadcasting which would lead to editors resisting any direct board intervention or intervention from shareholders to set the news agenda"*[147]

5.94 Alternatively, other representations questioned how far such cultural differences and safeguards could be depended on in a situation of full ownership. Specifically, concerns were raised that editors may 'self-censor' as editors cannot be expected to act with complete disregard to the views of a full owner[148]. This links to points made by the Competition Commission which noted: "*boards usually play some role in the appointment of editors*".

5.95 In addition, in future there may be potential journalistic and operational benefits arising from combining print and TV journalists when creating news for converged platforms. The increasing use of video content on text based news websites, or development of news for convergent devices, may result in a change in the distinction between print and video journalism and hence a chance in the role and culture of newsrooms.

[147]Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, Paragraph 5.68
[148] See e.g. responses from Slaughter and May, paragraph 7.13; Professor Steven Barnett, section 2(ii)

5.96 It is our view that cultural safeguards may be expected to go some way to maintaining the editorial impartiality of Sky News but we do not consider that they can be relied upon to secure plurality.

Summary of analysis of internal plurality

5.97 We recognise that audience expectations, the culture of TV journalism and the nature of rolling news may together contribute towards the independence of editorial voices against proprietary influence on the Sky News agenda. However, for the reasons set out above we do not consider that these factors will ensure plurality.

5.98 We recognise that the impartiality rules are relevant and may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot by themselves necessarily ensure against it. Our view is that these provisions do not adequately address all potential concerns.

5.99 In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises. The broadcasting regulatory framework, while relevant to the plurality of news and hence the public interest assessment, does not on its own ensure a sufficiency of plurality of news.

5.100 We recognise that it is possible that Sky News may remain a strong independent voice from an internal plurality perspective even while no longer part of a distinct media enterprise.

5.101 However, in a situation where Sky is wholly owned by News Corp and where we have received a significant number of representations that a proprietor may want to interfere with editorial decisions, we need to understand what would in practice prevent such intervention. From the evidence submitted to us, while there are factors that are likely to contribute to internal plurality, we consider that these are not such that they would preclude such interference in circumstances of full control.

5.102 In light of the importance attached by Parliament to media plurality in informing opinion and setting the agenda, we do not consider that in this case we can rely on internal plurality to ensure sufficient plurality in the provision of news and current affairs.

5.103 This is consistent with views expressed by the House of Lords Select Committee on Communications in 2008:

We do not believe that an internal company structure can be an adequate substitute for competition law and statutory regulation in ensuring that no single voice becomes too powerful.[149]

Multi-sourcing and online news provision

5.104 As explained in section 4, consumers tend to use more than one source of news and current affairs and this is a relevant consideration in any plurality assessment. This is because the extent to which consumers access and use news and current affairs

[149]House of Lords Select Committee on Communications, The Ownership of the News , 2008, paragraph 220

from different providers may limit the ability of any single provider to influence audiences.

5.105 The use of multiple sources of news is considered in most of the measures we have used to assess changes in external plurality. The effects of multi-sourcing are particularly evident when comparing the share of references of different providers for all news sources (which takes account of consumers' use of multiple sources) with the shares related to single main sources (which instead considers only the sources to which each consumer attaches the most importance).

5.106 The BBC accounts for 37% of references when considering all sources of news by wholesale provider, but its share rises to 54% when looking at single main sources. ITN's share of references remains similar (12% and 14%) when moving from all sources to single main source, and Sky also broadly maintains its share (10% for all sources, 9% for single main source). News Corp has a materially lower share of single main source share of references (6%) relative to its all-sources share (12%). A similar trend is visible for other newspaper providers. This suggests that consumers, when prompted to choose a single source of news, attach more weight to the news and current affairs content they access on television as opposed to newspapers.

5.107 News Corp's ability to influence is strengthened by the proposed acquisition (both in terms of share and of reach) even when taking into consideration all the sources that consumers access regularly. It is important to note that, regardless of the level of multi-sourcing, acquisition of one player by another will always result in an increase in the relative share of the acquiring enterprises. Similarly, a merger will always increase the reach of the acquirer unless the two entities merging have a perfectly overlapping audience.

5.108 In addition to considering multi-sourcing in our analysis of static effects to external plurality, we have also looked specifically at whether the proposed acquisition would change overall levels of multi-sourcing by consumers through the loss of one distinct news and current affairs provider (Sky News).

5.109 In its submission, News Corp estimated that 6% of all UK consumers relied on both News Corp and Sky for news. Of these, approximately 96% also sourced news from other sources as well. News Corp therefore estimated that the proportion of consumers who would, post transaction, rely on only News Corp and Sky News and no other news provider would be 0.3% of the population[150].

5.110 As described in section 4, our research found that in a typical week consumers used on average 2.9 wholesale news providers, with 46.8% of respondents claiming they use 1 or 2 providers and 29.2% 4 or more. We have also highlighted that levels of multi-sourcing for consumers that access Sky News regularly are higher than for the general population – with 4 news providers used in a typical week.

5.111 When considering News Corp and Sky as a single provider post-transaction, the level of multi-sourcing for the population as a whole decreases only slightly. The average number of wholesale news providers accessed by all consumers who regularly access news would fall to 2.8[151]. For the sole consumer base of Sky and News Corp combined, the average number of sources used following the proposed acquisition

[150] Source: News Corp submission (FTI report), paragraph 6.37
[151] Source: Ofcom cross-media audience research 2010. This analysis assumes no other change to cross-media consumption of news and current affairs, other than the loss of Sky as an independent provider.

would instead fall to 3.5. Although the relative change is higher, we note that the average number of sources would still remain considerably above the average for the population as a whole.

5.112 In section 4 we also noted that the size of the audience that relies solely on Sky or News Corp for accessing news and current affairs is very small (respectively 1% and 2% according to our market research) and this remains the case post-transaction, with only 6% of the combined consumer base (or 3% of the total population) relying solely on news and current affairs from News Corp or Sky.

5.113 This data suggests that although Sky would cease to be a distinct media enterprise, many individual consumers would continue to access a number of different sources following the proposed transaction. This would therefore provide some constraint on the extent to which News Corp, post transaction, would be able to take advantage of an increase in its audience share and reach to influence public opinion and the news agenda.

5.114 However, the implications of multi-sourcing in relation to this proposed transaction are complex and as a first stage authority we do not have sufficient time to consider it fully.

5.115 In any case, although we believe the level of multi-sourcing by individual consumers to be important, we do not believe that we can rely on it to ensure sufficient plurality.

5.116 This is because the process of forming public opinion does not just depend on individuals consuming news, and then each forming their own opinion without reference to other consumers. Rather, individuals consume news, debate and discuss it with others, and it is this process of both news consumption and discussion which contributes to public opinion. What matters more therefore is the number and range of news providers used by *all* consumers and their relative significance, rather than the number of news providers used by each individual consumer.

5.117 We also recognise the increasing importance of online news provision today. Wider availability and use of the internet, and the extension of media enterprises' news offerings online, allow consumers to access news more easily from a range of different providers. Our audience research indicates that online usage appears to be complementing the use of traditional media for consumers. This can increase the availability of news sources, and result in consumers using a greater range and variety of sources than may have historically been the case.

5.118 However, traditional media providers account for 10 of the top 15 online providers of news (eight newspaper groups plus the BBC and Sky), with the remainder predominantly being news aggregators rather than alternative sources of news. This suggests that today online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not present on traditional media. We recognise that this could change in the future, but the nature of any such change is uncertain.

Influence on other media and the agenda

5.119 We have received some representations that the merged entity, given its presence across all platforms and in particular in TV rolling news (through Sky News), could exert a greater influence over the news agenda of third parties, therefore diminishing overall plurality[152].

5.120 One submission illustrated this by referring to the risk that Sky News could choose to give disproportionate coverage to stories featured in News Corp titles, at the expense of stories featured by other news providers. We received representations that a story picked up by Sky News is more likely to become so important that all news outlets have to cover it[153]. Conversely, the perceived importance of Sky's rolling TV news in agenda-setting[154] would mean that stories excluded by Sky News would be less likely to be covered by other outlets.

5.121 The merging parties have instead argued that it is very unlikely for any single media enterprise (and for Sky News in particular) to be able to influence the wider news agenda because of a variety of factors, including:

- Sky News's relatively small viewing share in TV;
- the prominence of the BBC in news provision and the fact it is unlikely to follow any agenda set by other players;
- the growing importance of online outlets in both news distribution and news gathering; and
- trends towards greater use by consumers of international and specialist outlets, which are unlikely to be influenced by mainstream UK news sources.

5.122 We note that a variety of factors affect the way in which media enterprises source the stories they cover, and their editorial policy. For example, a title or programme focused on investigative reporting will (by definition) tend to source its stories directly. Other outlets may instead rely more on news stories supplied by news agencies[155].

5.123 As displayed in Figure 5 in Section 4, the news providers contained in the Perspective analysis drew on a range of cited sources for news stories in the period June to November 2010. In this analysis, neither News Corp nor Sky were the main source of news stories for these news providers. For the outlets Perspective examined, of stories that cited a source, Sky News was referenced 3.7% of the time. Sky in combination with all the News International papers was referenced 12.1% of the time. By comparison, the BBC was cited as a source for 24.6% of stories. The three news agencies were also cited as key sources for the titles contained in the Perspective analysis: Associated Press 25%, Reuters 13%; and the Press Association 10%. However relevant, rolling TV news is just one of many possible sources of news for media enterprises. Overall, the available evidence does not point to a conclusion that News Corp's ability to influence through other media would be materially enhanced by the acquisition.

[152] Slaughter & May, BT, Dr Des Freedman
[153] See file note of telephone conference with [✂] [a national newspaper editor].
[154] Slaughter & May
[155] We received a representation that, for example, the BBC's rolling news coverage largely reflects the Press Association's newslists. See file note of telephone conference with [✂] [a national newspaper editor].

Conclusions on static analysis

5.124 We have considered plurality and the need for there to be sufficient plurality by looking at the number and range of persons with control of media enterprises in light of their ability to influence opinion. We have done so in accordance with the purpose of the public interest consideration. We have considered carefully all the representations made and evidence available to us. We believe that there is a public interest concern in relation to external plurality as the effect of the proposed transaction would bring together one of the three main providers of TV news and the largest provider of newspapers significantly increasing News Corp's ability to influence opinion and control the agenda.

5.125 Further in circumstances of 100% ownership and control, we do not believe that cultural safeguards and internal plurality can be relied upon to ensure plurality.

5.126 We recognise that the impartiality requirements of the Broadcasting Code may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it. In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises.

5.127 We have carefully considered the submissions made in relation to the multi-sourcing and the increase in online news provision. Whilst we believe the level of multi-sourcing by individual consumers to be important, we do not believe that we can rely on it to ensure sufficient plurality. We also recognise the increasing importance of online news provision today. However, we believe that online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not already present on traditional media.

5.128 For the reasons summarised above and considering all the relevant factors together, our view within this first stage review, is that we consider it reasonable to believe that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross media audiences.

Section 6

Effects of the proposed acquisition - dynamic analysis

6.1 In addition to the static analysis, the proposed transaction could result in changes to the level of media plurality over a longer period of time. We received a number of submissions raising concerns about possible longer term effects from the proposed acquisition. We have therefore considered a forward view of the possible effects on plurality.

6.2 In order to do this, we have divided this section into two:

- An overview of key media market trends to provide a relevant context for plurality.
- In this context, we have provided a summary of the potential longer term effects on plurality arising from the proposed transaction that were raised with us through submissions.

Market trends and future market developments

UK consumers and content producers have adopted a wide range of new digital media technologies, platforms and services over the last ten years.

6.3 Ofcom's research has highlighted the growth in availability, take-up and usage of different media services over recent years. This has been supported by the development of a number of new technologies; convergence between different media services; and the growing availability of access to digital services via fixed and mobile broadband networks.

6.4 Ofcom's 2010 Communications Market Report presented research demonstrating that, on average, nearly half of UK adults' waking hours are spent using media content and communications services. Use of different services at the same time is also increasingly common, with people squeezing 8 hours and 48 minutes of media consumption into an average of 7 hours and 5 minutes of time each day. Of all services, television remains the most heavily used[156].

6.5 Many of the new technologies being adopted provide consumers with greater choice, convenience and control over how they consume content. These developments have also reduced the traditional distinctions between different services for consumers. The recent development and take-up of smart phones and tablet devices now enable consumers to access a range of content from broadcast, audio, print and other media on one device wherever they are. These devices have the potential to increase the levels of interactivity, participation and personalisation of media. Consumers are also increasingly choosing to take a bundle of different services from a single provider.

6.6 Such new services are usually adopted initially by younger and more affluent audience demographics. Daily use of a range of digital technologies is consistently higher among adults aged 16-24. By way of example, this audience spends a larger

[156] Ofcom Communications Market Report 2010, Figures 1.16 and 1.17

proportion of its media consumption time using mobile devices than any other age demographic[157].

6.7 These trends are making more information available to consumers and giving them more ways to access it. At the same time, the traditional media platforms continue to play a significant role for many consumers, including older consumers. Today, Ofcom research estimates that 38% of all media and communications usage for those aged 16 and over is watching scheduled television on a TV set – the most popular media activity among consumers. This rises to 51% for those who are aged 55 plus[158].

6.8 The development of new digital media technologies, platforms and services has consequences for the economics of the sector, above and beyond the impact of the recent economic downturn. These can include both opportunities to open up new revenues streams through selling new content and services to customers and challenges to existing business models when new technologies reduce the barriers to new entrants able to offer competitive services to consumers.

6.9 In the last five years there has been substantial growth in the revenue generated through subscription television and online advertising, whereas advertising from traditional print, television and radio has seen much more limited growth, and in some cases substantial declines. These trends are partially a consequence of the close link between GDP and advertising expenditure, but there is evidence of structural change occurring to the business models across the sector.

6.10 For content producers, these developments offer the prospect of new revenue models through the possibility of consumers paying for added choice or convenience, or access to a wider choice of content. They can open up new revenue streams such as online display advertising to media owners who extend their presence online. In addition, advertisers may be willing to pay a premium for targeting a particular audience target or demographic.

Despite widening access and use of new media technologies, the audience for television has remained relatively stable.

6.11 Television remains the most heavily used of all media services, and despite the growth in other media platforms such as broadband and mobile, overall levels of viewing have increased slightly over the last five years[159].

6.12 It is possible that this resilience of television viewing is a consequence of a number of technological enhancements to the platform, which have included the growth of digital television, the launch of high-definition television and time-shifted viewing through PVRs. Digital television is now available in 93% of homes; digital video recorders are installed in 37% households and 5.1m households take HD (as of Q2 2010)[160].

6.13 Over the last five years, television advertising revenue has declined by 1.8% p.a., whereas licence fee income allocated to television has grown by 1.7% p.a. and subscription revenue to television services has grown by 6.2% p.a.[161] This has led to

[157] Ofcom Communications Market Report 2010, Figure 1.19
[158] Ofcom Communications Market Report 2010, Figure 1.24
[159] Ofcom Communications Market Report 2010, Figure 2.67
[160] Ofcom Communications Market Report 2010, , Figure 1.2, Figure 2.15
[161] Ofcom Communications Market Report CMR 2010, Figure 2.28

a reduction in the overall levels of investment in programming by the main public service broadcasters over the period, with a 4.6% p.a. decline in investment in original programming over the last five years among public service broadcasters[162].

6.14 The availability and take-up of services that enable time-shifted and VOD television programming has grown significantly. All of the major broadcasters have launched video-on-demand services (or 'players') which they make available to a wide variety of platforms including the PC, games consoles, mobile devices and hybrid IPTV platforms. Of adults with the internet, 31% have watched catch-up TV[163], while time-shifted viewing through a DVR still only represents 5.9% of all television viewing[164].

6.15 Broadcast news has been affected less than other content genres by the emergence of new technologies that can draw audiences away from the live TV platform. Ofcom's consumer research shows that viewers prefer to watch news content live rather than on-demand or timeshifted[165]. However, broadcasters do appear to have pulled back on their news commissioning funding. Total spending on news-based content fell from £363m in 2005 to £293m in 2009[166].

Radio also remains a significant service for a large proportion of the UK audience

6.16 Like broadcast television, radio remains a very highly used medium by audiences despite growing use of other services. Overall weekly reach of radio has stayed consistent at 90% over the last five years. However, average weekly hours of listening has declined over the same period (by 5.3% p.a. to 19.8 hours per head per week)[167].

6.17 Digital Audio Broadcasting (DAB) has grown in usage with almost 16%[168] of homes owning a DAB set as of Q2 2010 and DAB listening representing almost a quarter of all radio listening.

6.18 The BBC remains the most significant player in the sector and its expenditure on radio has grown over the last five years, whereas both listening and revenues to commercial radio have declined over the same period[169]. This is primarily a consequence of a decline in advertising revenue in radio, which like television appears to be a consequence of both cyclical changes and the growing competition from other media for advertising expenditure.

6.19 The growth in the number of devices (both in the home and mobile) that can connect to the internet has led to the availability of non-broadcast audio services (e.g. audio streaming or downloading to a PC or mobile phone). Take-up and use of such services is most significant amongst the 16-24 age group.

Print media is facing declines in circulation as online use grows

6.20 The newspaper industry is in a transitional phase as new, disruptive means of distribution emerge and traditional revenue sources decline.

[162] Ofcom Communications Market Report, Figure 2.36
[163] Ofcom Communications Market Report Figure 2.8
[164] Ofcom Communications Market Report Figure 2.4
[165] Communications Market Report 2009, Figure 1.41
[166] PSB annual report 2010
[167] Ofcom Communications Market Report 2010, Figure 3.1
[168] Ofcom Communications Market Report 2010, Figure 3.2
[169] Ofcom Communications Market Report 2010, Figure 3.6

6.21 Print media has experienced progressive decline over the past ten years. There have been substantial declines in circulation and readership of national newspapers. For example, readership has fallen substantially among both daily and Sunday newspapers – by 3% p.a. among the Sundays and by nearly 2% p.a. for daily newspapers[170].

6.22 Newspaper providers have been especially affected by a drop in classified advertising revenues, matched to a steady decline in circulation, which threaten the future profitability of many titles[171].

Consumption of online services continues to grow in popularity

6.23 The growth in the availability and take-up of the internet has provided a platform over which a variety of content types can be delivered to consumers, both traditional (existing television, radio and newspaper content) and new (such as social networking sites and other sources of user generated content).

6.24 Access to the internet by consumers is now at 76% of UK households, the vast majority of whom use a broadband connection (up from 31% in 2005)[172]. As home internet take-up has risen, so has the average minutes spent per person surfing the web – at 27 minutes per person per day (up by an average of 17% p.a. since 2004)[173].

6.25 The growth in the availability and take-up of the internet has provided a platform over which a variety of content types can be delivered to consumers, both traditional (existing television, radio and newspaper content) and new (such as social networking sites and other sources of user generated content).

6.26 As a consequence of this rapid growth in broadband access to the internet, the total level of revenues generated by online services has grown substantially in the UK. The online advertising market alone was worth £3.54bn in 2009, 27% growth per annum over the last four years[174].

6.27 The majority of online advertising (£6 in every £10 generated) is made up of paid for search services such as Google. The remainder of the market is split evenly between classified and display advertising. It is particularly the growth in these two categories that has structural implications for the television, radio and press sectors, given each currently relies significantly on classified and display advertising currently. Each of these sectors is seeking to tap into the growth of online advertising as a consequence of declines in advertising in their own markets.

6.28 One of the most significant trends in the last few years has been the growth in mobile access to the internet, which is now at 16% of consumers and growing rapidly[175]. This has the potential to enable a range of new services to consumers above and beyond those already available to them at home or work, particularly linked to the take-up of smart-phones and tablets.

6.29 The breadth of functionality that mobile and fixed broadband access to the internet offers is reflected in the range of services consumers use. Social networking

[170] Source: NRS / MediaTel / Ofcom calculations
[171] Enders Analysis submission
[172] See Ofcom technology tracking study, Q3 2010, question QE6, Table 44
[173] Ofcom Communications Market Report 2010, Figure 1.4
[174] Ofcom Communications Market Report 2010, Figure 4.7
[175] See Ofcom technology tracking study, Q3 2010, question QE6, Table 44

accounts for a quarter of the time consumers spend online, by far the largest share of any online service (including email, search, news, games and other service). Online news is attracting a growing unique monthly audience, although it still accounts for a very small proportion of overall time spent online (less than 3%[176]). Most providers of news on television or radio have launched offerings on the internet accessible via a range of devices including PCs, smartphones and tablets. Each is seeking to extend the reach and use of their output while also accessing the growth in online revenue.

6.30 A range of different online content and business models are emerging which may provide new revenue opportunities for the newspaper publishers. News aggregators such as Google News and Yahoo! News bring together news stories from a wide range of providers and outlets. Many newspapers online are making increasing use of video and audio to enhance the richness of their content propositions. Some, such as FT.com and Times.co.uk, have opted for 'freemium' or subscription-based revenue models, whereas other players have pursued a free model reliant on advertising. So far newspapers' online revenues have failed to match those of their print counterparts. DMGT, for example, recently announced that the ad-supported Mail Online website, currently the second-most popular newspaper website in the world according to ComScore[177], generated approximately £12m in the financial year 2009/10[178]. GMG website The Guardian Online reportedly generated around £40m last year[179].

These trends suggest that convergent cross-media services will become increasingly important

6.31 Taken together, these trends suggest that there may be a continuous shift in the relative mix and balance of different media platforms and services for consumers, with an increasing push into convergent cross-media services.

6.32 Of the traditional media platforms, television appears to have an enduring strength as a key platform for the delivery of content to consumers – its reach, impact and significance to consumers is likely to continue in the future. However, all platforms including online today will need to respond to the development and adoption of increasingly convergent media.

6.33 Online services, and the convergence of the internet with traditional media platforms are therefore one of the key areas for future development. This will continue to result in the development of new, cross-media products and services for consumers. This is one of the areas of focus for many players in media, including news and current affairs: the development of convergent, integrated media products that draw on the strengths of video, print, and audio to deliver content to consumers across a range of platforms and devices.

6.34 It is unclear at present to what extent these cross-media services will be complementary to existing services, in which case we might expect bundling of such services to increase in importance, or substitutional to existing services, in which case they might be expected to displace them. [✂][180] [181] [The redacted text refers to

[176] Ofcom Communications Market Report 2010, Figure 4.4
[177] As reported by Paid Content. See http://paidcontent.org/article/419-mail-online-vs-nytimes.com-running-the-numbers/
[178] http://www.dmgt.co.uk/uploads/files/DMGT-Preliminary-Results-2010.pdf
[179] http://www.abc.net.au/pm/content/2010/s3058684.htm
[180] [✂]
[181] [✂]

paragraphs 210 and 213 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed].

6.35 However this develops from a commercial perspective, for those consumers adopting new products and services that exploit the potential of convergence between online and traditional media, this undoubtedly increases their ability to consume content from a wider variety of sources, with greater flexibility and sophistication than ever before.

Potential longer term effects on plurality arising from the proposed transaction

6.36 We received many submissions that raised concerns about the potential for the proposed acquisition to affect plurality in the future. Much of this concern was around the potential effect of the economic power of the combined entity in the context of future media market developments. The concerns raised were that, following the acquisition, News Corp would be better placed than its competitors to respond to market developments and develop its service and presence across-media.

6.37 The economic power of the combined group covers a number of possible factors. The merged entity would be financially bigger than any of the other voices in the market (for example in terms of group revenues and cash flows). Representations argued that thanks to its financial security and size News Corp would be able to make commercial decisions that its rivals would be unable to make, and thus would be better placed to respond to market developments and challenges. This would allow News Corp to increase its market presence and share compared to other news providers, while not behaving anti-competitively.

6.38 [✂]. Our view is that future concerns in relation to plurality are not necessarily captured by any competition assessment of the proposed transaction. As outlined in paragraph 2.35, media public interest considerations invoked by the Secretary of State are distinct from the competition-based test applied by the competition authorities. The aim of any competition analysis is to prevent a level of concentration of ownership which could give rise to a substantial lessening of competition, to the detriment of consumers. The public interest considerations defined by Parliament have a different goal: to ensure sufficient plurality of media enterprises to support effective debate and the democratic process. While it is possible that there may be overlap between issues and / or facts relevant to a competition consideration and a need for sufficient plurality under the public interest consideration, the two statutory regimes are distinct with different purposes.

6.39 As noted in paragraph 2.36 of this report, on 21 December 2010 The European Commission ("the EC") concluded its Phase One investigation into the competition effects of the proposed acquisition. The EC decided not to oppose the notified acquisition and declared it compatible with the internal market and with the EEA Agreement. Its decision was based solely on competition-related grounds, pursuant to Article 4 of European Council Regulation No 139/2004. [✂][182] [The redacted text refers to paragraphs 1, 307, 309 and 310 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed. The EC's press release of its decision is available at http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1767].

[182] [✂]

Concerns were raised in representations that the proposed transaction could influence future levels of plurality

6.40 In representations, we received two main groups of possible concerns for plurality as a result of the proposed transaction:

- The economic power of the combined entity and its ability to react to future market developments like convergence
- A range of specific concerns relating to potential activities by the merged entity

Economic power and convergence

6.41 There are historic examples of how 'economic power' can be employed to engage in long term strategies that could affect plurality if other players in the market are not able to respond. For example, News Corp has in the past supported Fox News through a period of substantial loss until it became established[183]. Such activities are not unique to News Corp though – there are numerous examples of media enterprises making significant investments in new titles and routes to market, notably online, before they make an economic return.

6.42 Economic power can allow a company to take strategic decisions that might ultimately have an impact on plurality. Economic power may allow a media enterprise to invest in new ventures, business developments or adopt pricing strategies that others do not have the resources to compete with. There may be a consequential reduction in other players' share of voice and hence plurality.

6.43 As noted above, one of the key expected developments for the future is developing the presence of news content across convergent media. For all media players, a future presence online and development of new applications, taking advantage of the functionality of new devices and the ways that consumers access content is likely to be key.

6.44 Representations to us suggested that the combination of News Corp's print news content and Sky's audio-visual content makes it best-placed to take advantage of the move to convergent news media. If for example it was able to develop a compelling content proposition for e-readers or tablet devices, which could not be replicated by other providers, this might over a period of time enable it to extend its share of voice beyond that which it achieves as an immediate consequence of the proposed transaction.

6.45 We acknowledge that the ability of News Corp to develop and distribute convergent media products does not depend on the proposed transaction. For example, The Times newspaper's website and the Times iPad edition already feature some Sky News content. The transaction is however likely to strengthen the ability of News Corp to produce such products, given the complementary capabilities of News Corp and of Sky in the production of textual and audiovisual content respectively.

6.46 We note that it is a difficult and uncertain process for other news providers (e.g. newspapers) to build up the capability to produce their own AV and multimedia content, although there are some emerging examples of newspapers doing so[184]. It is

[183] House of Lords Select Committee, Ownership of the News 2008, Appendix 4, paragraph 29
[184] E.g. Telegraph Media Group's Telegraph TV http://www.telegraph.co.uk/telegraphtv/

potentially costly, and would require them to diversify into a very different skill-set in order to produce high-quality AV journalism.

6.47 However, we note also that investment in new, innovative convergent media products is not limited to a combined News Corp or Sky, and other news suppliers do offer similar multimedia content[185]. Other news providers and platform operators may develop and distribute converged services through commercial deals[186]. No other single company has the same combination of a portfolio of content assets (including news) and scale of distribution across TV, newspapers and broadband. However, the evidence which has been presented to us in the time available does not support a conclusion that such strategies could not be replicated by rival news providers, entering where necessary into commercial agreements with appropriate partners.

6.48 We acknowledge that the effects on plurality of new convergent products are uncertain. They may fail, in which case they will have no impact on plurality. If they succeed, this could have a negative impact on plurality if other providers are not able to provide similar products, but could also have a positive impact if they help pioneer the development of new online business models which are then replicable by a wider range of alternative providers.

6.49 There is a high degree of uncertainty surrounding future convergent products, and the potential for a range of players across the communications value chain including news providers and platform operators to invest in such products. As a result, we do not consider that there is sufficient evidence for the view that it may be the case that these issues may be expected to result in additional plurality concerns to those identified in our static analysis.

6.50 However, that is not to say that these concerns can be dismissed either. This is particularly true given the fact that under the current statutory framework it is only possible to examine these concerns at the time of a particular transaction. So whilst we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, in event of a reference then this is an area that may warrant further consideration

Specific concerns relating to potential activities by the merged entity

6.51 In addition to the development and launch of convergent news media products, a number of other possible future issues were raised by respondents as potentially having an effect on the level of plurality. Specifically, representations raised concerns about:

- a greater ability to cross-subsidise news operations;
- more cross-promotion between News Corp outlets including Sky;
- 'bundling' together of goods and services; and
- a greater ability to bid for and win wholesale news deals.

6.52 **Better ability to cross-subsidise news operations.** Concerns were raised with us that the combined entity would have significant funds for cross subsidy between its different media operations. However, cross subsidies are a common feature of the

[185] E.g. BBC News has made certain AV content available to all newspaper websites http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/07_july/28/content.shtml

[186] It is common for newspaper websites to use a mix of their own and third party content, e.g. The Financial Times using CBS AV news content http://www.pressgazette.co.uk/story.asp?storycode=46046

market today for a range of media providers, and News Corp in particular already has a strong enough financial position to enable it to fund any cross-subsidies which it might wish to provide. Therefore, although the proposed transaction would increase the strength of News Corp's finances in terms of cash flow, we do not believe that the proposed acquisition would create a situation which is not possible already given News Corp's existing ability to cross subsidise its different media operations.

6.53 [✂][187] [The redacted text refers to paragraph 223 and 213 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed].

6.54 **Cross-promotion between News Corp outlets**. Concerns were raised that News Corp's influence on consumers could be increased through greater use of cross promotion. This could include direct cross-promotion, such as more references to Sky in News Corp's newspaper titles, or indirect cross-promotion, such as sister titles sharing correspondents or columnists. Incentives already exist for cross-promotion between News International's print titles and Sky, but these would be increased by the transaction.

6.55 There are limitations to how far Sky could directly promote News Corp titles on its television channels, as set out in Ofcom's Broadcasting Code[188] ("the Code"). However, the Code does not necessarily restrict some forms of indirect promotion[189] such as leading the news agenda with a sister outlet's news scoop or inviting a sister outlet's star columnist to comment on news stories.

6.56 We note that the European Commission considered the risk of input foreclosure of BSkyB's competitors as a result of a refusal to advertise in News Corp titles. The Commission concluded that this was not a concern, largely on the basis that there are alternative means of advertising to these titles.[190] This conclusion is relevant to our consideration of cross-promotion, since it suggests that News Corp titles are not uniquely well placed to engage in cross-promotion. However, we believe it may still be possible for cross-promotion to provide increased influence in circumstances which fall short of input foreclosure.

6.57 Overall we believe that the transaction may increase the effectiveness of cross-promotion between Sky and News Corp titles, and therefore the influence of these titles, but have not in the time available been able to quantify this effect. We acknowledge that there is already an incentive to engage in some cross-promotion, and note the conclusion of the European Commission on input foreclosure

6.58 "**Bundling" together of goods and content**. Bundles can come in several forms:

a) physical bundles of products (e.g. giving subscribers to Sky TV a "free" subscription to The Times newspaper);

b) content aggregation services (e.g. a News Corp service in which News Corp collects content from a variety of third party sources (e.g. The Daily Mail, The Independent newspapers) and brings it together at a single point of use for consumers. It would act as gatekeeper to this service.); and

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187 [✂]

188 See Section 10, 'Commercial References and Other Matters' http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references/

189 Subject to the limits implied by rules on preventing undue prominence of a product or service

190 [✂]

c) more complex bundling and integration (e.g. placing and using news content on the Sky broadband internet home page; giving priority to News Corp's own news content via broadband traffic management).

6.59 We note that some of the potential concerns which have been put to us under the banner of 'bundling' relate to the creation of new integrated products, typically in the context of convergent media. We have already discussed these above. In what follows we focus on the somewhat narrower question of the retail bundling of existing products, [✂] [The redacted text in this and the five following paragraphs refers to paragraphs 224-257 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed].

6.60 [✂][191]

6.61 [✂][192]

6.62 [✂][193]

6.63 [✂][194]

6.64 Our view, [✂] is that bundling of existing TV and newspaper subscription services is unlikely to be a significant concern. However, as discussed above, [✂] there is a great deal of uncertainty as to the types of integrated tablet or e-reader type products that might be developed as a result of convergence through new devices and the manner in which these might be retailed. However, this may create concerns in the future, and we note the absence of a statutory framework for addressing such potential issues on an ex post basis.

6.65 **Bidding for wholesale TV news deals** - Today TV news provision is already highly concentrated, with only three providers of news at the wholesale level: the BBC, ITN and Sky News. We received representations arguing that, in the longer term, the proposed acquisition might have an impact on the level of plurality in the wholesale provision of television news[195]. Specifically, post transaction, Sky might be in a stronger position when bidding for broadcast news contracts. Concern was expressed that, in the long term, this might lead to ITN exiting the wholesale broadcast news market[196], which could ultimately result in a duopoly of wholesale news provision in broadcast news[197].

6.66 We note that Sky News already bids competitively for wholesale tenders, both successfully and unsuccessfully, and that there is already the possibility of current wholesale providers of TV news being displaced by Sky News. Sky News is already part of a large and well resourced media enterprise, capable of bidding effectively for wholesale tenders regardless of this transaction. We have not seen any evidence that suggests changes in wholesale provision would flow specifically as a result of the transaction.

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191 [✂]
192 [✂]
193 [✂]
194 [✂]
195 For example, see BBC, Goldsmiths Leverhulme, Media Research Centre, Slaughter & May
196 For example, see BBC, Enders, Slaughter & May, Professor Barnett
197 It is important to note that Sky News would only be able to provide news to ITV as part of a consortium where it held less than 20% due to the designated provider rules for Channel 3 news

6.67 While it is possible that there will be changes which affect plurality in the future in relation to wholesale news provision, these are uncertain and could work to reduce plurality or to increase it. In this context we note once again the absence of a statutory framework for addressing potential issues on an ex post basis.

The proposed acquisition may result in potentially positive outcomes for consumers

6.68 We note that there are several potentially positive outcomes from this transaction.

6.69 The merged entity could be able to afford to take more risks and to innovate, with possible positive spill-over benefits for the wider industry. We note that News Corp and Sky each have strong records of innovation. News Corp led the way in revitalising the newspaper industry in the late 1980's, by driving the adoption of new printing technologies despite union opposition, and is currently trialling the use of paywalls for online news content. Sky has consistently pioneered new means of producing and distributing TV content including, *inter alia*, its launch in 1989 of Sky News, and its subsequent development as one of the UK's main sources of rolling TV news.

6.70 The increased scale and economic power of a merged News Corp / Sky may help it to establish or support new business models. The wider news industry could then benefit from these, as long as they are replicable. For example, News Corp has opted for a subscription-based (pay-wall) revenue model for some of its UK newspaper website titles. Subscription revenues per user are typically higher than advertising-based revenues, so it is plausible that if the transaction were to help establish a subscription model, allowing it time to mature and increase take-up, that it would improve the ability of a range of organisations to develop sustainable business models for news content online. This in turn, could help initiate a virtuous cycle, leading to a resurgence of the wider news industry.

Conclusions on dynamic analysis

6.71 A number of forward-looking concerns have been put to us. The most credible are those that relate to the ability of the merged party to use its economic power and its complementary strengths in text and audiovisual news content to produce new integrated products within the context of an increasingly converged market. Examples might include new types of news applications for e-readers and tablets. If these could not be replicated by other providers, this might over a period of time enable the merged party to extend its share of voice beyond that which it achieves as a direct consequence of the proposed acquisition.

6.72 As a result of the degree of uncertainty affecting any view on possible future developments, the limited evidence available on the effect of the proposed transaction, and uncertainty on how far these developments could occur absent the transaction, we do not consider that there is sufficient evidence for the view that these issues may be expected to result in additional plurality concerns to those identified by our static analysis.

6.73 However, that is not to say they can be dismissed either. So whilst we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, if a reference is made then these issues merit further evaluation. We are particularly conscious that whilst some of the longer-term effects of the transaction are inevitably somewhat speculative, there is no ex post mechanism to address potential plurality concerns arising in the future.

6.74 Our analysis and consideration of a forward view of the market in terms of plurality does suggest that, regardless of the transaction, plurality may face challenges in the future. Market developments such as those identified in paragraphs 6.3 to 6.35 above may be expected to have an effect on the relative influence of different voices over time. In this context, a relatively more influential voice for a combined News Corp/Sky may be more of a concern than relatively stronger voices for each of the two separate companies as distinct media enterprises.

Section 7

Recommendations

Advice and recommendations

7.1 Ofcom's advice, based on the evidence and reasons set out in this report and summarised in the executive summary, is that it may be the case that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences. In reaching this view we do not rely on the dynamic effects discussed in full in Section 6.

7.2 Therefore we believe there is a need for a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest, and we advise the Secretary of State accordingly.

Stakeholder views on possible remedies

7.3 We received various submissions in response to our invitation to comment on possible remedies to ensure sufficient plurality. Overall, three broad categories of potential remedy were identified:

- Requiring undertakings (behavioural remedies) from the parties to secure editorial independence for Sky News
- Requiring divestment of some news media assets
- Blocking the proposed acquisition on public interest grounds

7.4 We received few representations on remedies [✂]. One common theme within the comments we received was significant scepticism as to the effectiveness of behavioural remedies as a means of guaranteeing the editorial independence of Sky News from News Corp.

7.5 This scepticism was based partially on general concerns about the effectiveness of behavioural remedies, but also on the perceived outcome of specific commitments given during previous transactions, in particular following the acquisition by News Corp of the Times and Sunday Times. We note however that the evidence provided on this point was largely anecdotal.

7.6 While divestment remedies might potentially address public interest concerns, they would require a credible purchaser. Otherwise such a remedy risks a potentially perverse outcome for plurality, given the contribution currently made by Sky News, News International newspapers and their respective online services.

Recommendation on review of statutory framework for plurality

7.7 We received many submissions that raised concerns about the potential for the proposed acquisition to affect plurality in the future. We consider these in Section 6.

7.8 Furthermore, many of the submissions we received raised additional concerns which are relevant to plurality, but which are not specific to this transaction. These concerns arise from the rapid and far reaching changes that are taking place within the media as a result of technological advances and new business models. They include:

- **Adoption and use of new media technologies** combined with a contraction in some of the more traditional media forms. For example, according to Ofcom research online news was the main source of news for 7% of consumers in 2009, up from 3% in 2005[198]. The majority of online news is accounted for by online versions of current newspapers, but also includes aggregators such as Google and Yahoo. At the same time, newspaper circulation has been falling, down from 25 million for daily newspapers and 27 million for weeklies in 2000, to 22 million for each in 2009[199].

- **Organic change in market shares** of key players – since 2003, we have seen material changes in the relative standings and importance of different players. For example, ITN (which provides news for ITV and Channel 4) has seen its share of all national news viewing fall from 34% in 2003 to 22% in 2009[200] as a result of ITV's falling share and the loss of the Five news contract to Sky.

- **Changes to wholesale news provision** – wholesale news provision can change fairly quickly through changing contractual relationships. As a result, the structure and ownership of news provision on platforms like TV or radio can alter with the change of a significant contract.

- **Evolution in upstream content provision** – we may witness the emergence of a few stronger players in the upstream gathering and provision of news as a result of the economics of news provision. This possible development was discussed in more detail in our review of the Media Ownership Rules in 2009.

7.9 Under the current statutory framework, a media public interest consideration of plurality can only be triggered when there is a proposed merger involving media enterprises. The future market developments considered in this report suggest that the current statutory framework may no longer be fully equipped to achieve Parliament's objective of ensuring sufficient plurality of media ownership.

7.10 The market developments identified include the risk of market exit by current news providers, or a steady organic growth in audience shares and increase in ability to influence by any one provider. For example, in a situation where a company grows organically through entirely legitimate business strategy which does not involve any anti-competitive behaviour but finds itself in the relevant media market with 90% share of audiences. While this may not have raised competition concerns, it very clearly may raise plurality concerns.

7.11 While there is a clear statutory framework for remedying competition concerns which may arise in the context of a merger[201], the same is not true of concerns related to plurality more generally. This means that if a transaction is found not to operate against the public interest in relation to plurality at the time, there is no subsequent

[198] Ofcom Media Tracker, 2009, all adults 15+.
[199] NRS / MediaTel / Ofcom calculations
[200] Barb, Network Plus, Ofcom
[201] These include the use of ex post powers under the Competition Act, as well as the possibility of a market investigation reference under the Enterprise Act.

opportunity or mechanism to address or even to consider any plurality concerns which develop over time.

7.12 This suggests that a more fundamental review and possible reform of the current statutory framework may be required. Any such review would be a matter for Parliament.

7.13 Any new legislative and regulatory framework for plurality would need to provide a mechanism for intervention if market developments resulted in changes which raised serious doubts in relation to the sufficiency of plurality.

7.14 However, any intervention would need to be transparent, proportionate and balance the need for a plural media environment with possible risks from intervention. Any modified policy would need to ensure there remained a freedom to innovate in response to market developments, to make risky investments and earn suitable rewards and must avoid creating negative or perverse incentives.

7.15 This is properly a debate for Parliament. In undertaking any such review, we think it would be useful to consider a number of questions, including:

- What could trigger any safeguard – for example certain thresholds for cross-media audience shares or reach; regular situation reporting similar to the infrastructure report from Ofcom to Government?
- Who would be responsible for conducting any review following the trigger and to whom would it report?
- What sort of outcomes or solutions to public interest concerns might be required – which would be useful in defining the powers necessary to safeguard plurality effectively in the future
- What sort of legal instrument and mechanisms could be used to deliver a safeguard for plurality? How could it be ensured that any intervention was proportionate?

7.16 We therefore also recommend that the Government consider undertaking a wider review of the statutory framework to ensure plurality in the public interest. Specifically, we believe there may be value in providing for intervention where plurality concerns arise in the absence of a corporate transaction involving media enterprises and which are not safeguarded by the current media ownership rules.

Linkages to the current public interest consideration

7.17 Our thinking on potential new safeguards for plurality does not change our advice and recommendations on the proposed transaction. The time required to conduct a review of the legislative framework to secure sufficient plurality may be substantial and we see this as a separate consideration

Annex 1

Data sources used

A1.1 There is no existing system that measures cross-platform news consumption on a consistent basis. Instead, there are a series of separate industry standard metrics available on a platform-by-platform basis. It is important to note that each uses a different research methodology (as outlined below) and that the ability to analyse news-specific consumption also varies substantially across the methodologies; reach is also defined differently by each system. To supplement the analysis that these industry metrics support, Ofcom commissioned primary quantitative research to understand consumers' use of news across-media platforms.

A1.2 This section sets of the main features both of the standard industry measurement systems and of the quantitative research that Ofcom commissioned.

Currency	Methodology	Time period	Age range and sample size	News definition	Reach definition
Television - BARB	Continuous panei. Uses a meter attached to the teievision, measuring viewing on a second by second basis	October 2010, trend data 2002-2010 year to date	Age range: UK adults aged 16+, Sample size: 5,100 UK households on a continuous basis	News: national and international sub-genre provided by BARB	3+ consecutive minutes of viewing
Radio - RAJAR	One week seif-compietion diary – seif reported measure	Quarter 3 2010	110,000 UK adults aged 15+	Radio listening overall, with exception of average minutes analysis where we have estimated the amount of news listening.	5+ minutes of consecutive listening
Print - NRS	Face to face quantitative survey – seif reported measure	October 2009-September 2010	36,000 UK respondents annually Aged 16+	Self reported measure – read the newspaper	Average issue readership – using NRS 6-day estimate for dailies
Oniine - UKOM/Nieisen	Continuous panei of participants	October 2010	43,330 people aged 2+; data reported monthly	UKOM current events & global news sub category and selected other news sites.	The percentage of a country's 2+ population that visited the Web site or used the application.

Television news viewing - BARB

A1.3 For television viewing, we have used the BARB industry currency (Broadcaster Audience Research Board). BARB uses a continuous panel of 5,100 UK homes and tracks television viewing among all people aged 4+ in these homes on a second by second basis using a metering system.

A1.4 BARB viewing data can be analysed by programme genre. Programmes are categorised by the broadcasters and can be a useful way of analysing viewing. However, the genre classifications are provided on a voluntary basis by broadcasters, and there is no independent verification of them.

A1.5 The 'News and weather' genre contains four subgenres – 'national/international news', 'weather', 'regional news' and 'miscellaneous'. Analysis in this report is based on viewing to the subgenre of 'national/international news'. The other subgenres were excluded as we deemed them less relevant to an understanding of consumption of TV national and international news. We also excluded the BARB genre of Current Affairs, as it contains a wide range of programme titles, including ones we thought were not relevant to an understanding of the consumption of news and current affairs (such as The One Show, or Helicopter Heroes). This was also the case even when we looked at the 'political/economic and social' sub-genre of Current Affairs.

A1 6 In this report, analysis has been conducted on viewers aged 16+. Reach (that is the proportion of the population who have consumed a defined number of minutes of national/international news in a given period) is based on anyone who has watched at least 3 consecutive minutes of the sub-genre in an average week; industry practice is generally 3+ or 5+ minutes. Ofcom decided to run the TV news analysis on 3+ minutes due to the varying duration of news programmes (e.g. short news bulletins, hour long programmes or 24 hour channels).

A1.7 Share of news viewing is based on the following three providers - BBC (BBC One, BBC Two, BBC News); ITN (ITV1, C4), Sky (Sky News, Five), and relates to October 2010; in 2009, these providers accounted for 99.69% of all television news viewing (rising from 99.05% in 2001). Other channels measured by BARB that provide short news bulletins and/or generate a small proportion of total viewing of news are not included in this analysis. These include Euronews, Fox News, BBC Parliament, ITV2, ITV3, BBC Three, BBC Four; they accounted for the remaining 0.31% of television news viewing in 2009.

A1.8 There are other dedicated news channels that broadcast in the UK. However, as these are not individually measured nor reported by BARB (which is indicative of their relatively small channel shares) the viewing minutes they attract cannot be allocated to the 'news' category. These channels include CNN, Al Jazeera English, Russia Today and France 24. We estimate these non-BARB reported channels represent a very small proportion of total national/international news viewing.

Radio news listening – RAJAR

A1.9 For radio listening we have used the RAJAR industry currency (Radio Joint Industry Research). RAJAR interviews approximately 110,000 adults aged 16+ over 50 weeks per year. The survey operates as a sweep, not a panel, which means that respondents only participate for one week. Respondents are asked to complete a one week diary showing all the stations they listened to, for at least 5 minutes, recorded in quarter hour time blocks. Data is compiled and released on a quarterly basis.

A1.10 RAJAR does not provide programme level detail or programme genres. Therefore we have been unable to measure listening to news or current affairs programmes on radio. Instead, we have used listening to radio *overall* and analysed radio consumption by commercial stations versus BBC services. Where it has become necessary to conduct more detailed analysis, we have used a range of weights on station minutage to reflect the differing presence of news content on different categories of radio network; in so doing we have been able to provide an estimate of the amount of time spent listening to news on the radio (based on a review of the schedules of different radio networks, we consider it reasonable to apply weights of 27% to Radio 4; 19% to Radio 5 Live and 5% for all other radio networks). All reach and radio share figures are based on total radio listening and are not specific to news.

A1.11 In this statement, reach is based on those listeners who say that they listen to 5 or more consecutive minutes of radio in the average week.

Newspaper readership - National readership survey (NRS)

A1.12 Newspaper-specific analysis uses the industry currency – the National Readership Survey (NRS). This is a rolling face-to-face quantitative survey, drawing on a monthly sample of 3,000 respondents, interviewing 36,000 respondents each year.

A1.13 A respondent is deemed to have read a paper if they spent more than two minutes reading or looking at it. Average issue readership (AIR) is based on whether respondents say if they have read each title within the issue period of the title. For example, for daily newspapers respondents are asked whether they have read each daily paper in the last day.

A1.14 The titles analysed are the twenty newspapers that are available on a national basis: The Sun, The Mirror, The Daily Star, The Express, The Daily Mail, The Times, The Daily Telegraph, The Guardian, The Independent, The FT, The News of the World, The Daily Star Sunday, The Sunday Express, The Sunday Mirror, The People, The Mail on Sunday, The Sunday Times, The Sunday Telegraph, The Observer, The Independent on Sunday.

Online – UKOM / Nielsen

A1.15 Online-specific consumption is measured using data supplied by UKOM (UK Online Measurement) / Nielsen, which monitors consumers' active use of online sites on PCs and laptops at home and at work. The UKOM / Nielsen panel consists of 43,330 individuals aged 2+. Standard survey metrics provided by this panel include monthly active and population reach of different online sites/groups of sites; page views and time spent on a site per session.

A1.16 Nielsen is currently investigating a decline in its Internet use data around duration metrics and the potential impact of this on Unique Audience metrics. Until these investigations are concluded, Nielsen Internet data for October 2010 is likely to represent a lower bound and should be treated as indicative only.

A1.17 Nielsen groups websites into categories and sub-categories. In this statement we have performed our online analysis on its 'Current Events and Global News' subcategory. This includes the overwhelming majority, although not all, of the sites pertinent to this statement. To correct for this, we have combined this sub-category with a small number of sites found elsewhere – FT.com, Reuters, Wall Street Journal Digital, Metro.co.uk, Archant Regional Network and Northcliffe Newspapers. Our share of page views and time spent analysis is based on the top 50 sites by unique audience from this combined list of sites.

Cross-media research

A1.18 Ofcom commissioned eight questions on Kantar Media's omnibus survey between 19th and 23rd November 2010. This was a face-to-face survey among a representative sample of 2,018 adults in Great Britain, excluding Northern Ireland as this was not covered by the omnibus survey. The data is weighted to the National readership survey (by region, gender, age and socio economic group). Respondents were asked which platforms they used regularly/occasionally for UK/international news and current affairs. For those platforms cited, they were asked to select from a list which news sources they used. Regularly was defined as 'at least once a week', and occasionally was defined as 'at least once a month', with the exception of weekly newspapers and magazines, whereby regularly was defined as 'at least once a month', and occasionally was defined as' less than once a month'. We also asked consumers which platform (i.e. television, newspapers, radio or internet) and which title they regarded as their main source of news.

A1.19 The analysis in this report groups responses by wholesale news provider (Sky, ITN, BBC etc) and retail news providers (BBC, ITV1, Sky News etc). The quantitative consumer research includes analysis of the share of each news provider cross-platform, based on the number of times each individual news source is cited by respondents. An individual news source is, for example, a specific television station, radio station, newspaper title or website.

A1.20 Each provider's share is based on the total number of responses for each individual source across television, radio, daily and weekly newspapers and the internet. If a respondent uses more than one source from a particular provider, it is counted each time. The share of each provider is then calculated as the aggregated number of responses in thousands for that provider, expressed as a proportion of all responses for all news sources measured in the survey. Note that a reference of a daily newspaper carries the same weight as a reference of a Sunday newspaper.

A1.21 Reach describes the proportion of respondents who say that they use each news source, platform, or provider on a regular basis. The reach figures for media providers are calculated based on the proportion of respondents who say they use at least one news source regularly provided by each media group. For example, if a respondent says that they use both the BBC One and BBC website for their news on a regular basis, they will be represented once in the reach figure for the BBC. The reach figures for media owners are calculated in a similar way.

A1.22 The statement uses analysis by both wholesale news providers and retail providers. Please see the tables below for full details on how each source is grouped.

Retail news provider	Makeup
BBC	BBC channels (Q3), BBC national radio, BBC local radio (Q6), BBC website (Q7)
ITV	ITV (Q3), ITV website (Q7)
News Corp	Fox News, Star News (Q3), Sun, Times (Q4), News of the World, Sunday Times (Q5), Times\Sunday Times website, Sun website, News of the World website (Q7)
Sky	Sky news (Q3), Sky news website (Q7)
Channel 4	Channel 4 (Q3), Channel 4 website (Q7)
Northern Shell	Five (Q3), Daily Star, Daily Express (Q4), Sunday Star, Sunday Express (Q5), Star website, Daily Express website (Q7)
Associated Newspapers	Daily Mail (Q4), Mail on Sunday (Q5), Daily Mail website (Q7)
Trinity Mirror	Daily Mirror (Q4), Daily Mirror website (Q5), Sunday Mirror, People (Q5), Daily Post (Q4), Western Mail (Q4), Wales on Sunday (Q5)
Telegraph Media Group	Telegraph (Q4), Sunday Telegraph (Q5),Telegraph\Sunday Telegraph website (Q7)
Guardian Media Group	Guardian (Q4), Observer (Q5), Guardian website (Q7)
Independent Print Ltd	Independent (Q4), Sunday Independent (Q5), Independent website (Q7)
Pearson	Financial Times (Q4), Financial Times website (Q7)
Commercial radio	Classic FM, Absolute Radio, TalkSport, Any other commercial radio station (Q6)
Other	CNN, Euro News, Other TV Channel (Q3), Morning Star, Herald/Scotsman/Daily Record, Any regional local paper (Q4), Sunday Herald, Weekly Magazines, Other weekend\weekly newspaper Magazine (Q5), Other radio station (Q6), Google News/Yahoo news /MSN news, blogs, other websites (Q7)

Wholesale news provider	Makeup
BBC	BBC channels (Q3), BBC national radio, BBC local radio (Q6), BBC website (Q7)
ITN	ITV, Channel 4 (Q3), ITV website, Channel 4 website (Q7)
News Corp	Fox News, Star News (Q3), Sun, Times (Q4), News of the World, Sunday Times (Q5), Times\Sunday Times website, Sun website, News of the World website (Q7)
Sky	Sky news, Five (Q3), Sky news website (Q7), Classic FM, Absolute Radio, Any other commercial radio station (note: exc. TalkSport) (Q6)
Northern Shell	Daily Star, Daily Express (Q4), Sunday Star, Sunday Express (Q5), Star website, Daily Express website (Q7)
Associated Newspapers	Daily Mail (Q4), *Mail on Sunday* (Q5), *Daily Mail* website (Q7)
Trinity Mirror	Daily Mirror (Q4), Daily Mirror website (Q5), Sunday Mirror, People (Q5), Daily Post (Q4), Western Mail (Q4), Wales on Sunday (Q5)
Telegraph Media Group	Telegraph (Q4), Sunday Telegraph (Q5),Telegraph\Sunday Telegraph website (Q7)
Guardian Media Group	*Guardian* (Q4), *Observer* (Q5), *Guardian* website (Q7)
Independent Print Ltd	Independent (Q4), Sunday Independent (Q5), Independent website (Q7)
Pearson	*Financial Times* (Q4), *Financial Times* website (Q7)
Other	CNN , Euro News, Other TV Channel (Q3) Morning Star, Herald/Scotsman/Daily Record , Any regional local paper (Q4), the Sunday Herald , Weekly Magazines, Other weekend\weekly newspaper Magazine (Q5), TalkSport, Other radio station (Q6), Google News/Yahoo news /MSN news, blogs, other websites (Q7)

Annex 2

Summary of representations

A2.1 In total, we received 126 responses to our invitation to comment, comprised of 22[x] from organisations and 104 from members of the public. Two submissions from organisations consisted of collations of messages from individuals (around 58,500 in total).

A2.2 We summarise below the representations we have received. Some of these responses were in part or entirely confidential.

Organisations

Sky

A2.3 Sky provided a submission to Ofcom's Invitation to Comment, along with an appendix containing a copy of Sky's statement of 15 June 2010 regarding News Corp's proposal. [✂]

A2.4 Sky stated that, because an offer from News Corp could be in the interests of Sky shareholders in the future and that obtaining any necessary merger clearances would facilitate such an offer, it had agreed to co-operate with News Corp in seeking those clearances.

A2.5 Sky stated that:

- it considered that an offer from News Corp could be in the interests of Sky shareholders in the future, noting that the prevention of such an acceptable offer would be adverse to those interests.
- it wished to ensure that no precedent was set which would unduly restrict any merger or acquisition opportunities which may be available to Sky.

A2.6 Sky stressed that the investigation should be properly focused on the question before Ofcom (with submissions from commercial competitors being treated with 'due scepticism') and conducted in a manner which was mindful of the need for transparency and predictability in merger control, so as not unduly to undermine the ability or incentive for companies to expand, invest and innovate.

The scope of Ofcom's investigation

A2.7 Sky noted two boundaries to the scope of Ofcom's investigation, namely:

- that Ofcom is required to investigate the impact of the proposed acquisition on media plurality rather than competition (which is a matter which falls to the European Commission).
- that the investigation is limited to the impact of the proposed acquisition on existing levels of plurality

[x] In the version of this annex provided to the Secretary of State on 31 December 2010, we indicated erroneously here that we received a total of 127 responses and that 23 organisations had submitted representations on this case. This version gives the correct information, already provided in paragraphs 1.6 and 2.5 of the main report.

Without these boundaries, Sky believed that there was a risk of the media plurality provisions operating without clear and objective criteria, and undermining the incentives of operators to expand, invest and innovate.

A2.8 In relation to the first of these boundaries, Sky stated that 'any intervention by the UK authorities in the present case on grounds of media plurality must be justified by reference to the need to protect the sufficiency of media plurality, must be reasoned, transparent and proportionate and must be consistent with the competition assessment of the transaction to be undertaken by the European Commission'.

A2.9 Any submissions alleging that the proposed acquisition may adversely impact competition in the provision of news or other content would concern "extraneous factors" which, in Sky's view, should not properly fall within the scope of Ofcom's investigation.

A2.10 Sky stated that the second boundary reflected the framework of analysis adopted by the Competition Commission in 2007, which considered whether the proposed acquisition could have an adverse effect on the plurality of news relative to the position absent the acquisition. The proper scope of Ofcom's investigation was therefore to investigate the extent of any impact on current levels of plurality that results from News Corp moving from owning a 39.1% shareholding in Sky to owning a 100% shareholding in Sky.

A2.11 Sky also urged Ofcom to take due account of the DTI Guidance, which suggested that the media plurality public interest provisions are intended to operate only "in exceptional circumstances" where such mergers give rise to "serious public interest concerns".

The scope of Ofcom's invitation to comment

Content types

A2.12 Sky submitted that no content types other than news were relevant for the public interest consideration, given the statutory framework and Parliament's intentions. The submission highlighted that in the Sky/ITV case, neither the Competition Commission nor Ofcom investigated the impact that transaction might have had on any content type other than national news.

Control of media enterprises

A2.13 Sky noted that it was appropriate for Ofcom to consider the potential impact on the proposed acquisition by reference to 'internal plurality'. The Competition Commission adopted this approach in 2007 and did not consider that the degree of "internal plurality" at ITV would be adversely affected by Sky's acquisition - therefore concluding that the sufficiency of plurality of persons with control of media enterprises servicing audiences for news would not be materially affected.

A2.14 In light of the Competition Commission's reasoning, Sky stated that if no material change to the degree of "internal plurality" at Sky would be expected as a result of the proposed acquisition, then there could be no expected reduction in the overall current level of plurality. Ofcom would therefore need to determine whether the degree of "internal plurality" at Sky would be adversely affected by the proposed transaction and, in particular, whether Sky News would cease to be an independent "voice" from News Corp in circumstances in which it operates within a strong culture of editorial independence across television news broadcasting.

A2.15 Sky drew attention to findings by the Competition Commission in the Sky/ITV case which indicated that Sky News (and television news broadcasting as a whole) retained a strong commitment to editorial independence. The submission further highlighted that the setting of Sky News' news agenda was carried out by the Head of Sky News and his editorial team, and that impartiality requirements would continue to apply (which the Competition Commission considered relevant in 2007).

A2.16 Sky also stated that it had invested in the operation of Sky News despite the unattractive returns available from such investments. This enhanced the overall attractiveness of the services Sky offers, meaning that the availability of Sky News to audiences was the result of a strong commercial incentive. This incentive would remain irrespective of a change in ownership of Sky, but it had the potential to be undermined if the operation of Sky News inappropriately or unduly restricted any merger or acquisition opportunities which may be available to Sky. Thus, a conclusion that the transaction would result in a loss in plurality could, in Sky's view, increase the risk of that very situation.

Audiences and media platforms

A2.17 If Ofcom determined that internal plurality could be adversely affected, then the investigation would then need to consider whether the proposed acquisition would adversely affect the sufficiency of plurality of persons with control of media enterprises to a degree which would result in "serious public interest consequences", "unacceptable levels of dominance" and a "significant reduction in plurality".

A2.18 Sky highlighted several findings made by the Competition Commission in 2007 in relation to this issue, including:

- that Sky News had a comparatively low share of national television news viewing;
- that whilst viewing shares and readership varied somewhat by socio-economic group, there were no fundamental differences in the significance of ITV, Sky and News Corp to particular sections of the UK population; and,
- that no more than 1% of the population (and quite possibly less than this) took news from ITV and Sky and/or News Corp, but from no other source.

A2.19 In light of these findings, Sky noted that Sky News' audience share remained small, and that alternative sources of news had risen considerably in prominence since the Sky/ITV case (particularly via the internet). Additionally, Sky argued that the percentage of the UK population who could be said to rely upon Sky News as such an independent "voice" (and who therefore would in practice suffer from a loss of plurality) would be extremely low.

A2.20 Sky also noted that the Competition Commission did not seek to aggregate either Five News or radio services receiving news content from Sky into Sky News' audience share in the Sky/ITV case, and argued that Sky's wholesale news arrangements did not afford Sky control of the setting of the news agenda of the end providers.

Future developments

A2.21 Sky agreed that a consideration of future developments would be relevant to considering the potential impact of the proposed acquisition on existing levels of plurality. However, Sky argued that it would not be appropriate for such an analysis to set a new benchmark for "sufficient" plurality based on Ofcom's views of how news provision might develop following, or in the absence of, any transaction. The correct counterfactual for Ofcom's analysis was said to be the existing level of plurality.

[✂] [A submission]

A2.22 [✂]

A2.23 [✂]

A2.24 [✂]

A2.25 [✂]

A2.26 [✂]

A2.27 [✂]

A2.28 [✂]

A2.29 [✂]

A2.30 [✂]

A2.31 [✂]

A2.32 [✂]

A2.33 [✂]

A2.34 [✂]

A2.35 [✂]

A2.36 [✂]

A2.37 [✂]

A2.38 [✂]

A2.39 [✂]

A2.40 [✂]

A2.41 [✂]

A2.42 [✂]

A2.43 [✂]

A2.44 [✂]

A2.45 [✂]

A2.46 [✂]

A2.47 [✂]

News Corp

A2.48 News Corp provided a submission to Ofcom's Invitation to Comment, along with two annexes containing reports from FTI Consulting and Perspective Consulting on media public interest considerations. [✂] All of these documents are summarised below.

Background to the parties and the transaction

A2.49 The submission outlined the operations (such as assets, revenues and organisational structure) of both News Corp and Sky. It noted that News Corp owned 39.14% of the shares in Sky, and was entitled to exercise 37.19% of the voting rights in Sky.

A2.50 The proposed transaction contemplated the acquisition by News Corp of Sky's shares it does not already own. After the implementation of the Transaction, News Corp would exercise sole control over Sky. The transaction would be implemented by way of a public offer or court approved scheme of arrangement.

A2.51 News Corp outlined the rationale for the transaction, noting that it would present an opportunity for News Corp to achieve financial consolidation for a company with which it has been closely associated for a long time, and which is mainly active in a sector that constitutes a core business for News Corp.

A2.52 News Corp highlighted that the proposed acquisition would (amongst other things):

- allow News Corp to diversify the geographic scope of its activities by acquiring a significant presence in two territories (UK and Ireland) where News Corp's activities in the TV sector were rather limited; and,
- allow News Corp to diversify its sources of earnings by consolidating a business whose earnings were less dependent on advertising than other News Corp activities (more linked to subscription fees paid by TV viewers)

Legal framework: relevant public interest consideration and sufficiency of plurality

A2.53 News Corp stated that the scope of Ofcom's report was limited to plurality concerns. This did not include third party submissions which suggested that the transaction would have detrimental effects on competition, as such theories were 'unsubstantiated and are based on hypothetical assertions of what "may" or "might" occur'. These submissions would, in News Corp's view, fall under the exclusive competence of the Commission.

A2.54 The submission noted the Competition Commission's approach to the Sky/ITV case, and suggested an analysis of plurality that included:

- a qualitative assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality;

- a focus on the provision of news – although any wholesale activities which did not confer control over the editorial policy of a third party were deemed not to be relevant to the public interest consideration; and
- in terms of audiences, the proposed transaction could only conceivably affect a cross-media audience, if at all; socio-economic groupings were suggested not to be relevant audiences for statutory purposes.

A2.55 Therefore, after establishing what would qualitatively change post-transaction, compared with pre-Transaction in respect of the provision of news to a cross-media audience, it would then be necessary to assess whether or not that change would result in insufficient plurality in the UK.

The relevant public interest consideration

A2.56 News Corp noted that the Competition Commission's approach to conducting an assessment of the sufficiency of media plurality in 2007 was accepted and followed by the Secretary of State.

A2.57 The submission highlighted one particular aspect of the Competition Commission's approach which was ultimately endorsed by the Court of Appeal – namely that when assessing the plurality of the aggregate number of relevant controllers of media enterprises and considering the sufficiency of that plurality, the actual extent of the control exercised and exercisable over a relevant enterprise by another can and should be taken into account.

A2.58 News Corp stated that it should not be necessary for Ofcom to re-open the debate in areas where the Competition Commission has already made clear findings.

Plurality requires an assessment of the range and number of voices

A2.59 News Corp noted the approach of the Competition Commission and findings of the Court of Appeal, which confirmed that an analysis of plurality involved more than an assessment of the number of controllers, and instead encompassed an assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality.

A2.60 The submission stated that the provisions of section 58A(4) and (5) of the Enterprise Act meant enterprises may be treated as ceasing to be distinct if there is a change in the quality of control, but did not preclude additional qualitative analysis. It was therefore necessary for the Secretary of State to consider to what extent the transaction would change the status quo ante (whereby News Corp had a degree of control of Sky), so as to create a situation of insufficient plurality.

Focus of analysis should be news

A2.61 News Corp said that the Competition Commission had decided in Sky/ITV that the best metric to assess the range of information and views presented to the public (and to assess plurality) was the provision of news.

A2.62 News Corp argued that consideration of other types of content provision would not assist in assessing plurality and other content types should be should be regarded as irrelevant to a plurality analysis.

Wholesale supply of news content is not within the scope of the legal consideration of sufficiency of plurality

A2.63 The submission stated that the Secretary of State would be required to consider only the plurality of persons with control of media enterprises, and noted that (as per the Enterprise Act) an enterprise is a media enterprise if it "consists in or involves broadcasting". A "media enterprise" would therefore not be one which consisted in or involves the provision of news content or services to broadcasters.

A2.64 This approach was said by News Corp to be logical and consistent with the overall regulatory framework, where the focus is not on the provider of content but on the owner of channels and programming and editorial control.

A2.65 News Corp therefore believed that activities of Sky or News Corp in relation to the supply of raw news content to third parties which did not confer control over editorial policy were not within the scope of the public interest consideration. This encompassed the supply of news services to both Channel Five and those commercial radio stations who were customers of IRN.

Relevant audiences

A2.66 News Corp stated that the concept of an "audience" for a particular media outlet should be based on those people who are exposed to the views and opinions of that media outlet and could therefore be impacted by any alteration in its presentation of the news. For a merger between a newspaper enterprise and a TV broadcaster the relevant audience was said to be necessarily a cross-media one.

A2.67 The submission said that for statutory purposes, socio-economic groupings or regions or "nations" of the UK were not themselves audiences, citing the Competition Commission's conclusion that that there were no fundamental differences between these groupings in the Sky/ITV case. The FTI report demonstrated that the same conclusion could be drawn in regard to the proposed transaction.

A2.68 News Corp stated that the only audience for whom plurality could conceivably be reduced as a result of the transaction was a cross-media audience. The number of controllers of television news broadcasters would not be reduced. Neither would the number of controllers of newspapers.

A2.69 Thus the only context in which the number of controllers of news sources for any audience would conceivably have reduced would be examining an audience's consumption of news across multiple media, taking into account exposure to both television news and newspapers.

"Sufficiency" of plurality for relevant audience pre and post-Transaction

A2.70 News Corp said that there was no indication that Parliament considered plurality to be insufficient at the time of the Communications Act. Therefore it would be legitimate to assume that intervention on plurality grounds would only be appropriate where a transaction reduced plurality to a level materially below that when the legislation was introduced (i.e. 2002).

A2.71 The submission stated that today's 'rich and diverse media environment' meant it could not be established that the transaction would give rise to serious public interest concerns.

A2.72 News Corp noted that the Competition Commission had treated Sky and News Corp as a single enterprise in the case of Sky /ITV. It found that Sky had acquired material influence over ITV, yet still concluded that sufficient plurality remained for both for a TV audience and a cross-media audience. News Corp said that a cross-media audience would have access to a wide range of sources (including TV, radio, newspapers, magazines and online).

A2.73 News Corp concluded that it was extremely difficult to see how a transaction which did not involve ITV and only involved a change in the quality of control between two enterprises which were previously deemed to form a single enterprise could have any adverse impact on the sufficiency of plurality for any audience within the UK.

Editorial influence over Sky News

A2.74 News Corp drew a distinction between the degree of News Corp's control over Sky's commercial policy and whether such control would result in influence over the editorial policy of Sky News. The two concepts were said not to be aligned, a conclusion which the Competition Commission and Court of Appeal had reached in Sky/ITV.

News Corp's existing control over Sky

A2.75 News Corp said that it already had a degree of commercial influence over Sky which resulted in "control" for Enterprise Act purposes. This had been recognised by a number of UK authorities during the Sky/ITV case (the OFT, Competition Commission, Ofcom and the CAT).

A2.76 The submission stated that a number of factors highlighted the relationship between News Corp and Sky, namely:

- Shareholding - News Corp was a founding shareholder of Sky, had remained its major shareholder since it was listed, and currently was the largest shareholder by far (with the next major shareholder holding only 5.02%).
- News Corp's position on the Sky Board – there had always been (since the public listing) between four and five directors on the Board of Sky affiliated with News Corp. The position of Chairman has been occupied by Mr. Rupert Murdoch and Mr. James Murdoch.
- [✂]

Commercial influence and editorial influence

A2.77 News Corp stated that, despite its degree of control over Sky, it did not exert editorial influence over Sky News.

A2.78 The submission argued that the Court of Appeal judgement meant that one could not assume that commercial influence necessarily translated into editorial influence. Therefore, increasing News Corp's level of control to full legal control would not translate into the loss of Sky News' editorial independence.

A2.79 News Corp said that the Competition Commission had recognised the independence of Sky News in the Sky/ITV case.

A2.80 Editorial decisions were not subject to alteration as a result of the change of a shareholders' level of commercial influence in News Corp's view. The submission noted that the Competition Commission report in the Sky/ ITV case had confirmed that editorial decisions in TV news broadcasting were not taken at board level.

A2.81 News Corp stated that the proposed acquisition would not jeopardise the editorial independence of Sky News because:

- Sky's editorial policy was not a matter for Board determination (to date, editorial policy had not been a debated issue at Board level);
- despite its commercial influence over Sky, News Corp had not sought to influence the editorial policy of Sky News;
- the Sky News editorial directors were experienced individuals with expertise to manage and direct the editorial policy of Sky News;
- there was no evidence that independent directors had had to "defend" the editorial policy of Sky News against influence by News Corp executives; and
- News Corp had no special arrangements with Sky News which would confer on it control over editorial policy.

A2.82 News Corp also highlighted the importance of broadcasting impartiality requirements, which the Competition Commission had noted reduced the scope for influence over editorial decisions on TV news by owners. Sky News could not, for example, favour one particular party line, or it would risk losing its licence. This was contrasted with the position regarding newspapers.

A2.83 News Corp concluded that its ability and incentive to influence the Sky News editorial agenda would not be affected by the proposed transaction and that the current situation was likely to continue. The editorial independence of Sky News would not be jeopardised following the transaction, and there was no evidence to support the assertion that it would be.

Impact on setting of the news agenda

A2.84 News Corp highlighted the DTI's Guidance, which stated that the plurality analysis involved the assessment of the ability to "influence opinions and control the agenda". In relation to the latter point, the submission stated that two conditions would have to hold for the transaction to influence or control the wider news agenda, namely:

- News Corp would need to be able (and have an incentive) to exert control over the Sky News agenda; and,
- this would need to lead to significant changes in the wider news agenda.

News Corp did not consider either condition likely. The analysis in this section was explained in further detail in the Perspective report (detailed below).

Sufficient plurality post-transaction

A2.85 News Corp stated that even if Ofcom assumed that there would be a "head count" reduction in the number of voices for a cross-media audience, it must go on to consider whether that reduction will result in insufficient plurality for any relevant audience. To do this, Ofcom must consider:

i. how to measure the variety of voices available to each audience; and
ii. what the transaction changed (if anything)

A2.86 News Corp noted that Competition Commission analysed the sufficiency of plurality for television audiences and cross-media audiences in 2007 and had no concerns. Plurality had increased since that time, meaning that the 'only reasonable conclusion' was that the proposed acquisition would not lead to insufficient plurality for any audience in the UK.

A2.87 The grouping of particular individuals within the UK population who relied only on news content from Sky News and News Corp was said to be minimal (0.3%).

A2.88 The FTI report indicated that the level of plurality in the provision of news to UK audiences across different media platforms was increasing, in terms of both the number of voices and the range of voices. Penetration of digital TV and broadband was high, as was the number of TV channels available.

<u>News provision</u>

A2.89 News Corp stated that these changes had increased the availability of a wide number of voices. There were far more TV news options to the UK audience over and above the traditional PSBs. The number of voices in newspapers and magazines had not materially increased but nor had it materially decreased (although it was noted that this medium was becoming less important as a source of news).

A2.90 The submission argued that the internet had had a transformative effect on news plurality as a means of accessing multiple news sources:

- there had been an 'explosion' in the number of online news sources (675 UK news websites)
- the internet increased plurality in news reporting adding to conventional/offline news sources/providers (for example, news aggregators presented a vast range of sources to their audience, including many they would otherwise likely never come across).

<u>News consumption</u>

A2.91 Developments in news provision were said to be accentuated when considered alongside trends in news consumption:

- News Corp stated that it was easier for consumers to access multiple sources of news (most consumers used 4-5 sources daily across 3-4 different platforms).
- Although TV was the most popular medium for accessing news, News Corp noted that Sky News accounted for just 6% of TV news consumption.
- Circulation of print media was noted as being in long term decline.
- Proportion of people listening to radio was up, while total time listening was down.
- The internet was, according a recent Mintel report, the second most important source of news with around 46% of UK population using it regularly.
- Time spent watching TV news and consuming news on the internet were about equal

A2.92 News Corp highlighted that online news consumers tended to use a high number of news sources. Therefore as the internet became an increasingly important source of news, News Corp expected that an increasing proportion of the population would be regularly exposed to a wide variety of "voices".

Sufficient plurality post-transaction

A2.93 The transaction would not, in News Corp's view, detract from the high degree of variety and range of voices available to a cross-media audience which 'comfortably meets the criteria of sufficiency of plurality'. In particular:

- The importance of online as a source of news would continue to grow and so would the plurality of voices inherent in this medium, with News Corp / Sky having a 'diminutive share of voice';
- The number of TV voices would remain unaltered, and still be lead by the BBC and ITV;
- The number of radio news voices would be entirely unaffected; and,
- The number of newspaper voices would be unaffected (and in any event, the relative importance of print newspapers as was in long term decline).

A2.94 News Corp highlighted the FTI finding that only 0.3% of the population receive news only from Sky and News Corp. FTI also found that no socio-economic grouping or nation in the UK was disproportionately affected.

A2.95 News Corp argued that regardless of this finding, consumers could switch to different providers or expand their choice of sources. The potential availability of sources of news for this audience would be 'no different from the wide range and number of different voices available to the UK population as a whole'.

Conclusion

A2.96 News Corp concluded that there was no basis to conclude that the transaction 'would operate, or be expected to operate, against the public interest by way of any reduction in the plurality of enterprises serving any relevant audience in the UK'.

News Corp Annex I – FTI Consulting

A2.97 FTI researched the following areas:

- trends in news provision by provider by medium/platform;
- trends in news consumption by audiences by medium/platform; and
- differences pre- and post-transaction.

A2.98 The study covered the provision and consumption of news in the UK. FTI stated that in respect of consumption such consumers are defined as an "audience served by an enterprise". Socio-economic groupings or regions or nations of the UK are members of an audience. While such groupings are therefore not an audience per se, FTI also examined whether there are any key differences between the nations and demographic groupings.

A2.99 In respect of news provision, FTI examined news provision on TV, radio, the internet and the press. The study did not examine news provision in magazines in detail as these represented a minor source of news consumption and were not deemed of sufficient importance to be subject to sector-specific regulations in respect of ownership or content.

Key conclusions

A2.100 FTI stated that it was clear that the number of platforms and sources from which people take their news had increased during the past 3-5 years. Digital TV penetration stood at more than 92% and would reach 98.5% by the end of 2012 once digital switchover was complete.

A2.101 Around 75% of the population used the internet – this was expected to increase as the government (and private sector) addressed broadband "notspots". Radio listening (until recently when there was a rebound) and newspaper circulation had been on a consistently downwards trend.

A2.102 The internet was stated to be 'a cross-media environment [where] distinctions between traditional media blur'. FTI noted the vast range of services available, and suggested that this typified plurality in media.

Sufficiency of plurality

A2.103 FTI stated that the study demonstrated that there had been a significant increase in plurality of sources in news provision. Access to platforms had increased and FTI therefore concluded that the availability of this increased provision had also increased. It was noted that access could be expected to continue to increase.

A2.104 There had been no major changes in the provision of news on radio or in the press, and there was a sufficient number of voices in both sectors.

A2.105 Given the benchmark of the 2003 media landscape, and on the basis that since then there had been significant increase in the number and range of voices in news provision since then, FTI stated that it was 'axiomatic' to conclude that there was sufficiency in plurality in news provision on a cross-media basis.

A2.106 Overall, cross-media consumption had increased both in terms of number of providers accessed and number of sources used. FTI found:

- The plurality of cross-media consumption of news had increased in line with its increased provision;
- Press and radio were reducing in importance in the cross-media share of voice as both usage and user perceptions of their importance as news media had fallen;
- The internet was expected to continue to grow in importance in terms of time spent and usage;
- There was a shift in cross-media news consumption patterns towards the more plural environment of online;
- These trends were expected to continue as internet penetration increased; and
- In the media in which it has a presence, the BBC remained the leading player by a significant margin.

A2.107 FTI highlighted that the balance of usage (reach, number of outlets and time spent) and ascribed importance by consumers amongst the various media had been changing – a trend of reducing radio and press consumption, with TV remaining steady and online increasing.

A2.108 The study found the share of voice of each medium within the cross-media consumption mix to be changing. The weight remained towards the TV voice, with online voices increasing and radio and press voices in decline.

A2.109 FTI identified no fundamental differences between the significance of Sky and News Corp to nations and socio-economic groups.

Comparison of pre- and post-transaction

A2.110 FTI assumed a reduction of one voice at the cross-media level. The study argued that the loss of one voice could not be considered to be substantial given the range and number of such enterprises, and particularly given that the number and range of voices had increased since 2003. FTI said there was no changed within each of TV, radio and press.

A2.111 In the off-line cross-media environment, FTI stated that a reduction in the number of players by one could not be regarded as material, particularly as these sectors had many players and no concerns regarding the sufficiency of the number of voices.

A2.112 Sky had a relatively weak position in TV broadcast news, so the study did not consider that this reduction in headcount could have a material impact.

A2.113 FTI noted that online there were hundreds of news voices, along with several other players (primarily the BBC) that enjoyed a much stronger market position than Sky and News Corp.

A2.114 Sky was said to have a weak position in the cross-media environment, with a negligible share online and a low share in TV news (which was not expected to increase in the future, a digital penetration was already at a high level).

A2.115 News Corp was also said to have a weak position in the online environment. It held a strong position in press, but FTI stated that this medium was in decline in importance and had a decreasing share of the cross-media voices from a consumption perspective.

A2.116 FTI stated that the combined entity would not enjoy a strong position in TV, the most important news media from the consumer perspective. Its position would be strong in press, although the medium is in long term decline. In online its share would be around 6% and subject to competition from strong players and little expectation of increasing this share significantly.

A2.117 Based on this assessment, FTI concluded that the transaction would not materially reduce the range and number of voices in the cross-media environment and therefore that it would not have a material impact on the sufficiency of plurality.

A2.118 FTI also identified whether there were particular individuals within the UK who took news from Sky and News Corp and no other source. The study found that the proportion of the population that took news from Sky and News Corp was 4% excluding online and 6% including online. FTI found that the proportion of these groups that took news from no other source was negligible - 0.3% - (and lower than the proportion affected in the Sky/ITV case).

News Corp Annex II – Perspective Consulting

A2.119 Perspective were asked to consider:

- How the news agenda is in practice set in the UK market
- Trends in UK media plurality, and in particular news plurality, since the Communications Act of 2003

- How the UK market is likely to develop in the coming years.

Setting of the news agenda

A2.120 Perspective noted that TV news operates under a requirement of impartiality, but that this might leave a concern that a broadcaster might seek to influence opinion via choice of stories covered. The ability of a broadcaster to pursue an independent news agenda and to influence the agenda of other outlets was therefore a key consideration.

A2.121 Perspective focused on Sky News, as this outlet was subject to 'speculation that it might see a change in its output'.

A2.122 The report found that TV news operated under a range of practical constraints that would make it very difficult to alter the news agenda of a given outlet in such a way as to have material impact on plurality. In particular:

- Audiences have very particular expectations of TV news, encouraging similarity between outlets.
- Much of the TV news agenda is driven by events of the day and access to shared news gathering resources.
- Impartiality requirements act as constraints by influencing story choice as well as how stories are treated.
- For areas where plurality is most important (for instance, election coverage), it was 'inconceivable' that a broadcaster would choose not to provide coverage of a key story of the day, and impartiality rules apply once covering a story.
- TV news rooms have their own particular ethos, and imposing a newspaper approach would be difficult.

A2.123 Perspective stated that even if there were to be a change in Sky News' agenda following the transaction and that Sky News' output was altered, the combination of Sky and News Corp would still be most unlikely to materially alter the wider news agenda, for a number of reasons:

- There were numerous competitors of News Corp and Sky which were unlikely to become 'followers' of a news agenda. The BBC acted as a powerful independent voice; with secure funding, a substantial audience lead in each of TV, radio and online news; and a very high reputation with consumers.
- Sky News had only a 6.3% share of TV news consumption, suggesting a limited ability to influence third parties
- News Corp/ Sky News outlets did not represent a particularly important source of stories for other outlets. The Perspective Report demonstrated that newspapers were not the sole source of the stories they represent. An analysis of sources cited by Reuters indicated that Al Jazeera was as important as Sky News for that purpose.
- Consumers were increasingly consuming news from specialist and international outlets that are all the less likely to be influenced by a change in news agenda at one generalist, UK outlet.

Trends in plurality since 2003

A2.124 Perspective stated that there had been an increase in plurality since the enactment of the Communications Act, noting the effects of increased TV news provision through uptake of digital TV, the increase in online consumers and the rising importance of online news.

A2.125 As of 2009 TV remained the most important source of news for consumers, with the internet predicted to overtake newspapers. Perspective argued that this marked a shift from a media with less plurality of individual consumption to a media with more (since most consumers only take one newspaper, if any), and shift away from areas where News Corp and Sky were relatively strong to areas where they were relatively weak.

A2.126 Thus Perspective believed that plurality had risen appreciably since 2003, and News Corp and Sky's 'share of news voice' had fallen. This made it much less likely that the transaction in question would reduce plurality to the level of the market in 2003, and Perspective stated that it would 'seem unreasonable to reject a transaction that left plurality at a level higher than that that existed at the time the requirement was created'.

Future developments in the UK market

A2.127 Certain future developments in the UK media market were highlighted. Convergence was expected to continue with a focus on online platforms, leading to increased competitive intensity and plurality. Consumers were expected to be more active in searching for their own stories, as well as generating content themselves (e.g. through social networks), which would lead to greater plurality. Similarly, consumption via mobile devices was likely to increase, meaning more plural consumption would be more widely available.

A2.128 Perspective noted that this would result in a range of evolving approaches to capturing news. The different editorial demands of broadcast news and regulatory requirements meant TV and print newsrooms were likely to remain separate for the foreseeable future. Broadcasters operating in new media markets would place a central focus on audio and video news, with text and graphics in a support role, and so the 'culture' of the TV newsroom would be likely to remain central.

A2.129 The report stated that these trends pointed to a continuation of the increase in plurality and of declining 'share of voice' for News Corp and Sky. In Perspective's view, this made it hard to make the case for intervening in the market now to pre-empt a hypothetical future threat to plurality, given that the wider context is of generally increasing plurality and a weakening of the influence of News Corp and Sky.

Conclusion

A2.130 Perspective concluded that for each of the individual issues examined, the evidence suggested that there would not be a material impact on plurality, and that in aggregate across these issues the case was even stronger.

[✂] [A submission]

A2.131 [✂]

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A2.169 [✂]

BBC

A2.170 The BBC stated that it made an important contribution to news provision in the UK, but that it was imperative that a variety of other viable news providers also continue to exist to ensure plurality.

A2.171 The submission noted that the proposed acquisition would have the effect of combining two of the largest voices in the UK media. It highlighted that News Corp was the largest supplier of national newspapers in the UK, while Sky was the leading supplier of pay-TV wholesale and retail services in the UK.

A2.172 The BBC suggested that Ofcom should explore a number of issues when preparing its report, namely:

- A reduction in the number of entities setting the news agenda for the UK cross-media news audience (and, possibly, for particular socio-economic groups)
- The incentive and ability for News Corp to exert editorial influence over Sky's TV and radio news operations (both current and future), and align them with its national newspapers
- The potential impact of increased financial and other leverage (e.g. cross-promotion) between Sky channels and News Corp publications
- Future possible adverse developments in the UK newspaper sector as a result of the acquisition; and
- Future possible adverse developments in the provision of national television news as a result of the acquisition

Content types

A2.173 National news was the relevant content type to be considered for these purposes in the BBC's view.

Audience and media platforms

A2.174 The BBC stated that there were a variety of audiences – both by platform and by socioeconomic group – that would potentially be relevant to Ofcom's analysis.

A2.175 The BBC noted a number of points regarding relevant media platforms, namely:

- that television was the largest and most trusted source of news, cited by 74% of the population as their main source. Sky News was the second biggest provider of TV news in the UK by hours broadcast and the third biggest provider by total hours viewed.
- that newspapers and radio were considered to be the next most important sources of news, with the BBC and Sky / IRN as the only two significant suppliers of national radio news in the UK.
- that the majority of people still rely largely on traditional sources of news and traditional news providers rather than the internet as a source of news (only 6% of people rated online as their main source of UK news in 2009)

A2.176 BBC Management had undertaken audience analysis which indicated that between 3.5 million and 5 million people (depending on the definition used to measure newspaper consumption) consumed news from both a national newspaper title from News Corp and Sky produced news (either Sky News or Five).

A2.177 Given this, the BBC felt that the transaction would have an impact on the plurality of national news providers available to:

- The audience for national news delivered by national newspapers
- The audience for national news delivered by television news, and
- The UK cross-media audience for national news.

A2.178 The transaction was considered potentially to have an impact on each audience as a whole and with respect to particular socio-economic groups within them.

Control of media enterprises

A2.179 The BBC said that whether there is a change in control for the purposes of media plurality relied on: (1) either the standard merger change of control assessment, or (2) whether there is an "actual extent of the control exercised and exercisable over a relevant enterprise by another". The actual extent of the control exercised was therefore deemed to be a factual question for Ofcom based on what it considered the likely outcome in the shift in ownership to be.

A2.180 The BBC believed that the proposed change to the relationship between News Corp and Sky would significantly change Sky incentives, indicating a risk of a resulting loss of plurality. The directors of Sky could operate solely for the benefit of News Corp, taking actions that advantaged News Corp newspaper titles, such as cross-promotion. News Corp would be able to appoint and dismiss all Sky directors, and in the BBC's view, the editorial staff of Sky News would be under the control or influence of News Corp.

A2.181 The BBC stated that it was important to consider whether the transaction allowed – either directly or through an 'understanding' of the interests of their common owner – an alignment of the choices each media outlet would make in deciding the news agenda and whether such an alignment would be detrimental to the interests of the various news audiences highlighted.

A2.182 The current impartiality regulations were not thought by the BBC to would prevent the news agenda of Sky's news outlets being influenced (either directly or indirectly) by the agenda of News Corp's newspaper titles to the detriment of cross-media news audiences. The submission highlighted that previous evaluations by both

Ofcom and the Competition Commission had concluded that the impartiality requirements does not on its own ensure a sufficient plurality of news.

A2.183 The BBC also believed that cross-promotion between Sky News and the News Corp newspapers could have a potential detrimental impact on competing news outlets and all news audiences.

Future developments in the media landscape

UK newspaper sector

A2.184 The BBC recognised that a strong and varied national newspaper sector is a vital component of news plurality in the UK.

A2.185 Independent forecasts were highlighted which suggested that national newspaper industry revenues from advertising are likely to reduce between 2009 and 2014, whilst circulation revenues could hold roughly steady in nominal term. News Corp was predicted to increase its share of national press circulation to more than 40% by 2014.

A2.186 The BBC stated that that having access to the revenue of Sky would strengthen News Corp's ability to grow its position still further, and that the proposed acquisition would give News Corp the ability and incentive to bundle its pay-TV subscriber base with newspaper and/or online subscriptions. Both of these outcomes would have potentially negative effects on other newspaper groups.

UK TV news

A2.187 The BBC believed that TV news programme supply in the UK is already concentrated, with only three significant suppliers of television news. It expressed concern that ITV and Channel 4 could change their news provider from ITN to Sky, noting that Sky participated in the tender process when the ITV News contract was last up for renewal (2008) and was likely to do so again at the next tender in 2012. There was an incentive for both channels to seek the cheapest high quality bid that they could, although in the case of ITV, this might be countered by an ownership incentive to continue to select ITN (in which it has a 40% stake).

A2.188 The BBC noted that under this scenario there would be a cross-media concentration of news supply covering the vast majority of commercial TV news, all national commercial radio news and a sizeable share of the newspaper market. The current cross-over of News Corp readership and news viewing on Sky News / Five News / ITV News / C4 News was estimated at between 7.5 million and 10.9 million.

A2.189 The BBC highlighted the Competition Commission's statement in 2007 that the loss of ITN as a competitor to Sky News could reduce the ability of other channels to provide an independent voice. Given this role, the BBC believed it important to consider a scenario where the proposed transaction increases the risk of ITN being 'damaged irreparably'. It was thought that the combination of the newsgathering activities of Sky and News Corp may strengthen Sky's position when bidding for the opportunity to supply news to ITV and Channel 4 in the future.

BECTU

A2.190 BECTU's submission indicated strong support for the principle of media pluralism as a necessary component of democratic society. Given the role of the media in reflecting and informing opinion, this ownership control was necessary over and above existing competition controls.

A2.191 BECTU stated that its concerns over the proposed transaction stemmed in part from the existing size and range of the media assets (both in the UK and abroad) already owned by News Corp. It said that this scale, coupled with News Corp's strategy for growth and the 'editorially-interventionist' approach of Rupert Murdoch meant the requirement for media pluralism in the UK would be breached if the proposed acquisition went ahead.

A2.192 BECTU did not accept the argument that increasing News Corp's stake in Sky from the existing level of 39% to 100% would make no difference. It highlighted that Sky currently had an existing independent editorial structure, independent directors and a different shareholding structure. Moving to 100% ownership would remove all such institutional barriers and independent interests, leaving Sky in the direct and immediate control of News Corp.

A2.193 BECTU argued that any reduction in pluralism risked undermining impartiality requirements as well, noting that a dominant media owner could exert significant and undue influence over which issues were covered and how they are prioritized. Lying behind these concerns were BECTU's views on the editorial preferences of News Corp - the 'rabidly right-wing' approach of Fox News, conservative leanings of News Corp newspapers and the interventionist approach of Rupert Murdoch.

A2.194 There was also concern that Sky could be successful in future bids for news provision to ITV and Channel 4, leaving only two providers of television news.

A2.195 BECTU believed that the proposed acquisition would allow News Corp the opportunity to cross-subsidise and cross-promote. Such actions would not merely be a competition issue but would also have implications for media pluralism, with a further potential narrowing of media and editorial choice.

A2.196 The submission rejected the argument that the rise in online news provision would offset any reduction in media plurality arising from the proposed transaction. Online bloggers were suggested to be subjective and focused more on commentary, lacking the resources to engage in significant newsgathering.

A2.197 BECTU was strongly opposed to the proposed transaction. It also noted suggestions that the acquisition could be permitted to go ahead in the event of Sky divesting itself of the Sky News channel. BECTU was unconvinced of this proposal, questioning whether Sky would not then simply seek to initiate a further news and current affairs channel raising the same concerns.

[✂] [A submission]

A2.198 [✂]

A2.199 [✂]

BT

A2.200 BT believed that the proposed acquisition raised serious media plurality issues and that it would be in the UK national interest for this issue to be reviewed by the Competition Commission.

A2.201 BT stated that the serious media plurality issue was that the proposed acquisition would vastly increase News Corp's ability to "set the agenda" for UK national life.

A2.202 BT was already concerned about the extent to which News Corp's "world view" was reflected in its newspaper titles. It highlighted extracts from the Competition Commission report on the Sky/ITV case which indicated involvement from Rupert Murdoch and News Corp in decisions relating to newspaper titles. The submission also gave other examples, including the widespread support from News Corp newspapers of the Iraq war.

A2.203 The submission acknowledged that News Corp did not have the means of controlling Sky's editorial policy, but said that after the proposed acquisition it would. BT believed this raised the risk that News Corp's "world view" would creep into Sky News. The submission stated that it was not reasonable to expect that internal controls would be sufficient to safeguard editorial independence. The loss of the independent Sky shareholders would allow News Corp greater opportunity to influence, tacitly or otherwise, the editorial coverage of Sky News and other Sky channels.

A2.204 BT also highlighted that the transaction would allow News Corp control of Sky's operational approach. This could include the consolidation of the news and current affairs operations of the different entities into a single infrastructure or the production o single subscription products.

A2.205 BT stated that the proposed acquisition would lead to a reduction in media plurality as a matter of law. It cited the Court of Appeal judgement of the Sky/ITV case, which considered the correct interpretation of the phrase "sufficient plurality of persons with control of ... media enterprises" in section 58(2C)(a). The effect of the judgment was that a change in the quality of control satisfies the test under section 58(2C) as to whether there is insufficient plurality of persons with control of media enterprises.

A2.206 BT highlighted that the merged entity would have absolute control over 67% of content to UK pay TV customers and be the leading commercial provider of TV and radio news and print news, controlling 37% of the newspaper market. No other media organisation would control so much of the UK's media assets across such a broad range of media.

A2.207 This extensive control over multiple media threatened plurality in BT's view because the merged entity, in particular through the consolidation of news and opportunities for bundling, would have an advantage over its competitors that it would be impossible to replicate, as a result of which one could expect a long term reduction in media "voices".

A2.208 BT also highlighted Sky's 'dominant and increasingly aggressive competitive position in the UK TV markets', which the submission suggested would in itself have implications for plurality. The proposed transaction would in BT's view reinforce Sky's dominant position in pay TV markets, and this would threaten the market position and the number of retailers and wholesalers of alternative views and opinions.

A2.209 BT also provided a copy of the submission it made to the OFT explaining why BT believed that the proposed acquisition by News Corp of Sky should be referred back to the OFT under Article 9(2) of the EU Merger Regulation.

Campaign for Press and Broadcasting Freedom

A2.210 CPBF believed that the proposed transaction would be a cross-media merger which would represent a transformative shift in UK media ownership and would have a considerable negative impact on media plurality. This impact would become more pronounced as Sky's operations became integrated into the overall global business and media operations of News Corp.

A2.211 The submission highlighted that Sky and News Corp were already the largest companies in their respective sectors. It noted that News Corp would be able to absorb losses in order to gain market share where other competitors would be faced to make significant cost savings in order to sustain margins. Sky's high revenue was also noted, with increases being attributed to a growth in subscriber base, bundling of products and Sky's marketing approach.

A2.212 CPBF outlined Sky's strong position in the provision of premium sports and movies on pay TV. It also highlighted acquisitions in other areas of programming (including the purchase of the Virgin Media TV portfolio), and Sky News' role as one of three TV news providers and two radio news providers.

A2.213 Citizens' access to information sources and opinions was said to be provided overwhelmingly through the media. Concentration of ownership could lead to viewpoints being excluded or under-represented, while media owners could use outlets as a means of lobbying politicians to pursue policies which suit those owners' political and commercial interests. CPBF stated that Rupert Murdoch's position in relation to successive UK governments demonstrated this point.

A2.214 CPBF rejected the viewpoint that the internet provided a diversity of news and information sources, suggested that citizens mainly accessed news stories by going to the online sites of traditional news outlets, or to news aggregators or search engines which rely on traditional news organisation sources.

A2.215 The submission noted that News Corp already owned more media in the UK than it would be permitted to own in the US and Australia. If News Corp was to acquire the remaining 60.9% of Sky it would move from a minority shareholder to full ownership and gain important financial advantages which would allow it to destabilise other UK media groups and therefore have a direct impact on plurality.

A2.216 CPBF gave examples of actions by News Corp which it suggested were aimed at weakening or destroying competitors, including Sky's acquisition of ITV shareholdings in 2007 and recent critical comments relating to the BBC.

A2.217 Several potential policies if the transaction was permitted were highlighted which would have a 'deeply disruptive impact':

- Greater opportunity to influence the editorial coverage of Sky News and the content of other Sky channels, with the selection of news stories or the cross-promotion of stories from other News Corp sites to introduce indirectly particular viewpoints and issues.
- The cross-promotion of stories from News Corp titles on Sky and vice versa would 'inevitably happen', resulting in the merging into one stream of fact and opinion, to the detriment of plurality.
- Products currently offered separately by Sky and News Corp could be bundled, discounted or provided without charge. Other groups without such assets would find it difficult to compete with this practice.

A2.218 The submission referred to the concept of 'infocapitalists' (identified by Manuel Castells) who build 'self-reinforcing networks of business and political power by owning the production of information and knowledge'. CPBF submitted that the expansion of News Corp's cross-media presence through the proposed Sky acquisition was an example of this process.

A2.219 CPBF urged Ofcom to consider the 'vital issue' of journalistic standards. The submission suggested that journalistic endeavour was subordinated to News Corp's own national and international political or commercial considerations. It stated that 'a process of self-censorship' resulted in News Corp journalists avoiding subjects which contradict the views and interests of their owner, and that the influence of News Corp newspapers was used to persuade politicians to pursue policies which furthered News Corp business interests and to excoriate those which don't.

[✂] [A submission]

A2.220 [✂]

A2.221 [✂]

A2.222 [✂]

A2.223 [✂]

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A2.233 [✂]

Church of England

A2.234 The Church of England welcomed the inquiry and said that the vitality and plurality of the media was essential to the maintenance of a well-informed democracy. It was noted that there was an ongoing need for strong and effective regulation of cross-media ownership and media plurality, with no diminution in the range of views and voices that could hold government and other interests to account.

A2.235 The Church of England was not concerned about the nature of News Corp, but was concerned that a combined entity would comprise one of the three significant suppliers of TV news (BBC, ITN and Sky), one of the two suppliers of radio news (BBC, Sky) and the group with the biggest market share of national press in the UK, thus dominating both the television and newspaper landscape.

A2.236 The submission highlighted that Sky News demonstrated innovation and quality in its journalism, and that it had been influential in political debate despite its relatively small audience. The Church of England believed that News Corp could exercise subtle editorial influence if the transaction were permitted, including through selecting which news items are to be covered and which left out.

A2.237 If the bid were to be allowed, the Church of England suggested that an assurance be sought that the independence and editorial integrity of Sky News would be preserved.

Enders Analysis

A2.238 Enders Analysis provided Ofcom with three documents: an updated version of the analysis submitted on a confidential basis to the Secretary of State in July 2010, a document addressing Issues 4 and 5 of Ofcom's invitation to comment and a report by Charlotte Brewer, Professor of English Language and Literature at Oxford University, on the meaning of the word 'plurality', which was amended on 12 December 2010.

Updated submission to Secretary of State

A2.239 The submission examined the proposed transaction's potential effects on 'plurality' in the UK in the context of the UK TV and newspaper markets.

UKTV market

A2.240 The UK TV market totalled approximately £11.11billion in 2009, and comprised three significant sources of revenue: the licence fee (24%), advertising (27%) and pay subscription revenues (43%). The remaining 6% came from a variety of other sources, including global programme sales.

A2.241 Enders noted the position of Sky as the UK's leading supplier of residential and business pay TV services, and also supplies residential telecommunication services.

A2.242 The submission said that Sky had acquired growing economic significance in the UK TV market due to the surge in pay revenue in recent years. In contrast, the revenues from TV advertising that fund commercial PSB operators were relatively flat between 2004 and 2008 before plummeting in the recession, while the BBC's licence fee income has risen but at a lower rate than pay TV.

A2.243 Between 2009 and 2014, Enders expected pay TV revenue to continue to show strong growth, rising from £4.75 billion to £6.4 billion, and accounting for over 70% of the projected increase in overall TV revenues. Structural change and a continued weak economic environment pointed to limited nominal annual average growth of about 2% over the next four years for TV advertising (i.e. to 2014) – in real terms a significant decline of around 20%. Meanwhile, a significant reduction in the licence fee funding allocated to the BBC's TV service was expected as a result of the spending review.

A2.244 The surge in Sky's pay revenues was attributed to a two-pronged strategy of expanding the number of subscribers and selling more products and services to each subscriber, thus lifting annual revenue per user. Sky pay TV subscriber growth had been assisted by very high levels of promotional spend. In addition, upfront costs to the Sky customer, chiefly installation and the Sky+ box, had been reduced and were nil for certain packages

A2.245 Enders noted that to spur product adoption, Sky had announced that it would provide HD capable boxes as standard equipment to new subscribers to enable an upgrade to HD without having to replace their set-top box. For Sky, this eliminated the incremental set-top box subsidy when a customer decides to upgrade, making it more difficult for new entrants relying on the sale of set-top boxes to engage the customer in paying for their services.

A2.246 Enders also noted that Sky has been cross-selling telecoms services to pay TV subscribers since July 2006, when Sky broadband launched.

Sky's broader TV activities

A2.247 Enders stated that Sky's activities and its ability to influence other players in the market extended well beyond its core pay TV retail operations into other areas, namely:

- News provision - Sky News was one of three substantial providers of UK TV news, supplying its own channels and also Five, while Sky News and the BBC were the only two suppliers of news for UK national radio.
- Freeview presence - Sky had three free-to-air channel feeds on Freeview, with a current offering of Sky News, Sky 3 and Sky 3+1.
- Advertising sales – Enders estimated that Sky would account for approximately 14% of UK TV advertising sales through its airtime sales house, making it the third largest group, and that this was expected to rise.
- Third party channel provision – the submission stated that Virgin Media's withdrawal from content ownership put Sky in a 'commanding position' over the market for pay channels, including third party basic channel carriage fees. Sky was said to be able to dictate terms that allow its third party channels to be viable, while at the same time offer other non-PSB channels incentives to stay exclusively on the pay TV platform. Enders understood that Sky was in the process of consulting on its EPG, the result of which could further strengthen Sky's position in relation to other parties.
- Premium sports and films – Enders stated that Sky occupied an 'uncontested position of dominance' in the provision of televised sports in the UK, reflected in its budget of over £1 billion for this programming segment (out of £1.9 billion total) in 2010. The submission also highlighted the strong investment of Sky in films, although noted that this was decreasing. The decrease in investment was said to be a result of Sky's market power as a wholesale purchaser, able over time to negotiate successively lower fees as the film contracts become due for renewal.

UK newspaper market

A2.248 The UK national press market was worth £4.1 billion in 2009 according to the Advertising Association, and comprised two significant sources of revenue: consumer purchases of newspapers (62%), and advertising (38%). Structural changes in the advertising market combined with cyclical pressures had reduced newspaper industry revenues from advertising, forcing greater reliance on consumer purchases.

A2.249 News Corp's market position was noted, with its newspapers accounting for over 37% of national newspaper circulation in the UK (the same share as the two next competitors, Trinity Mirror and Daily Mail and General Trust combined). Enders highlighted that News Corp has been slowly gaining share in the UK national newspaper market.

A2.250 Enders' view was that, despite some strong growth in advertising in recent months, the long-term pattern for the newspaper industry in aggregate would continue to be a decline in advertising in real terms due to structural factors, exacerbated by over-supply. The submission projected national newspaper industry revenues from advertising to compress by about 6% between 2009 and 2014 due to ongoing substitution of advertisers for new media, whilst circulation revenues could hold roughly steady in nominal terms.

A2.251 Enders predicted that News Corp's share of national press circulation would steadily increase to more than 40% by 2014, assuming there were no material supply changes to the market. It was considered 'inevitable' that organisations able to absorb losses would gain market share over those that were forced to make significant cost savings to sustain margin.

News Corp strategy

A2.252 Enders stated that News Corp had a history of discounting cover prices to grow market share and reduce circulation decline. Purchasing the outstanding Sky shares it did not already own would provide News Corp with the financial resources to sustain its newspapers for the very long term. News Corp would also be able to experiment with media discounting and bundling in a much broader manner. These strategies could 'severely upset the competitive landscape to the detriment of competitors'.

A2.253 The submission also suggested that that free editions and press and digital bundles for households could become critical developments for News Corp's UK operations as a whole in the future.

A2.254 Enders also highlighted growing problems in newspaper distribution, noting that those publishers which were best able to absorb steep cost increases and overcome distribution challenges (such as News Corp) would clearly be better positioned to survive.

A2.255 The submission stated that another core feature of News Corp's strategy was to market its titles aggressively through advertising.

A2.256 Enders emphasised the importance of display advertising to newspapers, noting that the main challenges to display advertising categories were over-supply of titles and inventory. In this environment, the strongest titles would gain further market share, as some lesser titles fall off the roster for an increasing volume of campaigns.

A2.257 The submission also considered that online news subscriptions may play an important role in determining the pace and scale of business model development. However, it highlighted the early difficulty which had faced the Times Online following its move to a paywall system, and speculated whether the Times may adopt a different strategy in the future. This could include aggregating services sourced from a variety of different assets and media, and so offering bundles.

A2.258 Enders outlined the relative size of major competitors to Sky and News Corp, separating the companies into three groups: multi-product, TV and newspapers. Sky and News Corp were already the largest companies in their respective sectors (in terms of adjusted consumer revenue) and following the acquisition, the combined group would have annual revenues in the region of £7 billion.

The potential impact on plurality

A2.259 Enders noted that UK governments and regulators had consistently maintained that a healthy and informed democratic society required media 'plurality'. In Enders' view, this required there to be a significant number of broadcasters (radio and TV) and newspapers designed to appeal to 'a wide variety of tastes and interests'.

A2.260 The submission noted that impartiality was distinct from plurality, referencing Ofcom's conclusion in 2007 that the broadcasting code requirements were not designed to remove the ability of broadcasters to set the agenda by selecting the issues and events that were covered.

Implications on media plurality of the proposed News Corp transaction

A2.261 Enders stated that News Corp already owned more media in the UK than it would be permitted to own in the US and Australia. If the proposed transaction were permitted, News Corp would gain financial advantages which would improve its ability to compete, notably in the newspaper market (noting the weak position of most newspaper publishing groups).

A2.262 The submission stated that the group would acquire several important new strategic opportunities, namely:

- The ability to take Sky and News Corp products and combine them in bundles, discount them or provide them without charge. Enders believed that strategic initiatives of this nature could lead to a much more rapid decline in competitor newspaper circulations than we have assumed, boosting News Corp's newspaper market share above 40% by 2014.
- The ability to cross-promote - stories from Sky News could be carried more and more frequently on News Corp websites, while links to newspaper stories could appear at the bottom of the Sky News screen. The submission stated that 'progressively, News Corp papers and Sky channels, particularly Sky News, may merge into one stream of fact and opinion', noting that plurality would decline in this situation, even if the combined organisation continued to maintain nominally separate newsrooms.
- A greater opportunity (through the loss of the independent directors) for News Corp to influence, tacitly or otherwise, the editorial coverage of Sky News and other Sky channels. Enders said that this concern was heightened by Mr Rupert Murdoch's position as a 'traditional proprietor' of certain media properties, exercising editorial control on key policy debates or political events.

A2.263 Enders rejected the argument that that the widespread availability of other news outlets, especially online, protected the UK public and its political leaders against the excessive influence of media proprietors. The submission argued that Newspapers and TV news programmes still provide the bulk of news gathering operations in the UK, rather than independent online news sources.

A2.264 Enders stated that the link between endorsement and voting intentions was not necessarily important. The crucial point was that newspapers and TV affected citizen perceptions of political and economic life by deciding which stories were most important and how information, analysis and personalities were portrayed to their audience. Similar issues were said to apply to coverage by Sky News and/or News Corp's titles of product launches and pricing innovations from competitors.

A2.265 The submission said that in this context, regulatory control of strong and increasingly powerful companies such as Sky was central to maintaining the conditions of competition on the relevant markets. Enders noted, however, that the that the process was 'challenging, expensive and time-consuming for Sky, its competitors and the regulator'.

A2.266 Enders noted that if Sky were to win the ITV contract from ITN, ITN would have to dramatically reduce its costs and news gathering operations, potentially leading to a duopoly of TV news provision.

A2.267 The submission stated that there was little evidence to date that IPTV would provide a threat to traditional TV. While about 72% of UK households were on broadband, online video consumption accounted for just 2% of all minutes viewed per day. Consequently, Enders continued to anticipate no material challenge to Sky from the Internet space in the next five years.

Conclusion

A2.268 Enders concluded that there was a risk of a material reduction in media plurality, potentially to an unacceptably low level. It considered that the intervention was particularly timely as the leading positions of Sky on the UK TV market and of News Corp on the UK newspaper market would strengthen in the period to 2014.

Issues 4 and 5 of Ofcom's invitation to comment

Control of media enterprises

A2.269 In Enders' view, News Corp exerted 'material influence' over Sky via its shareholding of 39.1%. This was established by the Competition Commission in its report issued in December 2007 on the purchase of ITV shares by Sky.

A2.270 The submission further stated that the proposed acquisition by News Corp of the shares in Sky it did not already own would shift the latter's degree of control over Sky from 'material influence' to 'control'. This would imply the loss of any independent Sky shareholders, and the loss of the independent directors of the company, which also exerted some degree of influence over Sky, in addition to News Corp, its existing principal shareholder. Full ownership could lead to proprietor intervention.

A2.271 Enders stated that a methodology for quantifying the amount of plurality before and after a transaction to ensure an intellectually robust assessment of the impact of a merger. However, it was noted that there was no consensus on any such methodology.

A2.272 To this end, Enders assessed the loss of plurality implied by the proposed acquisition by measuring the anticipated changes in news supplier shares of adult viewing / reading / listening of national news combined. The submission outlined the assumptions and approached used for this assessment.

A2.273 The key conclusions of this assessment were:

- The average person is exposed to news for about 60 minutes a day. About half the time spent is occupied by newspapers and slightly less than half is TV. Radio, internet news sites and news magazines were much less important.
- The BBC provided about 34% of all news exposure, via its broadcast and online activities (no print media), News Corp had a 17% share.
- Merging the Channel 4 audience share with that of ITN, and the Five audience share with that of Sky News, yielded adjusted audience shares. After this adjustment, we the top four suppliers of news had a share of about 71% of all news consumption, and the UK had 10 separate companies each providing more than 1% of all news seen or heard by its adult citizens. Cross-media news concentration was therefore stated to already be high.
- Assuming the transaction was completed, the share of news consumption combined from News Corp audience shares of 17% (newspapers) with those of Sky's TV, radio and Five audience (4.5%), takes the new entity's share up to about 21.6% of UK news consumption. Other providers remain the same.
- The transaction increases the share of the top four providers of news to 75% and reduces the number of providers with more than 1% from 10 to 9.

A2.274 We received an updated analysis on 12th December 2010 correcting a number of issues with the original submission on minutes of news use. This new analysis showed:

- Average minutes of news use, per head per day increased to 70 minutes
- The BBC accounted for 39.3%, ITV had 6.7%, and Channel 4 had 7.7%.
- News Corp had a share of 14.6%, while Sky had a share of 7.4%.
- Enders estimated that the merged entity, including News Corp and Sky's TV, radio and Five News audience would account for 22.7%.

A2.275 Enders said that the previous Competition Commission and Ofcom investigations noted the increased penetration of News Corp and Sky offerings among people in the C2DE demographic group, and said that this would probably still be true today. The submission suggested Ofcom could assess the level of plurality in individual demographics.

A2.276 Enders also computed the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI rose from 1,793 to almost 2,000 after the transaction takes place, a measure of high concentration. The submission stated that 'plurality' was introduced into the Communications Act because competition law was not thought to be strict enough to protect consumers and citizens, but even on a standard competition measure, this transaction would create concern.

Further developments in the media landscape

A2.277 Enders forecast News Corp's UK newspapers market share rising from about 37.3% of UK national press circulation in 2009 to about 41.1% in 2015. Projections on Sky's subscribers and share of news viewing also indicated strong growth. Taken together, Enders believed that by 2015, News Corp's share of total consumption of news across all media could exceed 25%.

A2.278 The submission estimated that by 2015, if current trends continue, both Sky and News Corp's share of revenues in their respective markets would probably be 40% or more. These segments of the cross-media market were by far the most financially important, meaning that News Corp's overall share would likely be particularly high. Enders suggested that it would be, for instance, above the 30% threshold of the KEK method of analysis which German law used to assess transactions.

A2.279 Enders repeated concerns outlined in the submission to the Secretary of State (detailed above) relating to the position of ITN in the future.

Additional comments

A2.280 Enders also identified four ways in which the proposed acquisition could result in future loss of plurality. These issues were all separate and additional to the immediate loss created by the combination of the two companies.

A2.281 The deep interconnectedness of UK media meant that News Corp could influence the future course of all other media companies. The British media landscape was said to be dominated by a small number of firms. The submission listed some factors which it stated would make the industry more likely to suffer from 'co-ordinated effects', the tendency for the participants in a market to work together rather than to compete actively. These factors included shared production and distribution facilities, Sky's control of the satellite platform and Sky's status as an advertiser with other media groups. Enders stated that the degree of genuine diversity would therefore be lower in a market like this with such strong links between the firms.

A2.282 News Corp had far greater financial strength than other companies in the news market. Similarly, Sky had substantially greater turnover than other major companies in the TV market and this disparity was tending to widen. Enders suggested that the influence of Sky over the media scene was thus even greater than its share of news provision. Its ability to influence the evolution of the wider media market would affect the prospective degree of plurality in the offerings of news and comment.

A2.283 Sky's growing share of the total media market could lead to the ability to request its TV advertising customers to direct a portion of their spending towards News Corp newspapers, at the expense of other media.

A2.284 Similarly, Sky may be able to disadvantage non-News Corp newspapers by bundling its associated papers, either in paper or electronic form, into an offer to TV customers.

Additional comments on definition of plurality

A2.285 Enders' third submission focused on the definition of the word plurality. It noted the Court of Appeal's judgement, which found that the word 'plurality' could connote more than just a number exceeding one, possibly carrying an implication of range and variety as well. Enders stated that neither the Court of Appeal nor the Competition Commission provided a definition of what 'plurality' means, or indicated what a 'sufficient plurality' would be.

A2.286 Enders commissioned Charlotte Brewer, Professor of English Language and Literature at Oxford University to assess the meaning of the word 'plurality' in current UK usage. Her report analysed a number of dictionary definitions of the term.

A2.287 Professor Brewer concluded that there was 'an overwhelmingly strong presumption that, in common usage (in which I include Standard English, as used by educated people), a sufficient plurality is to be interpreted as 'a sufficiently large number or quantity or profusion". She stated that the only reason for thinking otherwise would be if those using the term gave explicit notice that they were attaching a specific technical sense to the term.

Goldsmiths Leverhulme Media Research Centre

A2.288 With reference to a 4 year programme of research into new media and the news, the submission argued that the full acquisition of Sky plc by News Corp would mark a significant limitation of the public interest, particularly in the area of news plurality.

A2.289 The research project aimed to investigate the impact of new media on the news in the UK including local and national news, commercial and public service broadcasting, print, broadcast and online, mainstream and alternative news.

A2.290 The submission stated that this research revealed that news media are in crisis:

- newspaper circulation and readership levels are at an all time low;
- there has been a tremendous growth in the number of news outlets available;
- a decline in advertising revenue combined with increased investment in new media technologies alongside staffing cuts have all had a negative impact on journalism.

A2.291 The response suggested that the role of journalists was changing, with fewer exchanges with sources and a greater focus on 'cut and paste, administrative journalism'. In this context, journalists were now monitoring and often rewriting other news stories, with the result being that stories were often covered from the same angles and different news organizations repeatedly present the same information in their stories.

A2.292 The submission highlighted that UK citizens predominantly used sites that were run by existing news providers, further asserting their dominance. Other popular websites were run by internet based organisations, either as news aggregators or by relying in the main on almost entirely on news agency reports. This meant that online voices would be dominated by the larger, more established news providers, leading to 'anything but increased diversity'.

A2.293 It was also noted that there was little evidence to support the view that the internet has been established as a primary source of news except for a very small minority. Moreover, the organisation of web search tended to send more users to the most popular sites in a "winners take all pattern".

A2.294 News Corp was highlighted as dominating national newspaper circulation, with strong growth expected in its market share. Further market strength was predicted come from cover price revenues, with News Corp having a history of discounting cover prices to grow market share and reduce circulation decline, which would help to protect it from the structural shift in ad revenue.

A2.295 Sky News was also noted as being one of only three television news providers in the UK. The submission stated that there was a danger that further market power could be used to diminish the ITN news provision, either by forcing ITN to cut costs to retain its contracts, or by Sky News successfully winning these news contracts itself. This would be far from the plurality of news providers expected.

A2.296 The submission noted that Ofcom had raised concerns about the position Sky held in the pay TV market, and indicated concern that this would be intensified should News Corp acquire full control of Sky (with associated cross-promotion and cross-subsidisation of services and products). Similarly, it also highlighted the attitude of News Corp towards the exit from the market place of competitors, suggesting that, when combined with substantial economic resources, this was likely to 'present a serious challenge to the future of news provided in the public interest'.

A2.297 The response concluded that despite the increase in media outlets, there was still a dominance of a limited number of players controlling news, information content and public debate. Plurality, in the context of a media environment in which News Corp is able to deploy the enormous revenues of Sky was likely to be further constrained.

Guardian Media Group

A2.298 GMG submitted that Ofcom should advise the Secretary of State that the Transaction may be expected to result in there being insufficient media plurality in the UK as a whole, and with respect to specific audiences in the UK, such that it may be expected to operate against the public interest. The submission covered concerns of GMG that were not covered adequately in that joint submission by Slaughter and May (see below).

A2.299 The proposed transaction would involve the integration of the UK's largest newspaper group with a the UK's dominant pay TV company, the UK's second largest commercial television news provider, the monopoly third party provider of news content for UK commercial radio and a significant provider of online news content. As such, in GMG's view, it would represent an unprecedented and unacceptable concentration of cross-media news interests.

A2.300 The submission noted the underlying policy behind the public interest assessment, highlighting that it was particularly focused on cross-media concentrations. In GMG's view, the change from a minority interest of 39.1 % to outright control would represent a material alteration of the relationship between News Corp and Sky that will have an impact on the companies' incentives and behaviour and thereby reduce plurality of the media to a level below the critical "minimum level" identified by Lord McIntosh.

A2.301 GMG also emphasised that Ofcom should attach particular importance to the need to ensure sufficient plurality in the provision of news by commercial providers, over and above the BBC.

A2.302 GMG considered that the transaction would reduce plurality across a range of content types, although viewed news as the key focus, given the strength of the merging parties in news provision and the importance of news plurality for the formation of opinion, for informing the terms of public debate and, ultimately, for the democratic process itself.

A2.303 The impact of the transaction should, in GMG's view, first be assessed on the basis of a UK-wide cross-media news audience. The submission also suggested that it be assessed by reference to its impact on narrower audiences, including the group of people who would be solely served by the combined entity (which Ofcom should seek to identify).

A2.304 GMG stated that the proposed acquisition would create a unique cross-media news provider, being the only UK media company providing national news content on television, in print, on the radio and online (which neither the BBC nor other news providers replicated). GMG submitted that Ofcom should consider the impact of the transaction on each of these platforms, as well as on cross-media news provision.

A2.305 GMG argued that 'external plurality' should be the focus of Ofcom's analysis, having due regard to the explanatory notes of the provision. The submission indicated support for the approach adopted by the Competition Commission in the Sky/ITV case, where the sufficiency of plurality was assessed qualitatively, by reference to the actual circumstances of the case. This would entail an assessment of editorial control, but GMG believed that such internal plurality would not ensure *sufficient* plurality in a situation where external plurality was not ensured.

A2.306 The UK media landscape was said to be in a state of flux. A combined News Corp / Sky would, in GMG's view, be uniquely well placed to influence developments in this sector, given its presence in content across platforms, and its role in providing platforms itself.

Specific GMG concerns

A2.307 The submission highlighted the strong status of Sky in TV and radio news markets, supported by its position in pay TV content and platforms. Similarly, News Corp was noted as holding a strong position in the newspaper market. A combination of the two would, GMG believed, account for 21 % of cross-media news consumption (the BBC providing 34% and DGMT 12%). Other commercial competitors were noted as being heavily reliant on one particular medium.

A2.308 GMG's believed that the group of people who took news only from News Corp and Sky may span a wide demographic and age range. The submission stated that a situation in which consumers of news content from a range of sources would be consumer only news originating from and controlled by News Corp would raise significant concerns over media plurality and the implications for democratic debate.

A2.309 GMG noted that were the transaction to be permitted, News Corp would gain full control and benefit of Sky's profit making ability. A merged business would have a strong incentive to offer consumers a bundle of Sky TV and a News Corp newspaper subscription, to the detriment of competitors. Given the fact that physical supply of newspapers often exceeded demand, GMG suggested that any diversion of readers to News Corp titles arising from such a bundling strategy would not lead to a material reduction in cost for the titles losing readers but would instead translate directly into greater financial losses for those titles. This could lead to a material weakening of competitors, or even exit from the market, reducing diversity and plurality.

A2.310 The submission highlighted that changes in the state of the media sector were leading to new business models being considered, often involving some form of paid digital content. News Corp had led the way in charging for general online news content through the use of paywalls. Overall revenues generated from the bundling of paid-for access to online newspaper content with other products, such as Sky pay TV, telephony and internet access subscriptions, could materially impact the viability of News Corp's paywall strategy. As the only mainstream newspaper group currently charging for general online content, only News Corp was able to put together such a bundled offering.

A2.311 [✂]

A2.312 Previous experience in relation to Sky subsidising set top boxes led GMG to expect a strategy in which devices were given away or sold cheaply to establish a user base that could then be exploited, at the expense of rival content sources.

A2.313 The potential adverse impact of a merged News Corp/Sky strategy of bundling a device with content could be exacerbated in GMG's view if combined with internet access, using Sky's own internet service provider. The merged group would be free to give preferential treatment on its own devices and internet delivery services to its own content, while degrading access to content from rival content providers.

A2.314 GMG would not support any remedy – short of outright prohibition of the acquisition of additional shares in Sky by News Corp – given its views on the deficiencies of relying on 'internal plurality' and the past behaviour of News Corp in this manner.

International Consumer Policy Bureau

A2.315 The ICPB stated that the proposed transaction risked a serious reduction in media plurality. One of the consequences would be an increase in 'the use by News Corp of news and editorial channels of communication with citizens to promote its own commercial interests' to the detriment of competitors. Citizens would have less choice for sources of information, and thus would find it increasingly difficult to form a true picture of events that may be connected to one or other of News Corp's commercial ventures.

A2.316 The submission cited several examples in support of this viewpoint. These included Harper Collins' refusal to publish Lord Patten's memoirs, perceived critical attacks on the BBC, coverage of the launch of Sky in the late 1980s, interventions by Rupert Murdoch in the editorial affairs of *The Times* and the lack of focus on the recent phone hacking stories.

[✂] [A submission]

A2.317 [✂]

A2.318 [✂]

A2.319 [✂]

A2.320 [✂]

A2.321 [✂]

A2.322 [✂]

A2.323 [✂]

A2.324 [✂]

A2.325 [✂]

A2.326 [✂]

Jewish Funds for Justice

A2.327 The submission from the Jewish Funds For Justice (JFFJ) outlined the organisation's concern that the acquisition of Sky would further consolidate media power into the hands of News Corp, to the detriment both of media plurality in the UK and to democratic debate. It highlighted that the experience of the JFFJ in the US gave it a unique perspective on the risks to the public interest of media consolidation.

A2.328 The JFFJ believed that should the proposed acquisition be permitted, News Corp could use Sky's television channels to pursue a political agenda in line with its political and commercial interests. This concern was based on News Corp's behaviour in the US, where it had aggressively promoted strategies which were not in the public interest. The proposed acquisition would be damaging both to fair and responsible reporting but also to specific audiences 'that [had] previously been targeted in the United States'.

A2.329 Concerns were held over both News Corp's motivations in seeking to acquire Sky, and News Corp's ability to leverage ideological and political views across both free-to-air and pay TV channels. The JFFJ believed that News Corp in the US had a 'track record of failing to ensure fair and responsible reporting and broadcasting of news', with tolerance and even promotion of extreme views.

A2.330 The submission suggested that Fox News broadcasted biased reporting, affecting specific audiences in the United States and that News Corp could continue to follow this policy in the UK if the transaction occurred. This would result in 'harmful' reports becoming more widely available in the UK and repeated across a number of media platforms due to News Corp's ownership of media outlets.

A2.331 The submission cited as an example of this Fox News' broadcast of what JFFJF labelled 'unevidenced, unjustified and unacceptable anti-Semitic attacks' against George Soros in a series presented by Glen Beck. News Corp's political stance was said to have been noted by other bodies, including the Anti-Defamation League (ADL). Mr Beck was suggested to have carried out similar 'attacks' on other individuals, including Simon Greer, the CEO of the JFFJ.

A2.332 News Corp's reporting style was said to have 'polarised' audiences in the United States, with the potential for a similar effect on UK audiences. The JFFJ indicated concern for the effect that such 'extreme and offensive' views would have on audiences in general.

A2.333 [✂]

A2.334 [✂]

A2.335 The JFFJ stated that these materials demonstrated that the public interest would be harmed if media power was consolidated in the hands of News Corp. The submission suggested that it was inevitable that audiences and specific consumer groups were likely to be negatively impacted upon by the types of content that will be more widely disseminated across the UK. By being available across various media platforms, the potential harm caused by the acquisition of Sky by News Corp would be exacerbated. The JFFJ said that a loss of plurality combined with a politically motivated agenda could lead to the erosion of tolerance and cohesion within the UK.

[✂] [A submission]

A2.336 [✂]

A2.337 [✂]

A2.338 [✂]

A2.339 [✂]

[✂] [A stakeholder]

A2.340 [✂] [A stakeholder] stated that it was particularly well placed to comment on the proposed acquisition as the only other UK media group with significant assets in both national newspapers and television. It was [✂] [The stakeholder]'s belief that there were significant synergies to be gained from owning both print and television assets (including cross-promotion and cross-media buying opportunities).

A2.341 [✂] [The stakeholder] highlighted the present market position of Sky and News Corp, noting that Sky was the 'best funded broadcasting business' in the UK, while News Corp owned the market leader in three of the four newspaper sub-markets alongside a 37% share of national newspaper circulation.

A2.342 [✂] [The stakeholder] outlined its view of likely future trends in the relevant market. The submission highlighted that newspaper circulation was declining, with no guarantee that all existing titles would survive. Similarly, Sky was set to continue its growth following heavy investment in its platform and the benefits of having secured commercial agreements in a staggered manner.

A2.343 The submission described Sky's 'virtuous circle' as contributing to likely further growth – using its predominant position in pay TV to acquire exclusive content, which attracted more customer subscriptions, in turn boosting revenues and providing for a further investment cycle. [✂] [The stakeholder] stated that this gave Sky a greater position in the market, made it more difficult for commercial free-to-air broadcasters to compete against it.

The advantages of full acquisition

A2.344 [✂] [The stakeholder] believed that acquisition would strengthen Sky's position in the television market and increase the ability of News Corp to stifle competitors. Potential strategies included:

- Cross-subsidy of TV revenues to loss-making newspapers
- Amalgamation of news operations of Sky News and News Corp's newspaper titles, both in terms of staff and of content itself (particularly on websites as convergence develops further)
- Bundling of Sky and News Corp products at preferential rates, which standalone businesses under separate ownership would not be able to match
- Use of Sky's subscription database to offer products, services and subscriptions from the newspaper side
- Greater integration of other News Corp businesses and Sky (e.g. joint or preferential sourcing of programming from the Fox network). [✂] [The stakeholder] suggested that as part of this, the merged company could expand into television production even becoming a vertically integrated production and

broadcast business (with no obligation to source any programming from independent producers)

- Cross-promotion and leverage of content, talent and acquisitions
- A reduction of the cost base of the business through merging back-office functions and other synergies such as cross-promotion and cross-media advertising sales

The threat to media pluralism

A2.345 [✂] [The stakeholder] believed that such developments would be likely to lead to a reduction in media plurality in both the short and the long term. The submission identified a number of risks:

- A reduction in the diversity of media ownership, through one company controlling 37% of newspaper circulation and the most lucrative TV platform, with a powerful position in the pay TV market and the television market as a whole.
- A likely reduction in the number of national newspaper titles, with News Corp being able to sustain losses and undercut rivals through cross-subsidy from Sky.
- A partial merger of news operations, reducing the range of available media voices and bringing Sky News and the newspaper titles under a single editorial control.

A2.346 [✂] [The stakeholder] stated that the TV landscape had changed considerably. The relative decline in the revenues of free to air broadcasters and the parallel rise of multi channel and pay television meant that media plurality could no longer be considered in traditional terms.

A2.347 [✂] [The stakeholder] concluded that the proposed acquisition would lead to the creation of a single powerful media business 'of exactly the kind that cross-media ownership rules have been designed to prevent', and as such should not be permitted.

National Union of Journalists

A2.348 The NUJ indicated strong support for the principle of media pluralism as 'a necessary component of any democratic society, in which the range of opinions and information made available through the media should not be solely determined by market forces'.

A2.349 The NUJ opposed the transaction, believing that the proposed acquisition would represent 'a transformative shift in UK media ownership'.

A2.350 The submission noted that Sky and News Corp were already the largest companies in their respective sectors, and highlighted the sheer scale of the resources which News Corp could deploy against its UK competitors in broadcasting and publishing should the transaction be permitted.

A2.351 The NUJ highlighted the strong positions of both Sky (accounting for 80% of pay TV revenue in 2009) and News Corp, and outlined the substantial extent of the media assets. The NUJ expressed concern that if the acquisition were to be permitted, the 'market dominance of Rupert Murdoch coupled with his significant influence on the editorial decisions and stance of his publications and news outlets would breach the requirement for media pluralism in the UK'.

A2.352 The submission rejected the claim an increase in ownership would make no practical difference, noting that Sky had an independent editorial structure, a separate board with independent directors and a different shareholding structure. The NUJ said that a move to 100% ownership would remove any institutional barriers or independent interests and leaving Sky in the direct and immediate control of News Corp.

A2.353 The transaction would also, in the NUJ's view, allow News Corp opportunities to undertake activities such as cross-subsidisation and cross-promotion, joint subscriptions packages and joint operations (including newsgathering). These could act to the detriment of competitors, new market entrants and editorial independence.

A2.354 The NUJ rejected the argument that the growth of online sites such as blogs would be sufficient to counter the significant influence of a combined News Corp / Sky entity. These were stated to 'lack the resources to provide any meaningful competition'.

A2.355 The submission suggested that 'quality journalism' would be harmed by the proposed acquisition, and that it may also act to the detriment of media impartiality, allowing media to be used to exploit political and / or commercial power.

A2.356 According to the NUJ, Rupert Murdoch's media power had 'played a corrosive role in UK politics with governments, fearful of antagonising him, shaping policies to win or hold on to his support'. The submission noted the recent phone hacking story, and expressed concern that the perceived power of News Corp may have played a role in dissuading politicians or other bodies from pursuing enquiries on this point.

A2.357 The NUJ concluded that Ofcom should acknowledge the strong opposition from the NUJ, the Trade Union Congress (TUC), other stakeholders, organisations, campaigning groups and individuals and reject the proposed acquisition.

Slaughter and May (responding on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror plc, Northcliffe Media and Telegraph Media Group)

A2.358 The submission outlined what Slaughter and May believed to be the 'clear case' for recommending a full assessment by the Competition Commission, given that the proposed transaction may be expected to operate against the public interest.

European intervention notice – relevant law

A2.359 Slaughter and May highlighted the relevant section (58(2C)) from the Enterprise Act, noting the explanation provided in the DTI guidance in May 2004 that the plurality assessment was concerned with "ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons", because of the potential ability for a person to influence opinions and control the agenda.

A2.360 Slaughter and May noted (with reference to Article 5(3) of the Enterprise Act) that if Ofcom considered that media plurality may be relevant to the proposed transaction, it must provide advice and recommendations on whether to refer this to the Competition Commission.

A2.361 The test was said to be a 'low hurdle', with a referral decision appropriate if it "is or may be the case" that the proposed transaction "operates or may be expected to operate" against the pubic interest. Slaughter and May stated that Ofcom's role was not to advise on whether media plurality concerns were conclusively established, but on whether there may be concerns, that would warrant a fuller second stage investigation.

Content types

A2.362 Although the transaction would, in Slaughter and May's view, reduce plurality across a range of content types, the submission focused on news plurality, given that the merging parties' position as important news providers, and the importance of news plurality to the democratic process. The submission cited various sources which supported this assertion, including the DCMS consultation on Media Ownership Rules in 2001, the Competition Commission's report in 2007 and academic research.

A2.363 Slaughter and May stated that the key social role of news had important implications for Ofcom's assessment. Any transaction that may result in insufficient news plurality would be expected to operate against the public interest.

Audiences

A2.364 The submission focused primarily on the UK cross-media news audience, noting that relevant legislation indicated that that plurality could be assessed on a cross-media basis, and that cross-media mergers could give rise to plurality concerns, and that this was supported by the DTI Guidance.

A2.365 Slaughter and May stated that the rationale for adopting this approach was that:

- most people consumed news from more than one medium, meaning a cross-media merger was at least as likely to reduce the choice of news sources available to the audience as a merger within a single medium; and
- each medium was influenced by the news agenda of other media when setting its own agenda (so that consumers of one medium indirectly receive news from other media), meaning that a cross-media merger had the potential to reduce the diversity of news by distorting the flow of news between media.

A2.366 It was noted that this assessment focused on plurality of the supply-side, academic literature also examined the importance of the demand-side. A full analysis would therefore consider whether substantial groups source their news wholly or mainly from News Corp and Sky, such that the transaction would result in those groups receiving little or no diversity of news. A proper consideration of the key aspects of media plurality would therefore, in Slaughter and May's view, require a Competition Commission referral.

Media platforms

A2.367 Slaughter and May outlined key features the relevant platforms, and the inter-relationship between these.

TV

A2.368 The submission noted that TV was the main source of UK news for the majority of people (74%). TV was also important because it set the news agenda in "real time" such that the output of other media was often influenced by TV. Rolling news channels were noted as playing an influential role, providing coverage of breaking news and often framing the subsequent coverage by selecting early reactions / analysis. This influence extended to the agenda and approach of other non-TV news providers.

A2.369 The agenda-setting function of rolling news was also said to be reflected in the nature of their audiences in two ways:

- Their audience tended to include many people who are themselves opinion formers (e.g. newspaper newsrooms)
- Their audiences tended to be focused on news consumption (by virtue of the fact that they have selected a news channel) rather than being incidental viewers.

Slaughter and May suggested that rolling news channels therefore had a larger impact than their viewing figures may suggest.

Newspapers

A2.370 Newspapers were highlighted as an important source for news, playing a distinctive role in setting the news agenda.

A2.371 Slaughter and May noted that newspapers had a track record of investigative journalism, holding those in positions of authority to public account. Furthermore, it was highlighted that many newspapers were associated with a particular political viewpoint. In aggregate therefore, the newspaper sector generated news stories representing a diverse range of views.

A2.372 Slaughter and May believed that the ability of newspapers to influence the news agenda depended heavily on their content being reported on other platforms. The submission suggested that stories broken by newspapers would often receive a higher profile when subsequently reported on TV, citing the recent MPs expenses affair as an example of this.

Radio

A2.373 Although radio was only the third most popular source for news, Slaughter and May noted that radio audiences themselves were large (reaching over 90% of the UK adult population). Radio played an important role as a source of news for people who did not consume news pro-actively. The news agenda of radio was stated to be important in serving people who may not otherwise be engaged in the democratic process.

A2.374 Radio was also said to hold an important role in agenda-setting, with a day's major news stories often developing from interviews on early morning radio news programmes.

Internet

A2.375 The internet was growing in importance as a news source, becoming more popular with consumers and allowing for a proliferation of news outlets. However, Slaughter and May did not believe that online news outlets contributed significantly to plurality over and above that provided by the existing broadcast and print media, for three reasons:

- all of the most popular sites were provided by existing broadcast and print organisations – 80% of online news traffic in the UK was accounted for by five established titles (BBC, The Daily Mail, The Sun, The Guardian and The Telegraph);
- few independent websites were able generate original news content. Hardly any had a significant editorial staff, instead relying on news feeds. As such, Slaughter and May did not believe this contributed additional news plurality.
- Ofcom had found that online news still had gaps in demographic coverage (for example the elderly, or the poor)

Cross-platform dynamics

A2.376 Slaughter and May submitted that there was a two-way relationship between TV and newspapers. TV news influenced stories covered in newspapers, while newspaper content was more widely distributed by TV.

A2.377 Slaughter and May said that this process resulted in a 'cross-fertilisation of news and ideas', given both audiences exposure to a more diverse news agenda. It was highlighted that the process relied on objective reporting of each platform's output by the other which would be threatened where there is cross-ownership of important outlets in both newspapers and TV, due to 'the resulting loss of objectivity'.

Control of media enterprises – external ownership and control

A2.378 "External plurality" was stated to be the primary concern of the legislation. Slaughter and May examined both the current plurality of persons with control of news media organisations in the UK and the effect of the acquisition on that plurality.

Current plurality

A2.379 Slaughter and May stated that the supply of news was already highly concentrated, such that any significant further reduction in plurality would 'clearly give rise to concerns'. While the number of news outlets was noted as increasing, the submission stated that there were only a small number of news suppliers, which in turn set the news agenda for all other outlets.

TV news

A2.380 Slaughter and May highlighted that there were only three significant suppliers of TV news (accounting for 99% of total news hours viewed) – the BBC, ITN and Sky News. Sky was stated to be an important provider of TV news because:

- it is one of only two commercial TV news suppliers in the UK – especially important given the BBC's reliance on state funding
- it is the second biggest TV news supplier by hours broadcast, and the third by hours viewed
- Sky News was one of only two mainstream rolling news channels, accounting for 1/3rd of rolling new hours viewed
- as per the Competition Commission finding in 2007 (which, Slaughter and May suggested, concluded that day-to-day editorial control of output remained with the news provider), Sky could be said to have day-to-day editorial control over the news output of Five

Newspapers

A2.381 Slaughter and May noted that the newspaper sector exhibited a higher of plurality than TV. Eight groups accounted for national newspaper circulation, although this was dominated by the top three groups, with News Corp, DMGT and Trinity mirror accounting for 75% of circulation.

A2.382 News Corp was noted to be the largest UK newspaper supplier. It also occupied a unique position in owning both mass market quality newspapers and tabloids. This gave it unrivalled audience coverage, and Slaughter and May cited newspaper readership statistics which showed that News Corp was the only group with a title achieving more than 10% coverage in each socio-economic group.

Radio

A2.383 Slaughter and May noted that there were only two significant suppliers of UK national radio news (accounting for 97.7% of all national radio news), and that Sky was the only private sector supplier.

A2.384 Given the reach of commercial radio, the fact that almost all national commercial radio news was provided by Sky meant that it extended its broad coverage. The broad range of stations served also gave Sky wide coverage over different audiences of the population.

Online

A2.385 The submission reiterated that no company other than the existing broadcasters and newspaper publishers has a significant portion of the online news audience

Effect of the transaction

A2.386 Slaughter and May made a number of statements relating to the effect that the transaction would have on plurality.

The transaction would combine two of the largest contributors to plurality

A2.387 Slaughter and May stated that News Corp and Sky were two of the most important voices in UK news, and combining these two voices into one would result in 'a major reduction in plurality'.

A2.388 The potential scale of the merged organisation was demonstrated by reference to audience reach. Using a standard advertising measurement of reach (which ignored most of Sky's reach through commercial radio), Slaughter and May estimated that the news outlets of the merged entity would reach at least 52% of the adult population. In contrast, only one other newspaper group had a title that reaches more than 10% of the population.

A2.389 In addition to this, News Corp and Sky were considered important by Slaughter and May because of the scale of their news gathering and production capabilities. This was stated to be particularly important in light of the effect that financial constraints were having on the news-gathering infrastructure of news providers (such as the increasing reliance on news agency feed and PR material, with the result being that there was less diversity of news content than is suggested by the number of outlets).

A2.390 Slaughter and May highlighted the strong revenue generating power of News Corp and Sky, which far outstripped the income of their competitors. It was estimated that News Corp and Sky combined had an editorial staff of over 2,100, almost as many as the other national newspapers combined (estimated at around 2,650). The submission stated that this illustrated the unrivalled ability of the merged entity to generate news content and set the agenda.

A2.391 This scale meant that both entities could play a key role in offering an alternative view of events, which other organisations could not cover independently. Slaughter and May suggested that both News Corp and Sky were well placed to support investigative journalism, which could have a major influence on the news agenda.

A2.392 The transaction would therefore have what Slaughter and May termed the 'particularly damaging effect' of combining the two commercial organisations with the greatest ability to invest in news-gathering.

The transaction would distort cross-platform dynamics

A2.393 Slaughter and May stated that a merged entity would have the ability to distort the exchange of news between platforms, and so restrict the ability of other media organisations to contribute to news plurality.

A2.394 Slaughter and May suggested as an example that Sky News could choose to give disproportionate coverage to stories featured in News Corp newspapers, reducing the likelihood that stories in other newspapers would be consumed by wider audiences. The role of Sky News in agenda-setting also meant that excluded stories would be less likely to be covered by other news outlets.

A2.395 The submission stated that evidence from other jurisdictions suggested that the incentives created by cross-ownership could undermine the practice of objective reporting. It cited a US study which found that media outlets tended to give disproportionate coverage to the activities of their own corporate group.

A2.396 The transaction would therefore, in Slaughter and May's view, undermine the ability of third party news providers to contribute to the broader news agenda.

There would be insufficient plurality post-transaction

A2.397 Slaughter and May highlighted that following the proposed acquisition there would be two large UK news groups, with News Corp as the only major private sector news group.

A2.398 ITN was noted as having a 'diminishing presence', with the submission highlighting the decline in audiences and the constraints placed on its news gathering capacity by the financial circumstances.

A2.399 Only one remaining newspaper group would have that achieved coverage of more than 10% of the population. Slaughter and May also said that rival groups would be constrained by Sky News' incentive to feature News Corp content.

A2.400 Slaughter and May also believed that the enhanced cross-media position of News Corp post-transaction would lead to a material weakening, or exit, of one or more newspapers, leading to a further loss of plurality.

A2.401 The submission stated that this analysis made clear that there would be an insufficient plurality of persons controlling the news media following the transaction, and that it should not be possible for Ofcom to conclude that no further investigation is required.

Control of media enterprises – internal control

A2.402 Slaughter and May noted the 'limited relevance' of "internal plurality" in circumstances where each of the relevant enterprises will be 100% owned by News Corp.

Law

A2.403 Slaughter and May stated that the public interest test related to control of the enterprise rather than control of the enterprise's editorial policy. Where News Corp held 100% control over Sky, Slaughter and May said that nothing in the statute required or permitted an enquiry into whether that control would be used to control the enterprise's editorial policies.

A2.404 The submission stated that this approach was consistent with the Court of Appeal's judgement in the Sky/ITV case. Nothing in that case suggested that, where complete control of the enterprise was established, it would be permissible to consider how that control might be used. Slaughter and May said that it was not found in the Court of Appeal that, in circumstances of full control, *de facto* editorial independence was relevant to the statutory test.

Policy

A2.405 Slaughter and May said that this analysis was consistent with the underlying policy considerations: a clearance based on internal plurality considerations would delegate the task of safeguarding the public interest to the controlling party. The submission stated that such a vulnerable situation would not represent "sufficient" plurality of persons for the purposes of the statutory test, and that this was supported by the House of Lords Select Committee on Communications.

A2.406 Slaughter and May therefore stated that it was irrelevant to consider possible editorial diversity of separate media outlets under the 100% ownership of the same corporate group.

News Corp internal plurality

A2.407 Slaughter and May argued that, even if internal plurality were considered, News Corp outlets did not have sufficient editorial freedom to remedy the external plurality concerns.

A2.408 The submission stated that News Corp's Chairman and Chief Executive (Rupert Murdoch) had spoken of his interventionist role in The Sun and The News of the World to the House of Lords Select Committee on Communications.

A2.409 Slaughter and May also said that there was also 'significant evidence' that News Corp played a role in setting the agenda for the Times and the Sunday Times, citing accounts from previous editors. The submission also noted that Mr Murdoch had reported that he regularly spoke to editors, which Slaughter and May believed illustrated 'the fundamental difficulty of seeking to rely on internal diversity to uphold plurality'.

A2.410 The support News Corp's newspapers for the Iraq War was also cited by Slaughter and May as indicative of both the 'dominant force of the proprietor', and the limits on internal plurality.

A2.411 Slaughter and May submitted that News Corp appeared to have influenced the agenda of The Times titles despite the conditions set out in the DTI's consent to the original acquisition of those titles. None of the parties were aware of independent directors having exercised the right of veto and the submission highlighted that at least two former editors had expressed doubts over the effectiveness of this system.

A2.412 The track record of News Corp was said to be significant by demonstrating that that, even if internal plurality was relevant to the assessment in this case:

- it was appropriate to treat the various News Corp titles as one voice for plurality purposes; and
- when assessing the post-transaction situation, there would be no reason to believe that Sky News will enjoy editorial independence such that it could constitute a separate voice to News Corp.

A2.413 Slaughter and May stated that the plurality issue would not be addressed by broadcasting impartiality requirements, noting the Competition Commission's conclusion that the measures do not cover what content selected or the prominence given to particular stories.

A2.414 Slaughter and May concluded that it was clear that there was 'no sound basis' to expect significant internal plurality within the merged entity.

Future developments

A2.415 Slaughter and May stated that a thorough consideration of future developments was essential to the proper application of the public interest test. When considering whether the level of news plurality was "sufficient" for the purposes of Section 58, it was essential to consider future reductions in plurality that might be expected regardless of the relevant merger. To be sufficient, the level of plurality must be sufficient in light of any reductions in plurality that might be expected to occur in the foreseeable future.

Key developments – declining revenue

A2.416 Slaughter and May said that the main news media groups had suffered downward pressure on revenues for several years, noting the decline in TV and newspaper advertising revenues. In contrast, online advertising revenues had been increasing, although this had not been matched by investment in news gathering.

A2.417 The online experience was said to be presenting a challenge to the traditional model of financing news gathering. Traditional media relied on a degree of cross-subsidy between inexpensive but popular content and costlier news content. Conversely, consumers could access very specific content directly online, and along with targeted advertising technology, this meant that significant traffic and revenues had been diverted away from news content. This trend was expected to continue.

A2.418 Slaughter and May said that the threat to plurality of declining revenues arose from there being fewer companies in the future (or at least those with the resources to invest in news-gathering).

A2.419 The submission stated that the financial health of ITN was a key point in this regard, with concerns over ITN's ability to contribute to news plurality in the coming years. ITN was said to be heavily reliant on its contracts for the supply of news to ITV, and the loss of this contract would threaten ITN's viability.

A2.420 Similarly, Slaughter and May said that the recent BBC licence fee settlement would result in the BBC having to fund a wider range of operations from the same level of funding, which could adversely affect its ability to fund news-gathering at its current levels.

Key developments – media convergence

A2.421 Media convergence was said by Slaughter and May to be an ongoing process, with developments in technology and evolving consumer preferences reducing the differences in the output and consumption of media which used to be distinct. The submission gave examples such as VoD services and the use of video and audio on newspaper websites.

A2.422 Slaughter and May believed that convergence presented challenges for news production and distribution. For example, a scheduled TV bulletin or a daily newspaper may not be deemed sufficient to meet consumers' expectations, with other content (e.g. an up-to-date website) required. Convergence therefore required a greater investment in technology.

A2.423 Additionally, media was said to be converging around web-based platforms, meaning the internet was an important route to market for media companies. Slaughter and May noted Sky's position as a major broadband provider, giving it a substantial marketing advantage over competitors. The submission stated that because of this, convergence was likely to lead to an increase in Sky's share of audience even absent the transaction.

Implications for plurality assessment of transaction

A2.424 These trends were said to have a number of effects on the transaction:

- the pressures on news media organisations meant it would be 'unjustifiable' for Ofcom to assess sufficiency of plurality on the assumption that all of the existing voices in UK news media would continue to exist in their current form for the foreseeable future;
- News Corp and Sky were particularly well-placed to survive the current pressures even in the absence of a merger, meaning that a takeover would combine two of organisations that would otherwise be important contributors to news plurality; and,
- it was necessary to consider the possibility that the transaction would give the combined entity the ability and incentive to engage in strategic behaviour that had the effect of removing or weakening other news suppliers.

Effect of the transaction on Sky

A2.425 Slaughter and May outlined why the transaction would result in a relevant change for plurality purposes notwithstanding News Corp's existing 39% stake in Sky.

The legislation specifically provides for intervention in these circumstances

A2.426 Slaughter and May stated that the media plurality provisions in the Enterprise Act specifically provide that where two media enterprises serving the same audience are part of a "merger situation" and thereby "cease to be distinct " (which would include a move from 39% to 100%), then "the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards".

A2.427 The submission noted statements relating to this provided in the DTI Guidance and the Court of Appeal judgement in the Sky/ITV case. Slaughter and May stated that, even if it was the case that News Corp already had material influence over Sky for the purposes of the Enterprise Act 2002, it was 'clear as a matter of law' that an increase to 100% ownership could result in a relevant reduction in plurality.

Sky is separate from News Corp

A2.428 Slaughter and May emphasised the limits of News Corp's existing influence over Sky, which indicated that a move to 100% ownership would be of a significant impact.

A2.429 It was highlighted that the Sky directors had a duty to promote the success of the company for the benefit of the shareholders as a whole, and treat all shareholders equally. They also had to ensure that certain transactions with News Corp were carried out on terms that were fair and reasonable to shareholders as a whole and to seek the prior approval of minority shareholders for certain transactions.

A2.430 Therefore, the directors could not seek to favour News Corp. If the transaction were permitted, however, directors would be able to take account of the benefit to the News Corp group as a whole, and Sky's operations could then be directed for the benefit of News Corp.

A2.431 Slaughter and May noted that Sky had put procedures in place to ensure that the company did not discriminate in favour of News Corp. News Corp's minority ownership meant that it only had limited influence over the appointment of Sky's management (with five of the fourteen directors as being News Corp employees or former employees). This would not be maintained if Sky were 100% owned by News Corp.

A2.432 Slaughter and May stated that News Corp's own actions suggested that it did not have control over Sky. News Corp had notified the transaction to the EU Commission for competition clearance, and since jurisdiction only arose under the European Union Merger Regulation in the event of a change of control of the target company, News Corp must itself recognise (and the EU Commission must accept) that the Transaction would result in a change in the control of Sky.

A2.433 Slaughter and May also said that News Corp's minority shareholding in Sky did not translate into any ability to influence the news agenda of Sky News. The submission noted findings from the Competition Commission's report into the Sky/ITV case, which suggested that News Corp did not have the ability to influence Sky's news content. This was said to be consistent with Rupert Murdoch's submissions to the House of Lords Select Committee on Communications.

A2.434 The editorial independence of Sky News from News Corp was also said to be demonstrated by its strong record of reporting on stories even where they are potentially prejudicial to News Corp, such as the allegations of illegal phone-tapping by The News of the World or BBC Director-General, Mark Thompson's riposte to criticisms made by News Corp executive, James Murdoch in 2009.

A2.435 Slaughter and May concluded that it was clear that Sky's news output should be treated as distinct from News Corp for the purposes of assessing the impact on plurality of a move to outright control over Sky.

Remedies

A2.436 None of the parties were aware of any measures (short of divestment) which would provide an effective remedy. Slaughter and May emphasised that behavioural undertakings to guarantee the editorial independence of Sky from News Corp were likely to be ineffective, for a number of reasons:

- the output of Sky News was likely to be influenced by the preferences of News Corp – 'editorial self-censorship' was said to be likely as Sky News editors would not be expected to act with disregard to the views of their owner.
- it would be possible to undermine or circumvent any behavioural remedy without necessarily breaching the letter of the undertaking (for example by encouraging the departure of a news editor by cutting their budget).
- a behavioural remedy based on editorial independence would be unlikely effectively to secure the need for any independent editor to have access to an independent news-gathering capacity – therefore if News Corp sought to cut costs and share news gathering functions, Sky News stories would be selected from the same sources as News Corp ones.

A2.437 Slaughter and May stated that it was clear that, whatever behavioural remedies were put in place, Sky could not provide an independent contribution to news plurality when under the 100% control of News Corp.

Conclusion

A2.438 Slaughter and May concluded that there was a compelling case for OFCOM recommending that the Secretary of State refer the transaction to the Competition Commission.

Trinity Mirror plc

A2.439 Trinity Mirror submitted a response in addition to the Slaughter and May submission

A2.440 Trinity Mirror outlined its position in the market and its media assets, including, five national newspapers (director competitors of *The Sun* and *The News of the World)*, 150 regional newspapers, 400 digital products and its role as the largest newspaper contract printer.

A2.441 [✂]

Public interest

A2.442 Trinity Mirror stated that news was essential to the proper functioning of democratic society, and that a free flow of news from various sources (which Trinity Mirror took to mean plurality) was at the centre of societal importance. It followed that if the number of sources of news was reduced or if its supply was concentrated in ownership, plurality would diminished and the democratic process threatened.

A2.443 Trinity Mirror was concerned that the scale of a merged News Corp/Sky would have a detrimental effect on the viability of Trinity Mirror and the long term health of its newspapers. It highlighted that the Mirror titles were the only national newspapers to adopt a consistent left of centre political position and as such were a vital part of the democratic system in the United Kingdom.

A2.444 Similarly, the regional press was stated to play a very significant role in local communities. Local and regional newspapers were often the only media outlets that reported on the work of individual members of parliament and allowed them to speak directly to their constituents.

Ofcom test

A2.445 Trinity Mirror believed that the test Ofcom was required to apply was set at a low hurdle and that a recommendation of a referral to the Competition Commission would be appropriate if it "is or may be the case" that the proposed transaction "operates or may be expected to operate" against the pubic interest.

A2.446 Trinity Mirror asserted that transaction would be highly likely to operate against the public interest by the mere fact of the reduction in the number of owners of news suppliers.

Change in control

A2.447 Trinity Mirror argued that at its present level of ownership News Corp could only exert negative control (i.e. preventing certain events) but could not impose positive control (i.e. compel Sky to take a particular direction).

A2.448 The submission acknowledged that News Corp had material influence over the running of Sky both by the size of its shareholding and by the number of News Corp employees or representatives on the Sky board, but stressed that a move to 100% ownership would be a 'clear change in status'.

A2.449 Trinity Mirror believed there had been an attempt to 'underplay' the influence of the presence of independent non-executive directors on the Sky board, and noted that their constraining influence would disappear in the case of a successful takeover.

News Corp / Sky presence in the market

A2.450 Trinity Mirror noted that the newspaper market was highly concentrated, with News Corp possessing by far the biggest share (more than the next two players combined). By combining both popular titles and influential 'quality' titles, News Corp was said to have 'an unparalleled readership drawn from the widest spread of socio-economic groups'.

A2.451 The TV news sector was also said to be highly concentrated, with only three significant suppliers of TV news. Sky was noted as being the second biggest TV news supplier in the UK by hours broadcast and third biggest by total hours viewed.

Editorial interference

A2.452 Trinity Mirror stated that there was a 'well documented' culture of "proprietorial" interference or influence on editorial policy and coverage within News Corp. The submission highlighted that this was a concern only in the context of the number of media "voices" being reduced.

A2.453 Trinity Mirror provided two attachments in support of this assertion. One was a Times editorial dated 13 October which criticised the BBC's comments on the proposed News Corp takeover of Sky. The other was an article by Kelvin MacKenzie in the Sun dated 14 October which was critical of other media providers commenting on the proposed acquisition.

A2.454 The submission rejected the argument that impartiality regulations precluded any influence editorially, saying that such an argument ignored the impact that could be exerted over the news agenda by the choice of stories to cover.

Potential for Commercial actions against Trinity Mirror

A2.455 Trinity Mirror stated that News Corp was 'aggressively protective of its market share', citing previous strategies in support of this. Trinity Mirror was concerned that, if the proposed transaction were permitted, decisions that were not commercially sound in the short term could be taken in the perceived greater long-term good of News Corp.

A2.456 Possible actions included:

- [✂]
- A bundling of products (e.g. TV, newspaper and online subscriptions). Trinity Mirror suggested that such a proposition would be entirely unmatchable by stand-alone newspaper publishers.
- Cross-promotion, whether through straight "house ads" or through cross fertilisation of star columnists, presenters and flattering TV reviews and features.
- The ability to create "packages" for advertisers which would be unmatchable by other media outlets, giving a combined News Corp and Sky an 'unfair advantage'.
- Negotiation of "solus" arrangements or share deals with advertisers. Trinity Mirror asserted that the size of a combined News Corp/Sky and its reach within the UK would give it a significant advantage in this respect.
- Cross subsidy of cover price discounting on News Corp titles, to the long-term detriment of their competitors.

A2.457 Trinity Mirror recognised that a number of these concerns could be categorised as "competition" matters rather than having any immediate and direct impact on plurality. However, the submission indicated that it was the ability of the combined entity to use a all or some of these activities to protect its position to the detriment of others that was of concern.

A2.458 Trinity Mirror expressed concern that the long-term impact of these activities would have a detrimental impact on the commercial viability of its existing portfolio of products, with an additional threat to the plurality of news supply in the UK.

[✂] [A submission]

A2.459 [✂]

A2.460 [✂]

A2.461 [✂]

A2.462 [✂]

A2.463 [✂]

A2.464 [✂]

A2.465 [✂]

Individual submissions

Avaaz

A2.466 Avaaz presented Ofcom with a spreadsheet of 39,105 messages indicating opposition to the proposed acquisition.

A2.467 Most of these messages repeated the Avaaz standard text, which stated that independent analysis indicated that the proposed acquisition could enable News Corp to own half of UK media in a few years time. This would, in the view of signatories, 'dangerously limit' media choices, stifling democratic debate.

A2.468 Around 1,330 submissions contained substantially different text and raised points in addition to the standard message.

A2.469 Many signatories highlighted News Corp's (and Rupert Murdoch's) perceived track record of editorial influence with News Corp newspapers. Similarly, a number of submissions indicated that News Corp already exercised a strong influence on politicians, with several respondents making reference to (amongst other examples) the Sun switching its support to the Conservative party ahead of the general election in 2010.

A2.470 There was a focus by some on the fact that Rupert Murdoch was able to exercise such political influence through his media assets despite not being a UK citizen. Several signatories indicated that this meant that there was a lack of accountability to the UK public of News Corp's editorial stance.

A2.471 Some messages suggested that there would be a lack of commitment to UK original programming, which could undermine the UK content industry and culture.

A2.472 Many submissions expressed concern that the acquisition would result in Sky News becoming more akin to Fox News. Respondents often implied that this would encompass a lowering of standards, or more partisan coverage of issues.

A2.473 Other respondents were concerned that a greater News Corp would seek to target the position of the BBC. Some submissions suggested this was already an increasing trend, evidenced by public comments by both Rupert and James Murdoch

A2.474 Some submissions argued that the News Corp paywall strategy served to limit the public access to content/news and therefore limiting the democratic process

A2.475 A number of messages highlighted News Corp's past record of offering undertakings in relation to transactions of this nature, with references to the "broken promises" in relation to acquisition of The Times and other non-UK newspapers

A2.476 There were also references to a variety of competition arguments outside the public interest test, mainly centring on the Sky platform. These included the possibility of content exclusivity limiting consumer choice, and the perceived existence of excessive prices.

38 Degrees

A2.477 The 38 Degrees submission consisted of around 19,500 messages to Ofcom, the majority (up to 15,000) of which replicated the standard text proposed by 38 Degrees. This argued that Rupert Murdoch controlled too much of the media already, and that the proposed transaction would result in:

- Too much media control in the hands of one individual
- Less choice for consumers
- Too much political influence for Rupert Murdoch.

A2.478 Many of the 'customised' messages advanced similar arguments as those described above for the Avaaz submissions. In addition, a number of other arguments were raised:

- Concerns about giving Murdoch more opportunity to cross-promote his TV and newspaper holdings
- That the proposed transaction would have a negative effect on democratic trade union activity
- Some submissions voiced concerns about the impact on British journalism. For example- that News Corp fails to develop in-house talent and just poach talented people from the public sector – which leads to extra expense for the public, and that independent journalists would be forced to work abroad.
- There was a concern that News Corp could later be sold on to someone with dubious/dangerous political or religious beliefs, with serious consequences.
- There were a number of references to the fact that this transaction would cause the UK's media to be similar to Berlusconi's situation in Italy
- That the proposed transaction would have a negative effect on innovation
- There were a number of references to content being effected, particularly on the news – in particular that it might be "dumbed down", overly-inflammatory, or racist.
- Some people expressed general concerns about this transaction setting a precedent for big business to dominate the UK (not just in terms of media industry).

Private individuals

A2.479 Ofcom also received 104 direct submissions in response to our Invitation to Comment. The vast majority opposed the proposed transaction, although some (7 in total) were in favour or suggested that it did not create media plurality concerns.

A2.480 Individuals who opposed the proposed transaction presented arguments in keeping with those identified above in the Avaaz and 38 Degrees summaries.

A2.481 Those who were in favour of the transaction cited a number of reasons for this, including:

- That the transaction would facilitate further investment and innovation in broadcasting

- That media choice and plurality would remain high regardless of the transaction being permitted
- That Sky / News Corp should not be 'penalised' for establishing and growing successful companies
- That News Corp already exercised control of Sky by virtue of its large shareholding

A2.482 Some individual submissions submitted anecdotal evidence such as articles to support their views. One individual submitted a significant volume of documents to support his view that the proposed acquisition formed part of a coordinated effort between many parties to exert influence in the interests of particular religious or cultural groups.

A2.483 Some specific individual responses are summarised below.

David Elstein, former Sky employee

A2.484 Mr Elstein noted the concerns of parties opposed to the proposed transaction, and in particular the submission to the Secretary of State by Enders Analysis. He stated that Enders had 'misunderstood' the nature of Sky, treating it as a media business along the lines of ITV or the BBC, when in fact it derived a significant part of its revenue from technical aspects rather than content (e.g. set-top box installation, Sky+ set-top boxes etc). In this respect, it was more similar to Virgin Media or BT.

A2.485 Mr Elstein asserted that Sky's relative position in the pay TV sector was not relevant to Ofcom's assessment, which should instead be focused on 'control of viewership'. The submission also stated that the terms of the review 'explicitly exclude cross-media ownership issues, as these are dealt with under the 2003 Communications Act, and clearly do not apply to the News Corp proposal'.

A2.486 The submission argued that the sale of the remaining shares in Sky to News Corp would not constitute a reduction in the number of media owners. This was partly because the current shareholders could not, in Mr Elstein's view, be characterised as 'media owners' given their identity (i.e. largely investment institutions) and that News Corp had previously been treated by UK authorities as being in effective control of Sky.

A2.487 Mr Elstein further argued that the number of media outlets was not likely to be reduced by the proposed acquisition. Sky News accounted for only a small amount of viewing, but would remain in operation on account of being 'a creation of News Corp's'.

A2.488 Mr Elstein stated that in his previous role of having had responsibility for all Sky programming for four years, no pressure was ever applied to Sky News. The only 'blemish' on its impartiality in Mr Elstein's view related to reporting on the Sky bid for Manchester United in 1998, which was quickly addressed. The submission highlighted a number of recent stories which had been fully reported despite being potentially negative for News Corp (for example, the recent phone hacking stories).

A2.489 It was stated that if Sky were compelled to sell Sky News to allow the deal to go through, the most likely outcome would simply be a closure of the channel, as it would be difficult to sell given that the service was loss-making.

A2.490 Mr Elstein rejected the suggestions that News Corp would divert Sky's cash flows to News Corp's newspapers (to the detriment of its rivals), or to allow the cross-media opportunities that would not be available to News Corp's disadvantaged newspaper competitors. It highlighted that these opportunities were already available and did not require Sky / News Corp to be a combined entity. The fact that they had not already been acted suggested that they were not sufficiently attractive opportunities. Mr Elstein also said that it was unclear why some kind of merged operations between News Corp's newspapers and Sky would be an issue, as there was no legal or regulatory inhibition to such co-operation.

A2.491 The submission stated that some concerns expressed by third parties – such as the use of pay-walls, and aggressive strategies including price cutting by News Corp – did not appear relevant to the matter of the proposed acquisition of Sky. It also highlighted that the launch of Sky TV had led to the provision of a large number (14) of 24 hour news channels, which would not have been possible otherwise.

A2.492 Mr Elstein concluded that third party concerns were not enough to trigger a formal plurality investigation into a transaction that 'clearly does not reduce media ownership or outlets now, and cannot be realistically projected as doing so in the future'.

Dr Des Freedman

A2.493 Dr Freedman's submission focused on competing definitions of plurality which he stated had 'very different public policy consequences'. It was noted that plurality in this context refers to both 'external control' (the number of different people owning media organizations) and 'internal control' (the diversity of content circulated to audiences by individual companies).

'Narrow' plurality

A2.494 Dr Freedman submitted that there was an assumption in some quarters that the new digital environment would inevitably deliver competition, choice and plurality (the submission highlighted that Rupert Murdoch had previously made this argument). This definition referred to a conception of plurality related simply to the number of media outlets available, as opposed to the distinctive character of these outlets and the contribution they make to diversity.

A2.495 Dr Freedman argued that this definition served two purposes for News Corp:

- it supports criticism of existing regulatory regimes by arguing that plurality is best served through market forces, unrestricted by competition legislation, content regulation and restrictions on ownership. Plurality, according to this approach, is facilitated even when competition leads to the closure of titles and services.
- it allows News Corp to challenge the BBC's position in the UK media market (hiding what Dr Freedman referred to as 'the greater truth' that Sky's income is far greater than the BBC's). This interpretation denied the significance of the 'internal pluralism' of a publicly-funded, public service institution.

'Robust' plurality

A2.496 Dr Freedman argued (with reference to Ofcom's discussions on plurality in the Media Ownership Review in 2009) that plurality should not be reduced to the number of different outlets, as there is no guarantee that a 'plural' media environment of competing groups will provide a platform for the range of views and information sufficient for a democratic society.

A2.497 The submission highlighted that the DCMS consultation on ownership rules in 2001 conceived of plurality in a more robust fashion, via four functions:

- 'Plurality ensures that no individual or corporation has excessive power in an industry which is central to the democratic process.'
- 'A plurality of ownership should secure a plurality of sources of news and editorial opinion...A healthy democracy depends on a culture of dissent and argument, which would inevitably be diminished if there were only a limited number of providers of news.'
- 'A single, dominant source of news would be in a position fully to define the news agenda'.
- 'Plurality maintains our cultural vitality...A plurality of approaches adds to the breadth and richness of our cultural experience'

Dr Freedman stated that it would be difficult to argue that these functions would not be affected by a News Corp / Sky merger.

A2.498 Dr Freedman said that News Corp with full ownership of Sky would be in a particularly powerful position to withstand current economic pressures and to place severe pressure on the viability of its rivals. Furthermore, the organisation would be under no obligation to cater for a range of editorial views nor to promote 'a culture of dissent'.

A2.499 News Corp would also be able, in the event of acquisition, to leverage its already significant influence on the news agenda onto the emerging digital news environment, with Dr Freedman citing Claire Enders analysis on the possibility of Sky News and News Corp newspapers increasingly becoming similar. In addition, the submission argued that in the event of the transaction being permitted, Sky would have no obligations other than to serve the long-term financial interests of its owners and would be highly unlikely to prioritise 'cultural vitality' as a strategic aim.

A2.500 Dr Freedman concluded that the impact of News Corp being allowed to take full control of Sky would be to limit the plurality of the UK media environment. News Corp would have strategic control over a large portion of the UK television, newspaper and broadband markets, and would be likely to occupy a dominant position, with negative implications for plurality.

[✂] [A submission]

A2.501 [✂]

A2.502 [✂]

A2.503 [✂]

A2.504 [✂]

A2.505 [✂]

A2.506 [✂]

A2.507 [✂]

A2.508 [✂]

Lord Puttnam

A2.509 Lord Puttnam's submission highlighted the debate in the House of Lords on November 4, 2010 entitled "To call attention to the case for maintaining a broad plurality of media ownership in the United Kingdom". It noted that in the course of that debate, various speakers set out the reasons why they believe allowing News Corp to acquire 100% ownership of Sky would lead to a serious reduction in the plurality of the media in the UK.

A2.510 The debate is available at http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101104-0002.htm#10110446000798

Professor Vincent Porter

A2.511 Professor Porter argued that the acquisition by News Corp of the remaining shares in Sky plc would constitute the takeover of a British broadcaster by an American company, and thus reduce the plurality of media organisations fulfilling the needs of UK audiences.

A2.512 The submission stated that Ofcom should look beyond the five issues identified in the Invitation to Comment, and consider the relations between these issues.

A2.513 Professor Porter noted that the acquisition would reduce by one the plurality of persons with control of media enterprises in the UK. He further submitted that section 58 of the Enterprise Act 2002 appeared to be concerned with the effect on *audiences*, a term which would not seem to include the citizen's need for newspapers, and therefore suggested that Ofcom's advice would be restricted to the plurality of persons serving television audiences.

A2.514 Professor Porter highlighted that News Corp held a material influence over Sky's affairs, but that the proposed acquisition would give it control over Sky. The submission noted that UK competition law draws a distinction between material influence and control, recognising that the latter gives the controlling party more powers than mere material influence.

A2.515 The submission also stated that as News Corp was registered in the USA, the transaction would effectively move the control of the new enterprise outside the United Kingdom. This could lead to a de facto reduction in the plurality of people serving the UK television audience.

A2.516 Professor Porter noted that Sky was a commercially successful company, highlighting the attractiveness of the Sky platform as a reason for this.

A2.517 The submission urged Ofcom to take a long-term view of the future relationships between a global media market and the information and media needs of UK audiences. It highlighted that there may be possible 'tensions' between a narrow interpretation of EU competition law and the public interest provisions of both the Communications Act 2003, and the Enterprise Act 2002.

A2.518 Professor Porter proposed that if the transaction were permitted, the UK authorities should seek to ensure six undertakings from News Corp in order to ensure that there continues to be a sufficient plurality of persons with control of the media enterprises serving UK audiences:

- Sky would remain as a UK-based company, which is accountable to the UK regulatory and tax authorities
- The new enterprise would fulfil the minimum quotas for transmitting EU programmes and commissioning independent producers required by the EU Audiovisual Media Services Directive
- The new enterprise would not transfer outside the UK (or possibly the European Economic Area) the ownership of any of the intellectual property rights either in its own programmes, or of those programmes which it produces in the UK in the future.
- The new enterprise would not prevent, by means of exclusive contracts, other UK broadcasters from acquiring the UK rights to foreign films and television programmes which Sky also seeks to broadcast in the UK
- After a specified period of time – possibly one month – the new enterprise would offer its own productions for sublicensing to UK free-to-air channels.
- News Corp would require any third party, to which it assigned control of new enterprise, or to which it sold any of its assets, to fulfil these same conditions.

Robert Beveridge, Lecturer in Media Policy

A2.519 Mr Beveridge said that Ofcom should recommend that the matter be examined by the Competition Commission. The submission stated further that it could be argued that changes in the media ecology warrant a Royal Commission to examine questions of pluralism and diversity of voice in the media as a whole.

A2.520 The submission cited evidence in Cardiff University research on the quality of broadcast reporting of impartiality and accuracy in news in the context of devolution, which suggested that ITV, Channel 4 and Sky only achieved accuracy in some 35% of their content

A2.521 It was argued that the proposed acquisition would increase the likelihood of costs and content to be shared across the gathering and reporting of news between the two organisation. Mr Beveridge argued that this would lead to an increasing emphasis on headlines rather than impartial analysis.

A2.522 The submission noted that there may be a move towards partnership and content sharing (particularly in the context of increasing cost cutting), and that the sourcing of media content from a limited or smaller number of newsrooms might have implications for levels of impartiality or plurality as a whole.

A2.523 Mr Beveridge stated that it was 'self evident' that Rupert Murdoch already held what many would perceive as an 'undue influence' on British politics and democracy.

Professor Steven Barnett

A2.524 Professor Barnett highlighted the existing market share of News Corp, noting it's strong position relative to competitors and also that it was predicted to grow further in the near future. The submission also outlined Sky's strong position in the pay TV market, and the role that premium sport and movie rights played in maintaining and strengthening this position.

A2.525 The submission noted that Sky was one of three television news providers in the UK, and that ITN was in a particularly vulnerable position. If ITN existed the market, Sky News would become the only commercial television news alternative to the

BBC. This would match the structure of the radio news sector, where by virtue of its contract with IRN, Sky was 'the only radio news competitor to the BBC'.

A2.526 Professor Barnett stated that, were the acquisition to be permitted, there would remain just one viable commercial provider of television and radio news in the UK, wholly owned by a single corporation and ultimately controlled by a single individual who also owned over a third of Britain's national press. This concentration was, in Professor Barnett's view, 'surely... unacceptable for a healthy democracy'.

A2.527 Professor Barnett said that News Corp and its Chairman Rupert Murdoch had 'a long and well established track record both in direct intervention and in exercising indirect influence over his media properties'. The submission argued that impartiality rules would not guarantee that internal plurality was maintained, as they did not cover the selection or omission of stories.

A2.528 It was also noted that editorial influence could be achieved through the selection of of like-minded senior editorial staff who are trusted to pursue styles or news agendas which are more acceptable to the owner', and noted the editorial stances of News Corp newspapers in relation to the Iraq war as indicative of this.

A2.529 Professor Barnett stated that a broadcaster's output could be shifted without 'heavy-handed intervention'. He said that plurality did not only mean allowing opposing views to be aired on matters of controversy, but that it involved recognising that corporate influence could be exercised in a number of ways throughout a media company's output, and that a prevalent "news culture" could reflect the worldview of an interventionist owner without breaching any statutes on impartiality.

A2.530 The submission said that corporate values and editorial positions were likely to be heavily influenced by the commercial interests of the parent company. It stated that News Corp had previously used its editorial presence to generate interest in new product launches, pricing innovations, major sports contracts or Hollywood movies. Conversely, News Corp had also, in Professor Barnett's view, failed to publicise rival initiatives on occasions, or distorted coverage against in this respect.

A2.531 Professor Barnett gave examples of this practice, including the establishment of the Sadler Inquiry on cross-promotion following complaints from British Satellite Broadcasting over the amount of promotion that News Corp titles were granting to the launch of Sky in 1989.

A2.532 The submission stated that if the transaction were approved, similar editorial pressures could be applied which would lead to extensive reporting of negative stories involving competitors, or minimal coverage of controversial stories related to News Corp itself, such as the recent phone hacking allegations.

A2.533 Professor Barnett rejected arguments that there an 'explosion' of news and information outlets (most notably through the internet) had rendered any merger restrictions unnecessary. He highlighted that the origination of news stories was still largely undertaken by mainstream news organisations, and that the role of television as the primary source of news remained for most people. Professor Barnett emphasised the latter point, highlighting that the importance of television had remained high despite technological changes, and that this indicated that it was likely to remain significant in the future.

A2.534 Professor Barnett stated that this analysis was applicable to content types beyond news and journalism, given that a 'corporate ethos' could spread through all aspects of a media organisation's operations, including the commissioning of content such as drama or comedy.

A2.535 The submission concluded by stating that there were arguably already too few voices dominating the main media outlets, and to reduce this further would be contrary to the public interest.

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Jeremy Darroch
Chief Executive
British Sky Broadcasting Ltd
Grant Way
Isleworth
TW7 5QD

7 January 2011

Dear Jeremy

NEWS CORP/BSKYB PUBLIC INTEREST INTERVENTION

As you know, the Secretary of State for Business, Innovation and Skills asked Ofcom on 4 November to provide advice and recommendations on the specified public interest consideration concerned with the sufficiency of plurality of persons with control of media enterprises. I received a copy of this report on 31st December and I am now sending you a redacted copy.

I have carefully considered this report, and, given the nature of the statutory threshold for reference to the Competition Commission, on the basis of the evidence and analysis presented by Ofcom, I am minded to refer the matter.

Before doing so, however, in accordance with section 104(2) of the Enterprise Act 2002, I am consulting you about my proposed decision in order to give you the opportunity to make further written representations and, if you request it, a meeting to discuss the issues raised before I reach my final decision on referral. I attach an indicative timetable for the next steps in the process.

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I am also enclosing the OFT's report on jurisdictional issues relating to the anticipated acquisition by News Corp of BSkyB.

I am copying this letter to James Murdoch at News Corporation.

The Rt Hon Jeremy Hunt MP
Secretary of State for Culture, Olympics, Media and Sport

Enc/

Process and Proposed Timings

<u>13 January</u>

Written representations

<u>Week commencing 17 January</u>

Meeting (if requested)

<u>Week commencing 24 January</u>

Referral and publication of redacted report and decision

<u>OR</u> (if minded not to refer)

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

<u>Week commencing 31 January</u>

Consider representations from parties opposed to the merger.

<u>Week commencing 7 February</u>

Decision on referral.

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James Murdoch
Chairman and Chief Executive
News Corporation
3 Thomas Square
London
E98 1EX

7 January 2011

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Department for Culture, Media and Sport

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The Rt Hon Jeremy Hunt MP
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Non-confidential version

Response to Ofcom's Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation dated 31 December 2010

1. Introduction

1.1 We refer to Ofcom's report dated 31 December 2010 ('the Report'). We are grateful to the Secretary of State for the opportunity to make representations to him in relation to the Report. This document comprises Sky's representations on the Report.

1.2 As noted in Sky's response to Ofcom's Invitation to Comment,[1] the paramount consideration for the Independent Directors and the Executive Directors of Sky in relation to News Corporation's ('News Corp') proposal is to ensure that the interests of Sky, and Sky's shareholders and employees, are safeguarded. In the context of the present intervention, there are two important aspects to this consideration:

a) First, the Independent Directors consider that an offer from News Corp could be in the interests of Sky shareholders in the future, provided that it is at an acceptable price. The prevention of such an acceptable offer would be adverse to those interests.

b) Second, Sky wishes to ensure that, in any review by the appropriate authorities of News Corp's proposal, no precedent is set which would inappropriately or unduly restrict any merger or acquisition opportunities which may be available to Sky (for example, as a result of Sky's continuing operation of Sky News).

1.3 Each of these matters speaks to the need for the present intervention to be:

a) properly focused on the relevant question, and rigorously evidence based, treating with due scepticism submissions by commercial competitors; and

b) conducted in a manner which is mindful of the need for transparency and predictability in merger control, so as not unduly to undermine the ability or incentive for companies to expand, invest and innovate.

1.4 We note that, in preparing the Report, Ofcom has set itself the task of deciding whether, having assessed the available evidence, "[it reasonably believes] *that the proposed acquisition may operate or be expected to operate against the public interest*".[2]

1.5 It is to be noted that Ofcom's role is to advise the Secretary of State, in order to assist the Secretary of State in deciding how he should answer the questions posed to him by the Enterprise Act 2002 ("EA02"). The EA02 requires that the Secretary of State should, on the basis of his own reasonable assessment of the evidence:

a) decide whether *he* believes that it is or may be the case that the proposed merger operates or may be expected to operate against the public interest; and

b) if so, decide whether he should refer the case to the Competition Commission ("CC") for further investigation.

1.6 It would not be appropriate for the Secretary of State simply to adopt the advice of Ofcom in a case such as the present one. It falls to the Secretary of State to make his own assessment of the evidence, on the basis of which he might reasonably reach different conclusions from Ofcom's as to whether the 'threshold' for a reference to the CC is met. But, if the threshold is met, it is also necessary to address the second question, namely

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1 [Confidential].

2 Paragraph 1.4 of the Report

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whether it is appropriate for the Secretary of State to exercise his discretion to refer the case to the CC. (We mention this second question, in particular, as the Secretary of State's letter of 7 January 2011 makes no reference to it, but appears to envisage that he is minded to refer the matter to the CC simply in the light of Ofcom's evidence and analysis of the first question.)

1.7 Sky submits that, in the present case:

a) Ofcom has subtly recast the statutory formulation of the "media plurality" test, with the result that it has approached in a distorted manner the questions which it should have answered; and

b) perhaps in consequence, Ofcom has given undue weight to particular pieces of evidence, and has discounted other relevant evidence.

1.8 Sky submits that it is therefore particularly important that, in the present case, the Secretary of State should assess the "raw" evidence summarised by Ofcom in its Report with an open mind, and by reference to a correct understanding of the relevant media plurality test.

1.9 Sky submits that such an assessment is likely to lead the Secretary of State to conclude that:

a) Ofcom has overstated the risk that the proposed transaction might operate against the public interest;

b) on a proper assessment of the issues, there is a minimal, if any, risk that the proposed transaction might operate against the public interest; and

c) accordingly, it would be reasonable for the Secretary of State to exercise his discretion to decide not to refer the matter to the CC for further investigation.

Sky elaborates on these points in the remainder of this Submission.

2. Ofcom's advice and recommendations

2.1 We note at the outset that, despite its final advice and recommendation that the Secretary of State should refer the matter to the CC for further investigation, Ofcom has, in fact, concluded that the proposed transaction poses a threat to media plurality only in certain limited respects:

a) in technical (and purely numerical terms), the merger of News Corp and Sky will reduce by one the number of independently owned/controlled media enterprises active in the UK;[3]

b) but it is a separate question whether there will be a reduction in the number of independent voices, since it remains possible that internal plurality will be maintained within the enlarged News Corp group to such an extent as to lead to no diminution in the number of independent voices, relative to the status quo ante. Ofcom does not find that there will be a loss of internal plurality, but merely concluded that, having conducted only a first stage review, *"we do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs"*;[4]

c) in terms of its static (immediate) effects the transaction would bring together News Corp's existing newspaper interests with Sky's retail and wholesale TV /radio news services, thereby conferring on News Corp an enhanced presence in terms of its share of total news consumption, its overall reach, its presence on several distribution platforms, its qualitative influence, and – allegedly in consequence - its *"ability to influence opinion"*;[5]

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3 Paragraph 1.36 of the Report.
4 Paragraph 1.39 of the Report.
5 Paragraph 1.48 of the Report.

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d) no special concerns arise in respect of particular audiences (whether defined by geography, age, socio–economic status, or use of particular news sources). The concerns identified relate to UK audiences generally; and

e) although one can speculate as to (longer term) dynamic developments which might occur in respect of the provision of news services, there is no sufficiently tangible concern arising from such speculation as to justify its forming part of the evidence on which Ofcom relies.[6]

2.2 It is self-evident that News Corp's acquisition of 100% ownership of Sky will lead, in purely numerical terms, to a reduction – by one – in the number of independently owned/controlled media enterprises. This is of no substantive significance. Nor does Ofcom in fact conclude that the proposed transaction is, in fact, likely to lead to any significant reduction in internal plurality as between Sky News and News Corp's newspaper interests. It merely proceeds on the precautionary basis that it cannot rule out the possibility that that might happen. It follows that, if the Secretary of State were satisfied that such internal plurality would be maintained, then there would be no basis for a reference.

2.3 Furthermore, in suggesting that the Secretary of State might wish to consider putting new legislation before Parliament to allow ad hoc interventions on grounds of media plurality, unrelated to any particular merger in the media sector, Ofcom effectively acknowledges that the present transaction does not itself pose a dynamic threat to media plurality (but it would like to see additional powers of intervention, just in case anything unexpected happens).

2.4 Thus, Ofcom's advice that the present case should be referred to the CC ultimately rests entirely on an assessment of the potential immediate effect on external plurality of the combination of News Corp's newspaper interests with Sky News's TV/radio interests. For the reasons explained below, Ofcom has misdirected itself as to how to conduct that assessment, and its resulting advice is therefore flawed and unreliable.

3. Ofcom's assessment of external plurality

3.1 The specified public interest consideration which arises in the present case is a consideration which is concerned with the sufficiency of plurality of persons with control of media enterprises, that is *"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience"*.[7]

3.2 In the Sky/ITV case, the CC and the Court of Appeal made clear that, in assessing whether a transaction may be expected to operate against the public interest, by reference to this public interest consideration, the authorities should have regard to whether the merger will have the effect of so diminishing the number and range of voices serving a relevant audience as to mean that there will, after the merger, be an insufficient number and range of voices to protect the public interest.

3.3 Thus, the CC summarised the concept of plurality as follows in the Sky/ITV case:

> *"There is no statutory definition of plurality in section 58A or elsewhere in the Act. We took the concept of plurality of persons with control of media enterprises to refer both to the range of and the number of persons with control of media enterprises."*[8]

and which was endorsed subsequently by the judgment of the Court of Appeal in the same case:

> *"We agree with the Commission on this ... The word plurality can connote more than just a number exceeding one. It may carry an implication of range and variety as well."*[9]

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6 Paragraph 1.54 of the Report.
7 Paragraph 1.2 of the Report.
8 Paragraph 5.7 of the CC Report in BSkyB/ITV.

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3.4 In the present case, Ofcom has looked beyond the wording of the statutory test, and the approach approved by the CC and the Court of Appeal for the application of that test, and has instead laid emphasis on an informal explanation of the test advanced in Parliament at the time of the enactment of the EA02, or advanced in subsequent statutory guidance.[10]

3.5 Accordingly, Ofcom appears to have concluded that its assessment should focus not on whether the presently proposed transaction will lead to such a diminution in the number and range of independent voices as to lead to insufficient plurality. Instead, its assessment focuses on whether the merged News Corp/Sky would have a "louder" voice, relative to other voices, with the implication that News Corp/Sky would then drown out other voices, such as to render the state of plurality insufficient to protect the public interest (a proposition which itself is not self evident): Ofcom has sought to decide who has greatest ability to influence the formation of public opinion, when it should instead have focused on whether there remained a sufficient number and range of sources of news provision to the public.

3.6 Sky submits that this approach distorts Ofcom's assessment. Ofcom has strained to quantify the relative ability to influence which a merged News Corp/Sky would have, using unreliable metrics, and making questionable judgments as to the way in which users of one news source can be expected indirectly to influence wider public opinion by debating what they have seen/read with other members of the public.

3.7 We elaborate on these errors in section 4 below.

4. Ofcom has adopted a flawed methodology

4.1 There is no established metric for analysing a media enterprise's ability to influence and inform opinion, as these are, arguably, not measurable concepts. As established above, *"the range of and the number of persons with control of media enterprises"* effectively acts as a proxy for all the concerns underlying the statutory test precisely in order to avoid this issue.

4.2 In this context, Ofcom has taken 'ability to influence' as being synonymous with consumption. Such an approach is questionable as even Ofcom notes that it does not take into account the varying ability of different media to influence opinion,[11] the impact of multi-sourcing on opinion forming, or, indeed, consumers' own judgments as to whether to accept everything that they read, see or hear.[12]

4.3 This is particularly so in relation to the use of 'share of minutes of news' as a relevant metric. Ofcom's analysis of the relative weights of 'minutes of use' across different media is, at best, speculative, without empirical basis. For example, Ofcom asserts that a 'TV news minute' would hold greater weight in terms of ability to influence than other media as *"TV news broadcasts are designed to deliver information and messages effectively in a relatively short time period compared to that available to newspapers"*. No attempt is made to assess the relative influence of (non-linear) media that provide for in depth reporting or investigation as compared to the brief news reports that are usually contained in linear broadcast media with limited schedule time.

4.4 At best, Ofcom's three metrics demonstrate consumers' actual use of media and their views on their sources of news on a cross-media basis.

4.5 However, whilst Ofcom acknowledges the limitations of these three factors it considers in its assessment (audience share and reach, minutes of use per day, and share of references), considering them to provide *"useful insight"*, Ofcom then goes on to rely solely on this analysis to conclude that *"the proposed transaction will result in an increase in News's ability to influence public opinion"*.

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9 Paragraph 90 of the Court of Appeal judgment. See also paragraphs 114 and 116 of that judgment.
10 Paragraphs 1.5 and 1.11 of the Report.
11 Paragraph 1.25 of the Report.
12 Paragraphs 4.81 - 4.87 of the Report.

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4.6 As demonstrated above, this conclusion does not follow from the evidence.

4.7 Furthermore, by exclusively focussing on 'relative ability to influence', Ofcom's methodology obliges it to adopt further distortions of the plurality test in order to overcome evidence pointing to a sufficiency of plurality post-transaction.

4.8 For example, Ofcom discounts the lack of direct harm to plurality that might result from the transaction. Only a very small number of people rely solely on News Corp and Sky for news content and would therefore lose an alternative source of news content.[13] Furthermore, Ofcom's research shows that regular Sky News users source news from more providers than the general population.

4.9 This is dismissed by Ofcom as not being adequate to ensure sufficient plurality as what matters more than the consumption of news by individuals is "*the number and range of news providers used by **all** consumers and their relative significance*".[14] It is not clear to Sky why public debate and discussion of news by individuals should be given greater weight than the number of news providers used by each individual. The two seem inextricably linked and should be given equal weight in any assessment of whether there will be sufficient plurality.[15]

5. Discounting of relevant evidence and considerations

5.1 Sky submits that, instead of seeking to evaluate the relative value/strength of the "voice" which a merged News Corp/Sky would represent, Ofcom should instead have sought to evaluate the number and range of voices which would remain post-transaction. Much of the evidence which Ofcom cites would be relevant to a properly-directed assessment. But Sky submits that, if Ofcom's assessment had been more appropriately directed, it would have attached more weight to:

a) the range of other news providers who will remain active, independently of News Corp/Sky, post-merger, and will continue to generate and disseminate diverse news content and comment. Such news providers include numerous newspaper groups and powerful TV broadcasters who are committed to the continued provision of TV news coverage;

b) the readership/audience share which such other providers already achieve, and the scope for them to reach additional readers/audiences if the quality/diversity of news coverage offered by News Corp/Sky were to diminish (in a context where Sky News' share of national TV news is only around 7% (and under 10% if Five News' share is included), compared to the BBC at 71% and ITV at 15%);

c) the fact that News Corp/Sky would not control any scarce resources or privileged means of distribution of news services, since News Corp/Sky would not control any scarce spectrum resources (e.g. terrestrial TV frequencies/franchise) or have access to public funding (such as the BBC's licence fee). Indeed, Ofcom fails to assess the relative impact of the BBC as "*the strongest provider of news and current affairs in the UK*".[16] Ofcom merely notes its institutional and editorial independence, and that this is "*fundamentally different from other media enterprises, including News Corp*";

d) the fact that there is no real prospect that News Corp/Sky could prevent a full range of news stories and opinions from being made known to UK audiences, since other news providers (providing content and/or editorial control) would remain sufficiently numerous and well-established to provide a diverse range of content and comment; and

e) the fact that the growth of access to the internet, and the unique facility which it provides to disseminate news stories and comment very quickly to end users, provide

13 Paragraph 5.112 of the Report.
14 Paragraph 5.116 of the Report.
15 Sky notes that this argument was not put to it as part of Ofcom's Issues Letter.
16 Paragraph 5.51 of the Report.

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a strong protection against the risk that any media enterprise could deny 'airtime' to the widest possible range of content and commentary.

5.2 Instead of recognising the contribution which these factors necessarily make to media plurality (in terms of the number and range of providers), Ofcom has sought to quantify the significance of such factors,[17] with the result that it has discounted the significance of some of these factors for no good reason. Thus, for example, Ofcom discounted the significance of the internet, because not all consumers have access to it,[18] whilst (inconsistently) relying on the power of conventional news providers to influence public opinion, on the basis that their influence is not limited to their own immediate audience, but extends further, since their immediate audience can be expected to pass on views sourced from such providers to other members of the public.[19] Likewise, Ofcom discounted the significance of 'raw' news providers, who have no editorial control, without attaching weight at all to the range of websites which provide comment on raw news stories.[20]

5.3 In addition, Ofcom's analysis places greater emphasis on the position of the merged entity in relation to the wholesale provision of news content than at the retail level. This has the effect of increasing significantly the cross-media share of consumption of the merged entity due to Sky News' supply of news content to Five and to commercial radio stations, particularly via IRN.

5.4 In doing so, Ofcom fails to give due consideration to the following:

a) the editorial control exercised by Five in relation to the Five News service; and

b) the different news content services available to commercial radio stations which enable them to select news stories to suit their own target audiences and editorial requirements.

5.5 Accordingly, even if Ofcom's methodology were appropriate, its conclusions are flawed. For example, Ofcom asserts that "*a similar picture* [to that at the wholesale level] *is displayed when considering all sources of retail news provision, ..., and when considering the main source of news at the retail level*".[21] Ofcom has not considered that the increments resulting from the transaction at the retail level (which correctly counts Five News and commercial radio stations as having separate voices to Sky News) are significantly less (around half) the level in the wholesale analysis and cannot be viewed as being significant, at 5% and 10% for 'share of references' and 'reach' respectively. It cannot be the case that any increase in such shares should result in a reference to the CC.

5.6 Thus, Ofcom's resulting assessment is no more than the sum of a series of idiosyncratic weightings attached to different inputs to media plurality, from which it concludes that a merged News Corp/Sky would be likely to have too much influence over public opinion. The consequence of Ofcom's error is well-illustrated by examining the graphs contained in paragraphs 5.33 to 5.44 of the Report, which divide media enterprises into numbered Groups, according to their relative contribution to plurality on different measures. It is self-evident that Ofcom has erred in discounting the significance, in terms of their contribution to plurality, of the combined membership of Groups 3 and 4 in each graph. In effect, Ofcom decides that these Groups provide no voices capable of contributing sufficient plurality alongside the BBC, a merged News Corp/Sky and ITV. Sky submits that this is self-evidently wrong.

6. The Secretary of State should exercise his discretion not to make a reference

6.1 For the reasons outlined above, Sky submits that the evidence clearly demonstrates that the presently proposed transaction poses no threat to the sufficiency of media plurality.

17 Paragraphs 4.39 ff of the Report.
18 Paragraph 4.31 of the Report.
19 Paragraph 5.116 of the Report.
20 Paragraph 2.21 of the Report.
21 Paragraph 1.34 of the Report.

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Absent any such threat, the Secretary of State may not therefore reasonably conclude that it is or may be the case that the proposed transaction may operate or be expected to operate against the public interest. Ofcom's advice to the contrary is based on its erroneous approach to the assessment of the sufficiency of media plurality, and, in consequence, its distorted evaluation of the evidence.

6.2 In addition, in making his assessment, the Secretary of State needs to give due consideration to the following factors:

a) the DTI Guidance makes clear that the purpose of the media plurality public interest provisions is to *"prevent unacceptable levels of media and cross media dominance"*[22] and to act as a safeguard against *"a significant reduction in plurality"*.[23] Furthermore, this is a case in which the media plurality public interest provisions are intended to operate only *"in exceptional circumstances"* where such mergers give rise to *"serious public interest concerns"*. Ofcom's Report singularly fails to provide evidence of such concerns; and

b) Ofcom has confirmed that, in its view, any media plurality concerns relate solely to Sky News. Sky therefore repeats the point made in its response to Ofcom's Invitation to Comment that it has invested for many years, and continues to invest, in the operation of Sky News as a distinct, impartial and independent news service. Indeed, the Board of Sky (including the members of the Board connected to News Corp) have for many years authorised growing investment in Sky News to that end as part of Sky's overall annual budgeting process. Such investment serves to enhance the overall attractiveness to customers of the services Sky offers. The availability of Sky News to audiences, therefore, is the result of a strong commercial incentive, not of any obligation to provide television news. This commercial investment incentive would remain irrespective of a change in ownership of Sky. Conversely, it has the potential to be undermined if merger control were to operate such that the operation of Sky News inappropriately or unduly restricted any merger or acquisition opportunities which may be available to Sky. Thus, a conclusion that the proposed transaction would result in a loss in plurality could perversely increase the risk of that very situation by undermining the incentives which have resulted in the provision of Sky News to date. This would be a wholly unwelcome outcome, and itself contrary to the public interest.

6.3 Accordingly, it would be appropriate in the circumstances for the Secretary of State to exercise his discretion not to make a reference in the present case.

Sky **13 January 2011**

22 Paragraph 7.7, DTI Guidance.
23 Paragraph 7.11, *ibid.*

Non-confidential version of Submission dated 14 January 2011

News Corporation

SUBMISSION TO THE SECRETARY OF STATE

FOR CULTURE, OLYMPICS, MEDIA AND SPORT

1. INTRODUCTION/OVERVIEW

(a) Background/decision to be taken by the Secretary of State

1.1 This submission is made on behalf of News Corporation (**News**) in relation to its proposed acquisition of those shares in British Sky Broadcasting Group plc (**Sky**) that it does not already own (the **Transaction**).

1.2 On 4 November 2010, the Secretary of State for Business, Innovation and Skills (Secretary of State for **BIS**) issued an European Intervention Notice which identified the following public interest consideration (**PIC**) as potentially relevant to a consideration of the Transaction:

> *"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom for there to be a sufficient plurality of persons with control of media enterprises serving that audience;" (section 58 (2C)(a) of the Enterprise Act 2002)*

1.3 Ofcom was required to provide advice and recommendation with regard to the PIC pursuant to Article 4A of the Enterprise Act (Protection of Legitimate Interests) Order 2003 (the **Order**) and OFT was required to advise as to the creation of a European relevant merger situation pursuant to Article 4(4) of the Order.

1.4 Following the revelations which emerged in the press on 21 December, indicating clear bias against News by the Secretary of State for BIS, the Secretary of State for BIS and his department were removed from a decision making role in relation to the Transaction and decision making powers were transferred to the Secretary of State for Culture, Olympics, Media and Sport (**Secretary of State**) who must now take the decision on whether or not to refer the Transaction to the Competition Commission (**CC**) under Article 5 of the Order.

1.5 Ofcom issued its report to the Secretary of State on 31 December 2010 (the **Report**).[1] A redacted copy of the Report was provided to News on Friday 7 January 2011, after business hours. OFT issued its report to the Secretary of State on 30 December 2010 (the **OFT Report**) and a copy of the OFT Report was also provided to News on 7 January 2011, after business hours.

1.6 In its Report, Ofcom has advised the Secretary of State that, in Ofcom's view, the Transaction "*may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences*" (paragraph 1.57) and has indicated that in its view, there is a need for a full review of the issues and the Secretary of State should refer the Transaction to the CC for a more detailed review.

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[1] All paragraph references are to the Report except where stated otherwise.

1.7 The Secretary of State is not bound to follow Ofcom's recommendation. Under Article 5(3) of the Order, the Secretary of State is obliged to take his own decision taking account of the PIC and considering whether the Transaction may be expected to operate against the public interest. Moreover, the Secretary of State has a power rather than a duty to refer. He may make a reference to the CC if he believes that the Transaction may operate against the public interest, but he is not obliged to do so.

1.8 Up to now News has been subject to an administrative review process which was seriously flawed: the initial decision to intervene in relation to this Transaction on the basis of a public interest concern was taken by a Secretary of State for BIS who was biased against the interests of News and its shareholders.

1.9 News believes that Ofcom has failed to approach the effects of this Transaction with an open mind and has carried out a review process with the intention of identifying concerns.

- Ofcom has been notably more receptive to submissions made by third party complainants than it has been to submissions made by News and has selectively omitted relevant evidence.
- As an example, Ofcom quotes vague evidence from Andrew Neil (widely reported in the press as having left his position as editor of The Sunday Times in 1994 "on bad terms") in support of its arguments but does not refer at all to the direct oral evidence provided to Ofcom by John Witherow (editor of The Sunday Times since 1994) who reported that no editorial influence whatsoever was exercised by News over the content of The Sunday Times.

1.10 The Report contains a number of serious errors in legal and analytical approach which undermine the validity of the Report and which render Ofcom's conclusions unreliable. Therefore there can be no presumption that rejecting its recommendation for a reference to the CC, on the weight of evidence available to him, would be unreasonable. On the contrary, for the reasons set out below, the Report provides no legitimate basis for a decision that the Transaction should be reviewed by the CC in more detail.

(b) Serious legal and analytical errors in Ofcom's Report mean that Ofcom's recommendation to refer to the CC cannot be relied upon in a number of key respects

(i) **Ofcom does not address the question of whether media plurality is currently "sufficient"** and whether plurality may be rendered "insufficient" as a result of the Transaction. Therefore, it fails to address the fundamental question on which the Secretary of State has to decide. It cannot be the case that *any reduction of* plurality is to be considered to lead to insufficient plurality - otherwise every media merger would need to be subject to a detailed review or blocked

(ii) **Ofcom also confuses the permissive nature of a first stage review. A lower standard of proof does not mean that Ofcom is permitted to stop short of an analysis whether the Transaction will result in insufficient plurality** - the key question posed by the PIC. The fact that the Secretary of State may make a reference to the CC if he believes that it is or "*may be the case*" that the transaction "*may be expected to operate against*" the relevant PIC does not remove the fact that the relevant PIC concerns "*sufficiency of plurality*" of "*persons with control of media enterprises serving that audience*".

(iii) **Ofcom's mistreatment of Sky's wholesale activities lead it to dramatically overstate the potential impact of the Transaction**. The provision of news content to third party media enterprises, who themselves maintain editorial control over content, is an activity which falls outside of the statutory definition of a media enterprise and, even if Ofcom considers that it should be taken into account, it cannot be **equated** with the audience share of a broadcast entity. Ofcom attributes the full extent of independent commercial radio's share of news consumption (which is itself overstated) to Sky. Moreover, while Ofcom generally analyses data both including and excluding the wholesale supply of news, in drawing its conclusions it inevitably relies on the data which takes account of the wholesale supply of news by Sky News to Channel 5. Indeed, in its analysis of cross-media consumption (key to its overall conclusions) it *only* presents data including the wholesale supply of news.

(iv) **Ofcom's approach to assessing plurality, based primarily on measures of reach and share, contains a number of flaws**. Once key errors are corrected, it is clear that the Transaction does not result in insufficient plurality.

(v) **Ofcom fails to explain why internal plurality does not ensure sufficient cross-media plurality.** Sky News is a TV broadcaster operating within the culture of editorial independence and impartiality in TV news which is reflected in statute and the Broadcasting Code. Ofcom avoids the issue, concluding that "*in light of conflicting views*" they "*do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs as part of a first stage review*". The Secretary of State, reviewing all of the evidence, should come to the only reasonable conclusion which is that, given the existing level of external plurality, and the predictable continuance of Sky News as an independent voice due to internal plurality mechanisms (both cultural and regulatory), there is no threat to the sufficiency of plurality as a result of this Transaction.

(vi) **Ofcom's forward looking "dynamic assessment" is speculative and, by Ofcom's admission, provides no basis for a decision that there may be plurality concerns.** Ofcom explicitly does not rely on these issues in recommending to the Secretary of State that a reference to the CC be made (at paragraphs 6.72 and 6.73 of the Report) and the Secretary of State should ignore these speculative concerns which provide no reasonable basis for a reference to the CC. Moreover, Ofcom fails to distinguish in its assessment between effects on plurality and effects on competition; the latter is subject to the exclusive jurisdiction of the European Commission which unconditionally cleared the Transaction in a first stage review on 21 December 2010.

(vii) **Any potential need for additional regulatory mechanisms in order for media plurality to be monitored on an ongoing basis is irrelevant** to the review of the Transaction and any decision by the Secretary of State relating to this Transaction.

1.11 Should the Secretary of State decide to refer the Transaction on the basis of the Report, the flaws identified in this submission would taint his decision.

1.12 Furthermore, there are a number of areas where Ofcom either fails to provide advice to the Secretary of State at all or fails to draw the natural positive conclusion from its findings (purportedly on the basis that it is unable to decide on the relevance of various factors to an assessment of media plurality in the time available to it). These are crucial factors on which the Secretary of State can and should come to a view and which would enable him to conclude that the Transaction may not be expected to operate against the public interest without the need of a CC reference. For example:

(i) The UK consumer group currently consuming news from Sky and News only is minimal, less than 1%. This is accepted by Ofcom (paragraph 5.109) and follows a similar finding by the CC in Sky/ITV.

(ii) Plurality in news consumption is crucial to the required qualitative assessment. Ofcom acknowledges that the multi-sourcing of news is of relevance to plurality (paragraph 4.59) and even "*important*" (paragraph 5.115). However Ofcom states at paragraph 5.114 that: "*The implications of multi-sourcing in relation to this proposed transaction are complex and as a first stage authority we do not have sufficient time to consider it fully*". In fact, multi-sourcing by consumers is a key feature contributing to the sufficiency of media plurality in the UK and this follows on from the CC's analysis of plurality in Sky/ITV. It is hard to see how increased access to news sources, including the internet, does not enhance plurality. The Transaction will have a minimal impact on the plurality of consumption by consumers and consumers will, on Ofcom's analysis continue to access on average 2.8 independent sources of news if News and Sky were treated as a single source (as opposed to 2.9 if they are treated separately).

(iii) Given the recognised ongoing existence of a multiplicity of other media enterprises cross media the effect of the Transaction on the broader UK news agenda is crucial. Ofcom concludes paragraph 5.123 that: "*the available evidence does not point to a conclusion that News Corp's ability to influence through other media would be materially enhanced by the acquisition.*"

(iv) The importance of internal plurality for Sky News as a TV broadcaster operating within the culture of editorial independence and impartiality in TV news which is reflected in statute and the Broadcasting Code has been accepted by the CC in Sky/ITV. As noted above Ofcom avoids the issue, concluding that "*in light of conflicting views*" they "*do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs as part of a first stage review*".

(c) In fact, the Transaction poses no threat whatsoever to the sufficiency of plurality in the UK

1.13 News has always submitted, and continues to submit, that the proposed Transaction poses no threat whatsoever to the sufficiency of plurality when considered on an impartial and objective basis and in the framework of the evidence which is relevant to the applicable statutory test.

1.14 Indeed, many of News' propositions are supported by Ofcom's own analysis and/or are based upon the detailed analysis which was already carried out by the CC of how to assess plurality in the context of the Sky/ITV transaction and which does not, as a consequence, need to be revisited in the context of this Transaction.

1.15 It is necessary, as a starting point to assessing plurality, to step back and to consider the broader media environment and the number of voices available to and accessed by consumers in the UK.

(i) The Transaction can only affect a cross-media audience and there is no reduction in the number of independent newspaper proprietors or TV broadcasters in the UK as a result of the Transaction

The number of newspaper enterprises in the UK remains entirely unaffected by this Transaction. Enterprises such as DGMT plc, Guardian Media Group, Telegraph Media Group and Pearson are well funded, with a strong commitment to the continued provision of news in the UK and with distinct approaches to reporting and commenting on news. Alexander Lebedev's 2010 acquisition of the Independent, and the successful subsequent launch of its sister title, "*i*", demonstrates that it is still possible for support to be found even for loss-making newspaper enterprises in the UK. Indeed, after Lebedev acquired the Evening Standard in 2009 and made it a free paper, circulation had increased to over

610,000 by February 2010, the highest in the paper's 180 year history and more than twice as high as the September 2009 figures (256,000).[2]

The number of TV news broadcasters in the UK also remains entirely unaffected. Sky News will continue to face competition from competitors including both larger ones (such as the BBC, ITV, Channel 4) and smaller ones (including, but by no means limited to, Euronews, CNN, CNBC, Bloomberg, Al Jazeera).

Online, each of these enterprises and more compete for audience attention and provide distinctive sources of news reporting.

The BBC dominates each of TV, radio and online news and, as result, cross-media news provision in the UK. On Ofcom's own numbers, the BBC's share of consumption is in each of these media at least three times as large as the combined News/Sky group (even on the basis of Ofcom's inflated 'wholesale' calculation of the group's share). For TV, the media that on Ofcom's own research is by far the most important for UK news consumers, the BBC's share is eight times that of the combined News/Sky group. News references and reach tell a similar story:

> *"The BBC has the largest share, representing 37% of the total [wholesale news] references" (paragraph 1.28). "In terms of reach, the BBC (in the form of TV, online or radio) is used by 81% of UK adults at least once a week. This compares to 40% for ITN, 33% for Sky News and 32% for News Corp." (paragraph 1.30).*

The BBC has also recently reached an agreement with the government which secures its funding for the next six years.

(ii) News' position in newspapers (a declining segment within cross-media consumption) is unchanged and Sky's relatively modest share of TV news provision is unchanged.

Ofcom calculates that News titles have a reach of 29.4% of UK adults (paragraph 4.23 and Figure 10). News still faces competition from a wide variety of strong newspaper competitors. Newspapers are in any event, a declining segment, as acknowledged by Ofcom:

> *"Newspaper readership is also in decline, with the number of people reading a Sunday title falling by almost 5% per annum over the nine years to 2009, while daily readership has fallen at an average annualised rate of almost 3% over the same period" (Report paragraph 4.20).*

Sky News' position in TV news remains relatively modest. Ofcom calculates Sky News to represent 6% of TV news viewing (paragraph 4.16 and Figure 7). Consumers of Sky News, by definition, have access to digital channels and therefore have a wide range of alternative news channels available to them. In other words, they consume news in a more plural TV environment.

Ofcom acknowledges that there is no change in the relative influence of News or Sky within each traditional media platform:

> *"This transaction does not result in a change in the number, range or relative ability to influence within three of the individual platforms – TV, radio and newspapers." (paragraph 5.19)*

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2 See http://www.pfj.co.uk/news/london-evening-standard-enjoying-record-circulation-figures-news-03139182187.

(iii) **A culture of editorial independence in broadcast news supported by regulatory requirements (the Broadcasting Code) will continue to ensure that Sky News remains as an independent voice and that internal plurality within the broader News group will be secured. This, together with the existing level of external plurality, removes any doubt that might arise as to the sufficiency of plurality post-Transaction.**

Ofcom recognises that these factors play a role in the analysis, but Ofcom fails to draw the requisite conclusion that the Transaction raises no cause for concern.

> *"We recognise that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners" (paragraph 1.41).*

> *"It is our view that cultural safeguards may be expected to go some way to maintaining the editorial impartiality of Sky News" (paragraph 5.96).*

In fact, the broadcast segment is characterised by consumer expectations for greater impartiality than in other media, which News can hardly ignore:

> *"Many consumers do however understand that newspapers are more prone to expressing a particular position than TV news" (paragraph 4.85).*

(iv) **In Sky/ITV, News was already assumed to have control/material influence over Sky and no concern about plurality was identified.**

The OFT stated that *"[BSkyB's] largest shareholder is News Corporation (News Corp) with a 39.02 per cent stake, along with several directorships, which is sufficient to confer control over BSkyB."*[3]

In fact Ofcom assessed plurality in the previous Sky/ITV case precisely on the basis that Sky and News were assumed to be part of the same enterprise. Ofcom took into account the links between News and Sky in its plurality assessment on the basis that it treated "*all media enterprises under the same ownership or the same control as being controlled by one person.*"[4] **<u>Ofcom has entirely reversed its position in this case</u>** and in its substantive assessment of the effects of the Transaction it treats Sky as an entity which is entirely unconnected with News. This clear reversal by Ofcom was entirely unexplained.

The CC also took into account that News had material influence over Sky when assessing media plurality in Sky/ITV and, having carried out a detailed review, advised that there was no concern about plurality raised by Sky's acquisition of an interest in ITV.

(v) **Ofcom ignores the importance of multi-sourcing and online news as a significant contributor to plurality.**

The average consumer in the UK accesses five different sources of news. Multi-sourcing exposes consumers to a variety of different views and enables them to take their own decisions as to which sources of news coverage they find most interesting and attractive.

As acknowledged by Ofcom, the Transaction will not affect the number of sources to which consumers have access, and will not impact on the fact that most consumers consume news from a variety of sources.

3 OFT Report, paragraph 25.
4 Ofcom Report, paragraphs 4.4-4.7.

"The loss of Sky as a distinct media enterprise would not materially change this average number of news providers used by individual consumers" (paragraph 1.44).

The internet encourages more plurality in consumption and facilities access to a greater range and variety of voices. Ofcom acknowledges that the internet is an expanding medium.

"we consider the internet and wider online news provision to be relevant in any consideration of the sufficiency of plurality in the provision of news and current affairs" (paragraph 2.18).

(vi) Ofcom acknowledges that the actual impact of the Transaction on consumers of news will be minimal.

Replicating the analysis of media plurality which was carried out by the CC in Sky/ITV (as set out in Appendix 1 to the CC's report in Sky/ITV) News calculated that the number of consumers in the UK who would in reality be directly impacted by a combination of Sky News and News International newspapers is very small.[5]

- Only 6% of UK adults actively watch Sky News or visit SkyNews.com and actively read News International newspapers or actively visit News International websites (the "Sky/ NI Overlap Group").
- Approximately 96% of the Sky/ NI Overlap Group make use of other news sources, in addition to Sky and News International sources.
- Only 0.3% of the Sky/ NI Overlap Group use only Sky and News International news sources.

These figures appear to have been accepted by Ofcom (although Ofcom, misleadingly, describes this consumer group as "relying on" news from Sky and News when in fact they simply choose to consume news from Sky and News).

"Across the population as a whole, we found that few regular news consumers rely solely on Sky titles or solely on News Corp titles: at the retail level, 2% rely solely on news from Sky; and 1% rely solely on news from News Corp; these shares do not change materially if considering wholesale news provision" (paragraph 4.79).

"News Corp estimated that 6% of all UK consumers relied on both News Corp and Sky for news. Of these, approximately 96% also sourced news from other sources as well. News Corp therefore estimated that the proportion of consumers who would, post transaction, rely on only News Corp and Sky News and no other news provider would be 0.3% of the population" (paragraph 5.109).

(vii) Ofcom acknowledges that the Transaction will have no impact whatsoever on the setting of the wider news agenda within the UK

Having considered carefully the evidence as to influence over the broader news agenda in the UK, Ofcom concludes that:

"the available evidence does not point to a conclusion that News Corp's ability to influence through other media would be materially enhanced by the acquisition" (paragraph 5.123)

[5] See FTI Report paragraphs 6.24 to 6.44 and paragraph 2.9 of the Response to the Issues Letter

1.16 The fact that Ofcom acknowledges both the minimal impact on consumers and the lack of any impact on the broader news agenda should provide the Secretary of State with significant comfort that it is reasonable to conclude, having reviewed the evidence relied upon by Ofcom in its Report, that the Transaction does not result in insufficient plurality for any audience in the UK.

1.17 News has made a number of submissions to Ofcom setting out its view of how the PIC should be applied to the current Transaction. Each of the key submissions is attached to this submission to the Secretary of State, as follows:

(i) News' Initial Submission to Ofcom (**Initial Submission**) – attached at **Annex 1;**

(ii) FTI Report measuring plurality in news (Annex I of the Initial Submission, **FTI Report**) – attached at **Annex 2;**

(iii) Perspective Report on past and future trends in plurality and the setting of the news agenda (Annex II of the Initial Submission, **Perspective Report**) – attached at **Annex 3;**

(iv) News' Response to Ofcom's Issues Letter (**Response to Issues Letter**) – attached at **Annex 4;**

(v) Opinion of Lord Pannick QC (Annex 1 of the Response to Issues Letter, **Lord Pannick Opinion**) – attached at **Annex 5**; and

(vi) Perspective analysis of media's use of other media outlets as a source for stories (**Perspective Sources Analysis**) – attached at **Annex 6**.

1.18 Without seeking to replicate this comprehensive body of evidence, News summarises the main points of its case below, at the same time as addressing the key flaws in Ofcom's report.

(d) News is prepared to offer undertakings which eliminate Ofcom's concerns

1.19 **[REDACTED]**

1.20 A decision on UIL rests with the Secretary of State. Ofcom has not provided the Secretary of State with advice on this issue. Ofcom repeats a number of third party views on possible remedies at paragraph 7.3 to 7.6 of its Report but it has not endorsed these views. In fact, remedies were not discussed with Ofcom. In fact, no advice on this issue is required to be given by Ofcom and it is for the Secretary of State to take his own decision on whether or not to accept UIL in place of a reference to the CC, exercising his unfettered discretion. Specifically, if the Secretary of State would otherwise intend to make a reference to the CC, he has the power to accept UIL 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.*"

1.21 Should the Secretary of State still have concerns, having reviewed and considered News' submissions, News is prepared to offer UIL in order to remedy, mitigate or prevent those concerns from arising. These arguments will be addressed more fully in a UIL Proposal which will be separately submitted to the Secretary of State, if required.

1.22 Pending a decision by the Secretary of State all News' rights in relation to a possible legal challenge based on the significant flaws in the way the administrative process has been run and/or the serious flaws in the Ofcom Report are reserved.

2. THE RELEVANT STATUTORY QUESTION: THE KEY ISSUE IS THE SUFFICIENCY OF PLURALITY WHICH OFCOM SIDESTEPS ENTIRELY

(a) The PIC which the Secretary of State must take into account

2.1 In this case the PIC which the Secretary of State must take into account is:

> *"the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom for there to be a sufficient plurality of persons with control of media enterprises serving that audience;" (section 58 (2C)(a) of the Enterprise Act 2002)*

2.2 Ofcom, at paragraph 2.8 of its Report quotes from Paragraph 7.7 of the Guidance on Public Interest Intervention in Media Mergers published by the DTI in 2004 which makes clear that the PIC:

> *"is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and* ***control the agenda****. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent* ***unacceptable levels of media and cross-media dominance*** *and ensure a* ***minimum level of plurality****." (emphasis added)*

2.3 Ofcom does not acknowledge the clear implication of this formulation which is that, ultimately, the relevant public interest threshold is set at a high level. It is not any reduction in plurality which would lead to preliminary concerns but only a reduction in plurality which threatens a "minimum level of plurality". It is not any increase in the strength of one voice which would lead to concerns but only an increase which leads to "unacceptable levels of media and cross-media dominance" where dominance, in competition law terms, is a well understood and high threshold describing a significant degree of market power. Furthermore, sufficient plurality is concerned with an ability to "*control the agenda*". As noted above, the Report acknowledges at paragraph 5.123 that the Transaction will have no impact whatsoever on the setting of the wider news agenda within the UK.

2.4 It most also be borne in mind that when the Transaction has been evaluated in parallel on competition grounds, it has been unconditionally cleared by the European Commission in a first stage review concluded on 21 December 2010 meaning that no concern as to the continued existence of effective competition in media markets arise in this case.

2.5 It would therefore be unreasonable for the Secretary of State to trigger a lengthy and costly CC process where, on an objective view, he is not convinced that the threshold for intervention is met (as should be the case, in News' submission, taking an objective view of the evidence set out in the CC's Report).

2.6 While media plurality is important and a matter of public interest, it is not the case that *any* reduction in media plurality must be the subject of close examination, otherwise all media mergers would automatically be required to be reviewed by the CC. Ofcom appears to have fundamentally ignored this and to have drafted a Report to the Secretary of State based on a misunderstanding of the legal test.

(b) Need for counterfactual assessment is clear – this should not be confused with an assessment of sufficiency of plurality

2.7 Ofcom is correct that it is necessary to assess the possible effects of the Transaction with reference to the current situation/ the situation where the Transaction does not occur.

2.8 However, at paragraph 1.14 of its Report, and paragraphs 2.9 to 2.12 of its Report Ofcom confuses two issues which should in fact be distinct steps in the statutory process. The first is for the effects of the merger to be compared with the expected situation absent the merger – a counterfactual analysis. The second is the need for an assessment of sufficiency of plurality post-Transaction.

2.9 Ofcom makes no real attempt to consider (and provides no advice to the Secretary of State on) whether there is sufficient plurality in the UK before the Transaction and what difference the Transaction makes to the sufficiency of plurality. Ofcom ignores the concept of sufficiency altogether and purports to treat any potential reduction in the level of plurality which currently exists as a reason for a reference to the CC. This is explicit in paragraph 2.12 of the Report:

> *"We consider how the proposed transaction may affect the level of plurality in the market today, and whether this may raise risks for the public interest in terms of a potential reduction in media plurality such that a fuller second stage investigation is warranted."*

2.10 This is a misstatement of the legal test on the basis of which the Secretary of Sate is to make his decision on reference to the CC under Article 5 of the Order. The PIC does not arise in every case where two media voices which were previously distinct cease to be distinct. The PIC is narrower than this and is potentially relevant only where a reduction in the number of voices is such that it threatens to result in insufficient plurality. The Report has failed to provide advice on the fundamental question to be addressed by the Secretary of State in his decision on reference.

2.11 The Secretary of State must form a view on the level of plurality which is/would be sufficient in order to assess the potential effects of the Transaction and to decide whether the Transaction raises concerns which might justify a reference to the CC. In addressing the former question, it is highly relevant that (a) at the time of entry into force of the Communications Act 2003 Parliament must have assumed that plurality was sufficient; and (b) in 2007 as result of the Sky/ITV review, plurality both in TV and cross-media was found sufficient, even if Sky had retained its stake in ITV. This suggests that the CC felt that the level of plurality was not only sufficient in 2007, but that there was an appreciable margin of safety. Moreover, media plurality has increased since both 2003 and 2007 for reasons set out in the FTI and Perspective Reports. The assumption must therefore be that pre-Transaction plurality was already sufficient by some margin. Ofcom has failed to demonstrate that plurality would be reduced, as a result of the present Transaction, to a level below that subsisting in 2003 (or 2007) that could reasonably be said to lead to insufficient plurality.

2.12 Ofcom sidesteps this question at paragraph 2.10 of its Report by referring to a number of submissions from third parties[6] which claim that plurality is insufficient in the UK. In a controversial case such as this one, the fact that two lobbying organisations, the NUJ and two academics (cited by Ofcom in footnote 35) express a particular view can hardly be taken as evidence that that view holds any weight whatsoever and it is not acceptable for Ofcom to refrain from taking its own view on this issue and advising the Secretary of State accordingly. Ofcom's failure to engage with the issues calls into question the reliability of its Report and the Secretary of State must come to a conclusion on whether or not he would be minded to refer in full awareness of the flaws in the Report.

(c) A lower standard of proof for a preliminary "phase I" review does not mean that the statutory test can be disregarded or changed or that Ofcom is permitted to avoid difficult questions altogether

[6] Specifically, Ofcom refers to submissions from: 38 Degrees, Campaign for Press and Broadcasting freedoms, the NUJ and two academics.

2.13 Ofcom also confuses the permissive nature of a first stage review in terms of the threshold to be met before Ofcom can recommend to the Secretary of State that the Transaction might merit further review (described at paragraph 2.4 of its Report) with an ability to stop short of analysing the key question posed by the PIC – whether there is a risk that the Transaction will result in insufficient plurality.

2.14 The fact that the Secretary of State is only required at this stage to determine whether it is or "*may be the case*" that the Transaction "*may be expected to operate against*" the relevant PIC does not remove the fact that the relevant PIC concerns "*sufficiency of plurality*" of "*persons with control of media enterprises serving that audience*". Ofcom has side-stepped the key question of the statutory test.

2.15 Throughout the Report there are many places where Ofcom's view is that it is unable to decide on the relevance of various factors to an assessment of media plurality in the time available to it. In many cases, these "open" questions are not specific to this Transaction but would apply equally to any merger between media enterprises operating on different media platforms.

2.16 For example, Ofcom states at paragraph 5.114 that: *"The implications of multi-sourcing in relation to this proposed transaction are complex and as a first stage authority we do not have sufficient time to consider it fully".* In fact, multi-sourcing by consumers is a key feature contributing to the sufficiency of media plurality in the UK and this follows on from the CC's analysis of plurality in Sky/ITV. It is hard to see how increased access to news sources, including the internet, does not enhance plurality. Ofcom is a specialist regulatory body which carries out regular, broad reviews of media consumption by consumers in the UK. Ofcom understands very well that consumers use varying platforms to consume content and that access to content is being increasingly facilitated by the growth of the internet and digital media. Ofcom also had 40 days to carry out its "first stage" review (having been warned in advance by the Secretary of State that a reference might well be made). In a similar length of time, the European Commission, assessing the competition impact of the Transaction, carried out a full and detailed review, consulted with all interested parties, and came to the decided view, set out in a reasoned decision of 60 pages, that the Transaction raised no competition concerns.

2.17 Ofcom's struggle with these issues is even more baffling given that only three years ago Ofcom, and then the CC, had to assess the sufficiency of media plurality for a cross media audience in Sky/ITV, where Sky's existing links with News were already taken into account. In any event, there is ample evidence to conclude that the Transaction would not result in insufficient plurality, as summarised in section 1(c) above.

2.18 It is therefore unacceptable that News should be penalised, by means of a reference of this Transaction to the CC for a more detailed review, because Ofcom had not decided what they believe the appropriate framework for the analysis of plurality in cross-media markets to be and/or were not able to progress to form a view on the facts within the reasonable time allotted.

3. OFCOM'S MISTREATMENT OF SKY'S ACTIVITIES PROVIDING NEWS CONTENT TO THIRD PARTIES PERVADES ITS ANALYSIS AND LEADS TO A DRAMATIC OVERSTATEMENT OF THE POTENTIAL IMPACT OF THE TRANSACTION

(a) The share of media enterprises to whom Sky wholesales news cannot be attributed to Sky under the relevant statutory test

3.1 The PIC specified in this case and set out at section 58 (2C) of the Enterprise Act requires an assessment of the sufficiency of the number of "persons with control of media enterprises serving [each different audience in the UK]".

3.2 Section 58A provides a definition of media enterprises:

> "(1) For the purposes of section 58 and this section an enterprise is a media enterprise if it consists in or involves **broadcasting**.
>
> (2) In the case of a merger situation in which at least one of the enterprises ceasing to be distinct consists in or involves broadcasting, the references in section 58(2C)(a) or this section to media enterprises include references to newspaper enterprises.
>
> (3) In this Part "newspaper enterprise" means an enterprise consisting in or involving the **supply of newspapers.**" (emphasis added)

3.3 Sky's wholesale provision of news is not an activity of a "media enterprise serving a relevant audience" under the Enterprise Act and should therefore be disregarded. [7]

3.4 It is the controller of Channel 5 who is responsible for the content and editorial policy of Channel 5 news, regardless of the fact that the content is in practice, at this time, sourced by Channel 5 from Sky. The same applies to Sky's wholesaling of news content to Independent Radio News (**IRN**). It is the radio broadcasters who remain responsible for their news content rather than Sky.

3.5 Ofcom acknowledges this to some extent. It comments, at paragraph 2.20, that:

> *"Sky's provision of news...to other media enterprises may not, of itself, bring Sky within the definition of "media enterprise" for the purpose of the statutory test. However, it is relevant to the question of the contribution made by those other media enterprises to plurality. In any event, Sky...indirectly serves a variety of audiences besides its retail audiences, through wholesale news provision.""*

3.6 Later, Ofcom generally analyses data both including and excluding the wholesale supply of news, but in drawing its conclusions inevitably relies on the data which takes account of the wholesale supply of news by Sky News to Channel 5 and IRN. Indeed, in its analysis of cross-media consumption (key to its overall conclusions) it *only* presents its data including the wholesale supply of news.

3.7 Ofcom treads a very fine line as regards wholesale provision, emphasising that the type of wholesale arrangement entered into by Sky and ITN must be taken into account, but that the upstream supply of stories by news agencies such as Reuters and AP does not need to be taken into account (paragraphs 4.6 to 4.8). Such a selective approach to defining the relevant sources of influence seems designed to emphasise the importance of Sky News, while minimising the relevance of other media players. By contrast, the CC in Sky/ITV reported submissions it had received as follows:

> *"Five told us that, in its experience, the costs of news provision are falling, due to advances in digital technology and distribution. This could mean many more companies being potential news providers to Five when its contract is next up for renewal. In addition to Sky News and ITN, this could include international news organizations such as CNN, Reuters and APTN. Should they feel inclined, Five considered that any one of these organizations could recruit the staff to provide the dedicated 'front end' resources for a high-quality news programme, while relying on its own infrastructure to support this".* [8]

(b) Agreements for the supply of news content are temporary commercial arrangements

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7 See, in addition News' Initial Submission, paragraphs3.14 to 3.18.

8 At Appendix H of the CC Report.

3.8 There is nothing permanent at all about the supply arrangements between Sky and Channel 5 or IRN and they can be lost as well as won. The current arrangements represent a choice on the part of the responsible broadcaster, to source wholesale content from Sky for a particular period, on the understanding that the broadcasters will (as they are obliged to do) retain full editorial control over their own stations.

(c) News cannot interfere with the editorial content provided by Sky to third parties – this is highly relevant to the issue of internal plurality

3.9 Ofcom does not even take into account the indirect, limited and temporary nature of these arrangements when assessing the extent to which "internal plurality" is relevant to the analysis in section 5 of its Report.

3.10 It does not consider that:

(i) in practice, there is no reason to believe that News would interfere with editorial decision making at Sky News;

(ii) there is a clear and important additional barrier preventing News from interfering with editorial decision making in relation to news provided to Channel 5 and IRN given that the broadcasters who remain responsible for broadcast news content could object to any interference by news and would certainly be likely to object to any bias in the news content presented to them; and

(iii) in addition to drawing on the IRN feed, many commercial radio stations create their own national news bulletins drawing on a variety of sources.

3.11 As the CC noted in its Report in Sky/ITV (in the same paragraph 5.55 from which Ofcom selectively quotes in its Report):

> *"The channel operator remains ultimately accountable (including to the regulator) for the news that is presented on its channels. The presentation of individual news stories may on some occasions be discussed between the programme provider and the channel operator either before or after transmission."*

3.12 By contrast, Ofcom did acknowledge the limits to wholesale provision to a greater extent in its Report to the Secretary of State for BIS in Sky/ITV in relation to the arrangements which were then in place between ITN and IRN (albeit later drawing the wrong conclusion as to a potential threat to media plurality, as was later found by the CC and the Secretary of State for BIS who identified no such threat):

> *"since IRN self-supplies some news and ITN acts only as a sub-contractor of IRN in the provision of news content for radio stations, ITN's influence on radio news may be less significant" (paragraph 4.33 of Ofcom's Report in Sky/ITV)"*

(d) Ofcom's analysis of the share and influence of Sky News is misleading

3.13 It is not legitimate to attribute the audience share of Channel 5 and independent commercial radio to Sky when assessing the strength of different media enterprises and to treat this "indirect" audience as the equivalent of the direct audience of Sky News, which Ofcom does at paragraphs 1.23 and 1.27 of its Report and throughout section 5.

3.14 Sky's provision of News content to third party broadcasters accounts for the vast majority of the increment that Ofcom identifies as resulting from the Transaction. At paragraph 5.28 Ofcom claims that "News Corp will account for 23.7% of all minutes of news consumption – a 9.8 percentage point increment". A full 6.7 percentage points of the share of minutes attributed by Ofcom to Sky News in fact represents commercial radio listening. An additional 0.7 percentage points of the share attributed to Sky News represents viewing of Channel 5. Ofcom places appreciable weight on this analysis of consumption, saying it "provides a useful overview of the parties' relative positions and ability to influence public opinion". Stripping out the provisions of news via IRN and Channel 5, which is a wholly different activity from broadcasting directly to consumers, **the increment to News' existing share of consumption, on the basis of Ofcom's calculation, is a mere 2.4%,** representing a total share of consumption of 16.2%. This is hardly at a level where concerns would arise as to "*unacceptable levels of media or cross media dominance*" as required by the DTI's Guidance on the application of the media plurality test. If other flaws in Ofcom's exercise (identified below) were corrected, this share would be even lower.

3.15 In addition, there are two specific factual errors in Ofcom's calculation of the importance of news on commercial radio:

(i) Ofcom's "share of minutes" analysis is based on a weighting of 5% of commercial radio output being national news, or three minutes per hour. Ofcom's "share of minutes" analysis is based on a weighting of 5% of commercial radio output being national news, or three minutes per hour. In fact, the actual amount of news included in such services will vary considerably, for example, the main news programming provided by Sky to IRN for on-sale to its client stations is a two minute news bulletin each hour.

(ii) Ofcom assumes that Sky (via IRN) supplies all national news on commercial radio. But this too is an error. Many stations do simply rebroadcast the IRN bulletins in off-peak hours, but in peak hours (obviously far more important for minutes of news consumption) many stations will create their own national news bulletins, writing their own scripts drawing from a number of sources, including but by no means limited to IRN.

3.16 Correcting for these two errors (based on a conservative assumption of half of radio news consumption being of bulletins created locally rather than by Sky), the impact of the transaction would drop significantly. If Sky was treated as providing two minutes of news per hour rather than three this would change from a 9.8 percentage point increase to 5.3 percentage point increase, even on Ofcom's inappropriate wholesale basis.

3.17 Ofcom's approach in emphasising the degree of trust which consumers place in Sky News, in addition to the aggregate share of Sky taking into account wholesale provision, is equally flawed. Nowhere in the Report does Ofcom suggest that commercial radio stations are a key source of news content or an influential source of news for consumers or that an acquisition by News of some level of influence over content provided to independent radio stations (which is ultimately under the editorial control of those stations) is a matter which would raise concerns. To be coherent, if the trust and authority of Sky News were to form any part of the Secretary of State's analysis, the consumption of news via independent radio stations and via Channel 5 must be ignored.

3.18 Stripping out Sky's wholesale of news to other news providers, it is clear that Sky News has only a very small share of minutes of consumption and a very limited audience reach; the increment to News existing share of news consumption is modest. If the Secretary of State were to take the reasonable view that Sky's provision of wholesale news must be discounted when assessing its audience share and its ability to influence consumers, this in itself would fundamentally change the conclusions which should be drawn from the Ofcom Report. The small increment to News' existing share of cross-media consumption (combined with the lack of any change in the number, range or News' relative ability to influence other news providers within newspapers or TV news acknowledged by Ofcom at paragraph 5.123 of the Report) is in fact a reasonable basis for concluding that the Transaction does not raise media plurality concerns or pose any threat to the public interest.

4. ERRORS IN OFCOM'S ANALYSIS OF NEWS PROVISION AND CONSUMPTION

4.1 Ofcom makes a number of key errors in analysing news provision and consumption:

(i) It relies excessively on "share of minutes" which understates BBC's role and the importance of online and over-emphasises the importance of newspaper publishing.

(ii) Ofcom attributes the entire reach and share of national commercial radio news to Sky News and essentially treats this as the equivalent of Sky News' ability to reach and influence consumers directly. This is both factually incorrect and nonsensical.

(iii) It relies excessively on a narrow view of reach which is not a good proxy to measure the plurality of voices available to a cross-media audience.

(iv) The issue of multi-sourcing, which is crucial to an assessment of cross-media plurality, is noted to be "important" but in practice is ignored in Ofcom's analysis of the impacts of the Transaction. In fact, multi-sourcing (which is increasingly being facilitated by use of the internet as a medium of accessing news) plays a crucial role in ensuring that consumers are exposed to a variety of opinions. The absolute level and the rise of multi-sourcing contribute substantially to the sufficiency of plurality and will continue to ensure a plural news environment in the UK.

4.2 Ofcom excludes from its analysis the regional newspaper groups (which publish numerous titles that provide national news) on the basis that "they do not provide news to a UK-wide audience, and will have lower circulations and readerships for individual titles compared to national newspaper groups". However, across their titles, these groups do provide news to a very significant portion of the UK population, and the reach of each of the groups is comparable to that of the FT or the Independent (which Ofcom does include in its analysis). While individual titles will have lower readership, Ofcom elsewhere in the Report dismisses the value of internal plurality, and as a practical matter national news may well be centrally provided to relevant titles within a group. Thus to be consistent, Ofcom should view regional press on a group basis, not a title-by-title basis (exactly as it does for News).

4.3 Ofcom has undertaken new research to investigate cross-media consumption (described in paragraph 4.39 of the Report), asking consumers which media outlets they regularly use. However, there are two substantial errors in this research:

(a) It has defined 'regular' usage differently for Sunday newspapers ('once a month') from all other media ('once a week'). This is an arbitrary and highly distorting distinction. There is no reason to believe that, as regards influencing public opinion, reading a Sunday newspaper once per month is equivalent to reading a daily newspaper once per week – the far more natural assumption is that the same frequency gives the same influence. The effect of this error is to materially overstate the starting share of News, since the importance of Sunday papers (where News is relatively strong) is likely over-weighted by a multiple of 4 or 5.

(b) There was an error in the design of the questionnaire acknowledged by Ofcom in footnote 89 of the Report. Ofcom offered consumers a list of Sunday papers to select which ones they read. However this list omitted high circulation titles including the Mail on Sunday, Daily Star on Sunday, Sunday Express and People (none of which are News titles). While respondents were able to 'write in' other responses, it is a fundamental principle of consumer research that prompted responses will be higher than unprompted. Thus the effect of this error is to suppress reporting of usage of non-News Sunday titles, thereby exaggerating News' share.

4.4 In addition to its analysis of cross-media consumption based on market research, Ofcom also considers cross-media consumption based on minutes of usage (described in paragraph 5.24 onwards of the Report). However, this analysis is based on fundamental errors of fact, specifically in relation to the amount of news provided by Sky to IRN and Ofcom's erroneous assumption that Sky (via IRN) supplies all national news on commercial radio (as set out in more detail at paragraph 3.14 above). These errors have the effect of substantially overstating the impact of the Transaction. As discussed in section 3 above, it is a further error to attribute this wholesale share to News.

4.5 Given that correcting for even these basic factual errors would substantially reduce both the incremental impact of the Transaction (from 9.8 percentage points to 5.3 percentage points) and News' aggregate share, it calls into question whether (even on its own logic) Ofcom's overall conclusions regarding the Transaction are valid and adds weight to the argument set out at paragraph 3.16 above that in fact the analysis set out in Ofcom's Report, once key errors have been corrected, provides a basis for deciding that the Transaction does not result in insufficient plurality.

5. FLAWS IN OFCOM'S ANALYSIS OF THE POTENTIAL EFFECTS OF THE TRANSACTION

(a) Ofcom does not take account of Sky's existing links with News

5.1 News accepts of course that the Transaction brings about a change in the nature of its legal control over Sky. However, as confirmed by the Court of Appeal in Sky/ITV, this does not mean that – in carrying out a qualitative analysis - it is permissible to ignore the current level of control exercised over Sky's editorial policy and the changes that the Transaction will bring about in that respect:

> *"[...] it seems to us that the Commission was correct to hold that, whereas in reckoning the number of controllers of media enterprises for the purposes of section 58(2C)(a) only one controller is to be counted in respect of both or all of the relevant enterprises (here Sky and ITV), nevertheless, when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control."*[9]

5.2 In fact, Ofcom assessed plurality in the previous Sky/ITV case precisely on the basis that Sky and News were assumed to be part of the same enterprise. **Ofcom has entirely reversed its position in this case** and in its substantive assessment of the effects of the Transaction it treats Sky as an entity which is entirely unconnected with News. The CC also took into account that News had material influence over Sky when assessing media plurality in Sky/ITV and, having carried out a detailed review, advised that there was no concern about plurality raised by Sky's acquisition of an interest in ITV.

5.3 Although it acknowledges that pre-Transaction Sky is not an entity which is unconnected with News at paragraphs 5.3 and 5.4 of the Report, Ofcom proceeds to treat Sky News as: (i) an entity entirely separate from News pre-Transaction; and (ii) an entity under the editorial control of News post-Transaction.

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9 *British Sky Broadcasting Group Plc v Competition Commission*, Court of Appeal (Civil Division), 21 January 2010, [2010] EWCA Civ 2 (**Sky/ITV**), at paragraph 121.

5.4 In fact, News was a founding share-holder of Sky over which it initially had sole control. Sky News was launched as a channel in 1988, at a point when the then four-channel Sky Television service was under the sole control of News, having been announced to the British Academy of Film and Television Arts by Mr Rupert Murdoch on 8 June 1988.

5.5 At the present time, News clearly continues to have a degree of commercial influence over Sky which is sufficient to count as "control" for the purposes of the Enterprise Act. News holds 39.02% of the shares in Sky and from 2007 until the present day has had between four and five affiliated Directors on the board of Sky at any one time. Mr James Murdoch was the CEO of Sky from 2003 to 2007 and is currently the non-executive Chairman of Sky.[10]

5.6 Ofcom's attempts to consider what has changed as a result of the Transaction are unsatisfactory. At paragraph 5.6 Ofcom considers that, as a result of the Transaction, News would be able to take decisions that are in the exclusive commercial interest of News. At paragraph 5.7 Ofcom considers that, as a result of the Transaction, News "may also gain a greater ability to exert influence over editorial decisions". The first issue is irrelevant to plurality and the competition implications of News acquiring control over Sky have already been assessed by the European Commission. The second concern can be addressed entirely by establishing that there is adequate internal plurality (a question which is dealt with below).

5.7 Ofcom does not consider whether, if News was really motivated to interfere with editorial decisions at Sky News (which Ofcom appears to assume in identifying concerns about plurality), it already has some ability to do so **but does not**. Again, the failure to engage with the issues arising in this case fundamentally calls into question the reliability of Ofcom's analysis and the conclusion that any real risk to the sufficiency of plurality arises as a result of the Transaction. In contrast, the CC in its review of the Sky/ ITV transaction expressly recognised the editorial independence of Sky News:

> *"BSkyB and the BBC, which both provide news in-house, emphasized the role of their editorial staff in determining the day-to-day content of their programming. BSkyB told us that all editorial decisions regarding the content of BSkyB's various news services were taken by the Sky News editorial staff. BSkyB board's role was to consider the competitive strategy and funding of BSkyB's news content at a high level; it had no role in the day-to-day editorial control of Sky News content on television or online. We received no evidence from third parties to suggest that senior executives at BSkyB or its parent companies exerted influence on the Sky News agenda."* [11]

(b) Ofcom fails to give sufficient emphasis to the fact that the number of newspaper providers, and the number of TV broadcasters is unaffected

5.8 Ofcom correctly identifies that in this case the only conceivable impact of the Transaction would be on a cross-media audience in the UK. On any analysis: (i) the number of newspaper voices in the UK remains unchanged post-Transaction; (ii) the number of TV broadcast voices in the UK remains unchanged post-Transaction; and (iii) radio is unaffected and/or the number of radio voices remains unchanged; and (iv) while News and Sky both provide news content via the internet, so do a multitude of other providers.

5.9 The Transaction therefore has no impact whatsoever on the sufficiency of plurality for consumers who only read newspapers and consume no other sources of news. It also has no impact whatsoever on consumers who only watch television news and consume no other sources of news. It is simply not credible to suggest that combining the internet platform of Sky with those of News International

[10] See paragraphs 4.4 to 4.11 of the Initial Submission. That these interests confer "control" over Sky was acknowledged by the Ofcom, the OFT and the CC in the 2007 review of Sky's acquisition of 17.9% of the shares in ITV (See paragraph 4.5 of Initial Submission in particular).

[11] At paragraph 5.57.

newspapers could conceivably reduce plurality to any material extent or have an adverse effect on the public interest in the UK. **It is only consumers who consume news via multiple platforms who would potentially experience any change.**

5.10 Therefore, it must surely be the case that the fact that the existing number of providers will continue to provide news within each separate medium "raises the bar" in terms of identifying a public interest concern arising from this Transaction.

(c) Combination of Sky News and News International newspapers would have no material impact on the range and variety of cross-media voices available to and accessed by consumers in the UK

5.11 Any analysis needs to take account of the fact that alternative sources of news are increasingly not "substitutes" in any meaningful sense. Those news media which are fastest growing (internet news and, to a lesser extent, TV news) are in most cases free at the point of consumption, enabling consumers to access multiple sources of news at no incremental cost and thereby encouraging consumption from multiple sites or channels, as the case may be. Furthermore an increase in audience for one source of news does not necessarily mean a reduced audience for another source of news. A qualitative assessment of cross media plurality is possible (and it has been done in the Sky/ITV case) but cannot be done in a meaningful way without looking at both news provision and news consumption - not separately (as Ofcom does) but in combination.

5.12 More multi-sourcing in consumption means that UK consumers are exposed to a variety of different views and should be able to take their own decisions as to which sources of news they find more interesting and attractive.

5.13 In fact, on average, in the UK each consumer of news currently consumes five different sources of news according to the FD Survey of news consumption in the UK (see FTI Report paragraph 5.38). Trends in multi-sourcing, and an increased tendency by consumers to access news via the internet (described further below) will continue to operate to increase plurality in the UK[12]:

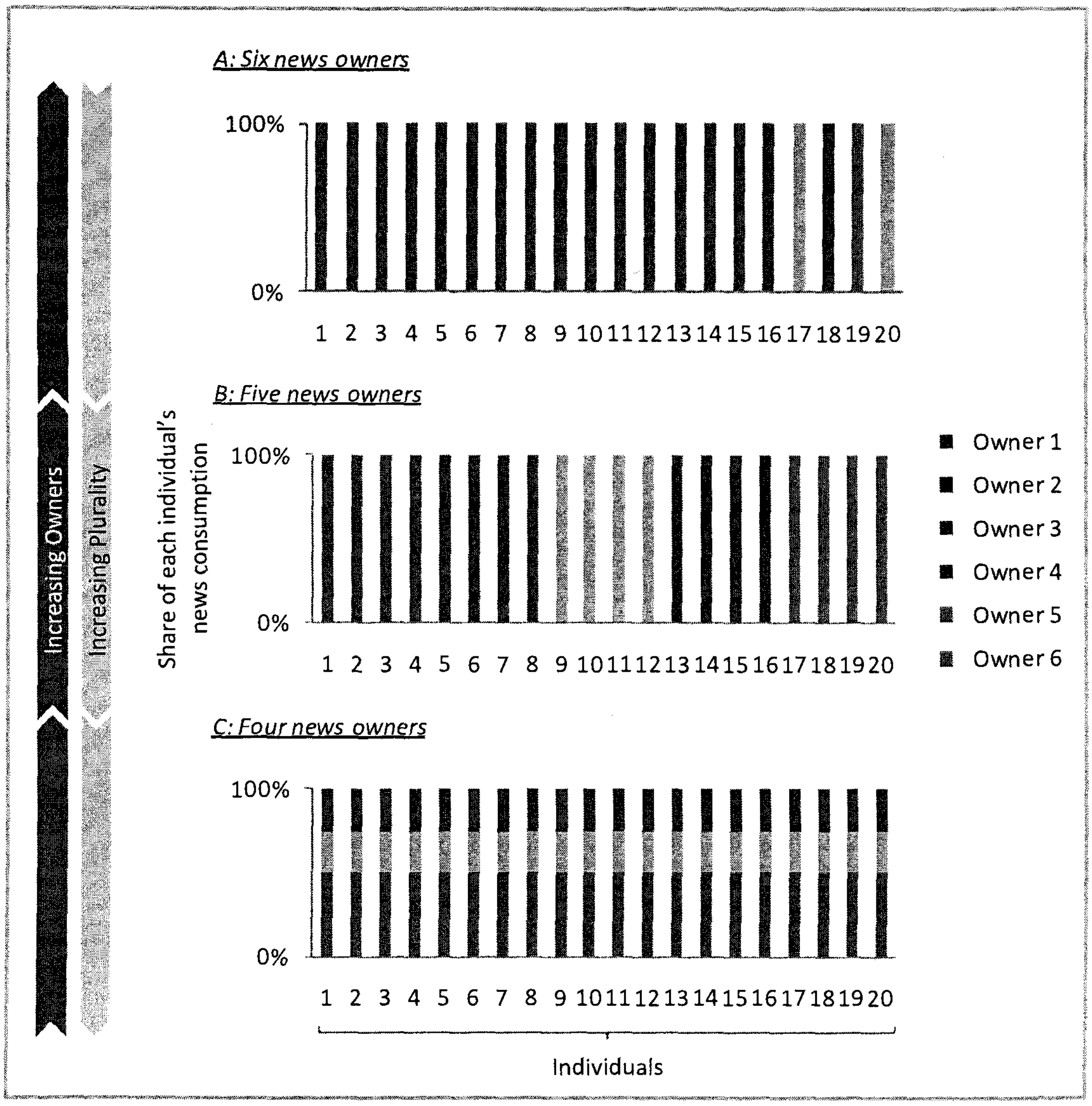
- Most viewers of TV news consume one or two source of news (and most of those using a single source will exclusively watch BBC news given that the BBC has a 75% share of news viewing);
- Most readers of newspapers read only one national paper, with a smaller group reading two.
- Most people who use internet news sources consume 3 or 4 sources of news.

5.14 Ofcom acknowledges that the multi-sourcing of news is of relevance to plurality (paragraph 4.59) and even "important" (paragraph 5.115). News submits that, particularly given the need to focus on a cross-media audience (which by definition is consuming news across multiple platforms), the Secretary of State should acknowledge that the multi-sourcing of news by consumers is fundamental to any analysis of the sufficiency of plurality.

5.15 Assuming an equal number of news voices, it is indisputable that where the relevant audience engages in more multi-sourcing of news rather than less multi-sourcing of news, the environment is more plural. This idea is illustrated further in the diagram set out at paragraph 2.5 of News' Response to the Issues Statement and reproduced below. It seems indisputable that scenario C is a more plural news environment than A or B (even though C has the smallest number of players and, as a market, C is more concentrated than B):

Illustrative Scenarios of News Consumption

12 (See paragraph 5.6 of the FTI Report which is based on data from Touchpoints and other sources. See also paragraphs 2.4 to 2.8 of the Response to the Issues Letter.)



5.16 At paragraph 5.116, having said that the level of multi-sourcing of individual consumers is important, and having calculated that the Transaction makes essentially no difference to the number of distinct enterprises used by the average consumer (a drop from 2.9 to 2.8 on Ofcom's wholesale basis), Ofcom dismisses this factor on the basis that "*what matters more [...] is the number and range of news providers used by **all** consumers and their relative significance, rather than the number of news providers used by each individual consumer.*"

5.17 The distinction that Ofcom purports to draw is meaningless and it cannot be relied upon rationally to dismiss a factor that Ofcom recognises to be important. If the range of news providers used by all consumers is acknowledged to be relevant, then the range of news providers used by individual consumers must be relevant to the overall assessment, since the latter represents an aggregate view of the range used by individual consumers. News has provided evidence on patterns of behaviour which in the aggregate enable a decision-maker to reach a view of degree of overall plurality. Moreover, in so far as Ofcom believes the "word of mouth" transmission of views between consumers to be an important factor, this would tend to increase the potential reach of smaller players by comparison with larger players. The vast majority of people will already be aware of the BBC's reporting of an issue but they might find out something new from discussions of Al Jazeera's coverage.

5.18 The importance of multi-sourcing was implicitly recognised by the CC in Sky/ITV. In Appendix I to the CC's Report, setting out evidence used by the CC to assess plurality, the CC considers, among other metrics:

- The number of different media platforms through which consumers actively take news;
- The number of different channels on which customers actively watch television news;
- The proportion of the population who actively took news from ITV and Sky/News International but from no other source.

5.19 News has also estimated the proportion of consumers who would, post Transaction, rely only on News International and Sky News and no other news provider. It has done so using the same methodology used by the CC in Sky/ITV. This group accounts for only 0.3% of the UK population, a very similar share to that identified in Sky/ITV (see paragraph 1.15(vi) above for a more detailed summary of News' overlap analysis). Ofcom accepts that these estimates are broadly correct. Therefore, the Transaction would have no material impact on the range and variety of cross-media voices in the UK.

5.20 Given the plethora of choices of news provision available to consumers in the UK, if consumers should begin to dislike the approach taken by Sky News, they are far from obliged to continue to watch it. Consumers have more than sufficient other choices available to them and can easily switch channels, or, for that matter, switch newspapers if they prefer. By definition, consumers of Sky News have access to digital channels and a wide variety of alternative news content. Ofcom acknowledges that within TV (as well as within newspapers), this Transaction does absolutely nothing to reduce the continued existence of that field of choice. Should Sky News consumers wish to switch to a different news media, there are many sources of news available that are independent of News, both in paper copy and online.

6. OFCOM FAILS TO EXPLAIN WHY INTERNAL PLURALITY DOES NOT ENSURE SUFFICIENT CROSS MEDIA PLURALITY

(a) TV broadcast news operates in a particular cultural and regulatory context

6.1 Ofcom does not adequately address the question of internal plurality in relation to Sky News as a TV broadcaster and its relevance to an overall assessment of plurality. Ofcom simply states that "*in light of conflicting views*" they "*do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs as part of a first stage review*" (paragraph 1.39).

6.2 Ofcom does not explain why it considers that internal plurality resulting from Sky News' position as a TV news broadcaster does not ensure sufficient cross media plurality *in combination with* other external factors. In contrast, the opinion by Lord Pannick QC (as provided by News to Ofcom and as attached at Annex 5), makes clear that the impartiality rules in the Communications Act 2003 help to ensure that, in practice, the owner of a television station (or the news editor) could not intervene to require news items to receive lesser (or indeed greater) prominence for political reasons, or no coverage at all. The Secretary of State can and should come to a definitive decision on this issue without the need for a protracted investigation by the CC.

6.3 TV news in the UK has traditionally been very different from news presented in newspapers and this tradition of strict impartiality in broadcast news is protected in the Broadcasting Code which prevents broadcast channels from displaying bias in their presentation or selection of stories.[13] As the CC found in Sky/ITV:

> "[W]*e concluded that* ***the regulatory mechanisms, combined with a strong culture of editorial independence within television news production****, were likely to be effective in preventing any prejudice to the independence of ITV news*" (emphasis added).[14]
>
> *"In television news, existing regulatory mechanisms—including quality controls (eg in the Broadcasting Code), requirements for impartiality and quotas for television news and current affairs programming—reduce the scope for influence over editorial decisions by owners of television channels which broadcast news".*[15]

6.4 The Report states that News' submissions on internal plurality "*are made in the context of a regulatory framework*" (paragraph 1.40). News' submission goes further than this - internal plurality in TV broadcasting results from practical/cultural factors which would prevent News from dictating the editorial policy of Sky News, and these factors are reflected in and reinforced by the regulatory environment and the Broadcasting Code. This is entirely consistent with the CC's findings in Sky/ITV and there is no need for further regulatory consideration of this issue.

(b) There is no reason to believe that the independence of editorial decision making at Sky News will be impacted as a result of the Transaction

6.5 As noted above Ofcom acknowledges but does not take account of the fact that pre-Transaction, Sky is not an entity which is unconnected with News. News' commercial influence has not in the past and will not in the future translate to an ability to dictate the editorial policy of Sky News due to: (i) the prevailing practice and culture of editorial decision making in TV news in the UK and (ii) the regulatory context within which broadcast news operates

6.6 At paragraph 5.100 and 5.101 the Report states "*We recognise that it is possible that Sky News may remain a strong and independent voice from an internal plurality perspective even while no longer part of a distinct media enterprise. However, in a situation where Sky is wholly owned by News Corp and where we have received a significant number of representations that a proprietor may want to interfere with editorial decisions, we need to understand what would in practice prevent such intervention.*"

6.7 The nature of editorial decision making, particularly in the specific environment of TV news in the UK means that it cannot be assumed that commercial influence necessarily translates into editorial influence. Editorial decisions will remain with the Sky News management and are not a matter for the shareholders or the board of Sky[16]. In reviewing Sky/ITV, the CC commented that:

> *"the evidence that we received suggested to us that there was a strong commitment to editorial independence across television news broadcasting which would lead to editors resisting any direct board intervention or intervention from shareholders to set the news agenda." (Paragraph 5.68 CC Report)*

6.8 News would also argue strongly that the experience with The Times, which operates under the supervision of an independent board specifically established to maintain impartiality and prevent interference with editorial content, shows that the independence of specific titles can be maintained

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13 These arguments are set out further in paragraph 4.20 of the Initial Submission, in paragraphs 4.4 to 4.7 of the response to the Issues Statement and in the Lord Pannick's Opinion. Lord Pannick's Opinion shows that the position set out by the CC in Sky/ITV which is relied upon by Ofcom in paragraph 1.42 of the Report is not correct.

14 CC Report, paragraph 41.

15 CC Report, paragraph 5.54.

16 This was described further at paragraphs 4.12 to 4.19 of News' Initial Submission.

even in the newspaper context which is very different, indeed at the other end of the spectrum, from broadcast news and where no general obligation of impartiality applies.

6.9 Ofcom casts doubt on the practical independence of The Times at pages 68 and 69 of its Report in an egregious example of the selective quoting of evidence. Ofcom quotes vague evidence from Andrew Neil (widely reported in the press as having left his position as editor of the Sunday Times in 1994 "on bad terms") and does not refer at all to the direct oral evidence provided to Ofcom, in a meeting on 2 December 2010, by John Witherow who has been the editor of the Sunday Times since 1994. John Witherow reported that no editorial influence whatsoever was exercised by News over the content of the Sunday Times.

6.10 In addition, evidence in relation to the independence of Sky News (summarised in paragraph 5.76 of the Report) is unreasonably dismissed without explanation on the basis that "past behaviour may not necessarily be a reliable indicator of future behaviour." In fact, as News maintained in the Initial Submission, the acquisition by News of full legal control over Sky would not jeopardise the editorial independence of Sky News for the following reasons: (a) Sky's editorial policy is not a matter for Board determination. In fact, to date, editorial policy has not been a debated issue at Board level; (b) as recognised by the CC, despite its commercial influence over Sky, News has not sought to influence the editorial policy of Sky News; (c) the Sky News editorial directors are experienced individuals, each with expertise to manage and direct the editorial policy of Sky News (d) there is no evidence that independent directors have had to "defend" the editorial policy of Sky News against influence by News executives; and (e) News has no special arrangements with Sky News which would confer on it control over editorial policy.

7. OFCOM ACKNOWLEDGES THAT THE TRANSACTION WOULD HAVE NO IMPACT ON THE SETTING OF THE WIDER NEWS AGENDA IN THE UK

7.1 Ofcom considers the evidence as to influence as to whether the Transaction will give News any significant degree of influence over the broader news agenda carefully and finds that News' ability to influence the broader news agenda (the news agenda of other media outlets) would <u>not</u> be enhanced as a result of the Transaction (paragraph 5.123).

7.2 The fact that the Transaction will have no influence whatsoever on the broader news agenda in the UK should provide significant comfort to the Secretary of State should he decide (as he should) not to refer the Transaction to the CC.

7.3 In fact, the various powerful media enterprises in the UK, with the BBC an enormously powerful influence and with a large number of well funded independent voices providing a multiplicity of different views, mean that the UK has a very healthy and very plural media environment within which the overall news agenda is broadly set and within which a combined News/Sky would continue to operate[17].

7.4 The Secretary of State should rely on the conclusion reached by Ofcom in this respect where the weight of the evidence was clearly overwhelming. It is self-evident that News does not now influence the news agenda in the UK to any material extent, nor will it do so post-Transaction. While News International's newspapers (more so than Sky News) do indeed break news stories and generate controversy in the UK they are merely individual voices in an environment which is one of healthy, if not fierce competition among news providers. If the volume of negative comment and media coverage about the proposed Transaction illustrates anything, it is that News and Sky together are very far from being able to influence the news agenda in the UK or to silence voices of dissent.

17 See also, paragraph 5.7 of News' Initial Submission, the Perspective Report, paragraphs 5.1 to 5.3 of News' Response to the Issues Letter and the Perspective Sources Analysis.

8. THE TRANSACTION DOES NOT RESULT IN INSUFFICIENT PLURALITY

(a) The level of plurality post-Transaction must be compared with a "sufficient level of plurality"– there needs to be a benchmark

8.1 It is a necessary part of the statutory test to assess whether plurality would be "sufficient" post-Transaction, which necessarily involves forming a view as to whether plurality is sufficient pre-Transaction.

8.2 It can be assumed that plurality was considered to be sufficient in the UK by Parliament at the time of the enactment of the Communications Act 2003 which relaxed controls on media ownership. It can also be assumed that the plurality was considered to be sufficient in the UK by the CC and by the Secretary of State when they applied the media public interest test to Sky's acquisition of 17.9% of the shares of ITV in 2007. Neither the CC nor the Secretary of State found concerns about the sufficiency of plurality arising from that acquisition (which has subsequently been partly unwound).

8.3 In fact, since both of these benchmarks, news provision in the UK has become significantly more plural. The implication of News' submission is that plurality would need to be reduced, as a result of the present transaction, to a level below that subsisting in 2003 (or 2007) before it could reasonably be said to lead to insufficient plurality.

(b) Trends in plurality in the UK are towards greater rather than lesser plurality

8.4 Using the level of plurality in the supply of news content and the plurality of consumption of news content by consumers in 2003 as a benchmark, and assuming that plurality was at that stage "sufficient", News' view is that there is significantly greater plurality of news provision today and that the Transaction is demonstrably very far away from creating an insufficiency of plurality.

8.5 Trends are towards greater rather than lesser plurality and any dynamic analysis of likely future impacts most assume that these trends will continue:

(i) There has been a dramatic increase in the range of TV news available to consumers in the UK, largely due to the rise in digital TV penetration and in the choice of channels across all platforms. The UK now has one of the highest levels of digital penetration in Europe and UK consumers have access to the largest number of TV channels in Europe, including a wide variety of digital news channels;

(ii) The internet has had (and continues to have) a transformative effect on access to and consumption of news, and has meant that many more consumers access a significantly broader variety of news sources;[18]

(iii) Consumers are increasingly shifting from media with comparatively less plurality in the provision of news and the consumption of news: while there are a large number of newspaper providers in the UK there are a far greater number of sources of news accessible via the internet; consumers tend to read one paper newspaper (if they read a newspaper at all) but to access multiple news sources online;[19]

(iv) The easy accessibility of information via internet search and the ease with which information can be disseminated by individuals via Twitter, YouTube, blogs and so on has an important

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[18] The circulation of paid-for newspapers declined by 3.5% between 2003 and 2010 (FTI Report figure 8).

[19] The circulation of paid-for newspapers declined by 3.5% between 2003 and 2010 (FTI Report figure 8); time spent on online news sources has grown by 214% since 2007 (Perspective Report page 27); and Mintel has found that the internet is currently the second most important source of news in the UK with 46% of consumers accessing it regularly (Initial Submission, paragraph 6.7).

influence on the news agenda. Controllers of media enterprises are simply not in a position to block the dissemination of information and stories to a broad UK audience.

8.6 Further information on trends in the UK media landscape since 2003/2007 through to the present day which demonstrate that there is more than sufficient plurality in the provision of news in the UK both pre and post-Transaction can be found at paragraphs 5.8 and 6.5 to 6.6 of News' Initial Submission.

(c) For the reasons set out in section 1(c) above, the Transaction poses no threat to the sufficiency of plurality in the UK

8.7 To summarise and conclude, News believes that the Secretary of State can reasonably rely on the following significant factors in deciding against a reference to the CC:

(i) The Transaction can only affect a cross-media audience and there is no reduction in the number of independent newspaper proprietors or TV broadcasters in the UK as a result of the Transaction.

(ii) Ofcom acknowledges that News' position in newspapers (a declining segment within cross-media consumption) is unchanged and Sky's relatively modest share of TV news provision is unchanged:

> *"This transaction does not result in a change in the number, range or relative ability to influence within three of the individual platforms – TV, radio and newspapers." (paragraph 5.19)*

(iii) A culture of editorial independence in broadcast news supported by regulatory requirements (the Broadcasting Code) will continue to ensure that Sky News remains as an independent voice and that internal plurality within the broader News group will be secured. This, together with the existing level of external plurality, removes any doubt that might arise as to the sufficiency of plurality post-Transaction.

(iv) In Sky/ITV, News was already assumed to have control/material influence over Sky and no concern about plurality was identified.

(v) Multi-sourcing of news by consumers, facilitated by an increase in the consumption of news over the internet, contributes significantly to plurality and is an increasing trend.

(vi) Ofcom acknowledges that the actual impact of the Transaction on consumers of news will be minimal:

> *"Across the population as a whole, we found that few regular news consumers rely solely on Sky titles or solely on News Corp titles: at the retail level, 2% rely solely on news from Sky; and 1% rely solely on news from News Corp; these shares do not change materially if considering wholesale news provision" (paragraph 4.79).*

(vii) Ofcom acknowledges that the Transaction will have no impact whatsoever on the setting of the wider news agenda within the UK:

> *"the available evidence does not point to a conclusion that News Corp's ability to influence through other media would be materially enhanced by the acquisition" (paragraph 5.123).*

9. CONCLUSION

9.1 It is highly unfortunate that the administrative process leading to this point has been seriously flawed and that the initial decision to intervene in relation to this Transaction on the basis of a public interest concern was taken by a Secretary of State for BIS who was biased against the interests of News and its shareholders. News is still unclear as to the extent to which the biased and prejudiced approach of the Secretary of State for BIS has tainted the wider process and has requested that it be provided with copies of relevant correspondence in order to establish whether there is direct evidence of this.

9.2 News believes that Ofcom has failed to approach the effects of this Transaction with an open mind and has carried out a review process with the intention of identifying concerns. Ofcom has been notably more receptive to submissions made by third party complainants than it has been to submissions made by News and has chosen to present the evidence in a one sided way (in some cases selectively omitting relevant evidence).

9.3 For the reasons set out above, News believes that the Report issued by Ofcom to the Secretary of State is flawed, misinterprets the test which the Secretary of State is obliged to apply to the Transaction under the Order, contains fundamental flaws in analysis and should not be relied on by the Secretary of State. Any decision to refer the Transaction to the CC which was taken by the Secretary of State on the basis of the Ofcom report would itself suffer from legal flaws.

9.4 Pending receipt of all relevant information and a further consideration of its position News reserves its rights as regards the possibility to challenge earlier steps in the administrative process and/or the Report by way of judicial review.

9.5 News hopes that the Secretary of State, applying the legal test objectively on the basis of the relevant evidence, will take the view that no reference to the CC is necessary or appropriate give the facts of this case.

9.6 If the Secretary of State does believe, having considered News' submissions, that he has remaining concerns about the sufficiency of plurality in the UK, News is, without prejudice to its views as to the effects of the Transaction, prepared to offer UIL which would remedy, mitigate or prevent all of the effects adverse to the public interest which Ofcom erroneously identifies may result from the Transaction. The Secretary of State has the power to accept such a UIL 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.*"

9.7 **[REDACTED]**

Allen & Overy LLP | **Hogan Lovells International LLP**

Written Ministerial Statement: Media Ownership

Tuesday 25 January 2011

Secretary of State for Culture, Olympics, Media and Sport (Rt. Hon Jeremy Hunt):

On 3 November 2010 News Corporation notified the European Commission of its intention to acquire the shares in BSkyB that it does not already own. On 4 November 2010 the Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. He asked Ofcom to investigate and report back to him by 31 December 2010 providing advice and recommendations on the public interest consideration in section 58 of the Enterprise Act 2002. This public interest consideration concerns the sufficiency of plurality of persons with control of media enterprises.

On 21 December 2010 the European Commission cleared the proposed acquisition of BSkyB by News Corporation. The Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area or any substantial part of it. The Commission made it clear that its decision did not prejudice my jurisdiction in relation to the merger's impact on the separate question of sufficiency of plurality in the media.
Following receipt of Ofcom's report and in the interests of transparency I want to inform the House of the timeline and process that I have followed to date in my considerations of the relevant public interest.

As such I am today publishing the following documents, copies of which will also be deposited in the Libraries of both Houses:

Ofcom's report on the public interest issues relating to News Corporation's proposed acquisition of BSkyB that was sent to me on 31 December 2010 (with redactions for confidentiality)
The OFT's report on jurisdiction that was sent to me on 30 December.
My letters to News Corporation and BSkyB of 7 January 2011.
BSkyB's response of 13 January 2011 with confidential information redacted.
News Corporation's response of 14 January 2011 with confidential information redacted.

All documents are available from the **publication section of the DCMS website**.

After careful consideration of the Ofcom Report which recommends referral to the Competition Commission, and as provided by section 104 of the Enterprise Act 2002 that sets out my duty to consult adversely affected parties, I met with News Corporation on 6 January to set out the process that I would follow and briefly explain Ofcom's conclusions. Having informed them of the process I then wrote to News Corporation and BSkyB on 7 January enclosing a copy of Ofcom's Report. In this letter I explained that I was minded to refer the case to the Competition Commission but that I would receive written, and if necessary oral, representations from them if they wanted to challenge my thinking.

On 10 January I met with Ofcom to seek clarification on a number of aspects of their report.

In response to my letter of 7 January BSkyB and News Corporation provided written representations challenging elements of Ofcom's report on 13 and 14 January respectively.

These documents have today been published. After considering these responses and consistent with section 104 of the Enterprise Act I therefore met again with News Corporation on 20 January to hear representations on the issues they highlighted.

As a result of these meetings and my consideration of the Ofcom report and subsequent submissions from the parties involved I still intend to refer the merger to the Competition Commission. On the evidence available, I consider that it may be the case that the merger may operate against the public interest in media plurality.

However, before doing so it is right that I consider any undertakings in lieu offered by any merging party which have the potential to prevent or otherwise mitigate the potential threats to media plurality identified in the Ofcom report.

News Corporation says that it wishes me to consider undertakings in lieu which it contends could sufficiently alleviate the concerns I have such that I should accept the undertakings instead of making a reference. It is appropriate for me to consider such undertakings. In considering whether to accept undertakings in lieu, I will ask the OFT under section 93 of the Enterprise Act 2002 as an expert public body with experience in negotiating undertakings in lieu to be involved in the process from this stage. I will also ask Ofcom under section 106B for advice whether undertakings in lieu address the potential impact on media plurality.

If this process produces undertakings in lieu which I believe will prevent or otherwise mitigate the merger from having effects adverse to the public interest, and which I propose to accept, I will then publish the undertakings in lieu and (as required under the Act) begin a formal 15 day consultation period during which time all interested parties will be able to express their views.

It is in the nature of this process that I cannot give clear dates for each step as we move forward. My main concern is not to work to an arbitrary timetable but to ensure that I reach my decision in a fair and even-handed way which is transparent and ensures that all concerns are properly considered.

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department for
culture, media
and sport

009/11

25 January 2011

news release

NEWS CORP/BSKYB MERGER

Today the Secretary of State for Culture, Olympics, Media and Sport will give an update on the timeline and process that he has followed in his considerations of the relevant public interest in this proposed merger, and is publishing the following documents:

- Ofcom's report on the public interest issues relating to News Corporation's proposed acquisition of BSkyB that was sent to the Secretary of State on 31 December 2010 (redacted for confidentiality).

- The Office of Fair Trading's report on jurisdiction that was sent to the Secretary of State on 30 December.

- The Secretary of State's letters to News Corporation and BSkyB of 7 January 2011.

- BSkyB's response of 13 January 2011 with confidential information redacted.

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the quality
of life for all

- News Corporation's response of 14 January 2011 with confidential information redacted.

Secretary of State for Culture, Olympics, Media and Sport Jeremy Hunt said:

"After careful consideration of the Ofcom Report, which recommends referral to the Competition Commission, and as provided by in Section 104 of the Enterprise Act 2002 that sets out my duty to consult adversely affected parties, I met with News Corporation on 6 January to set out the process that I would follow and briefly explain Ofcom's conclusions. Having informed them of the process I then wrote to News Corporation and BSkyB on 7 January enclosing a copy of Ofcom's Report. In this letter I explained that I was minded to refer the case to the Competition Commission but that I would receive written, and if necessary oral, representations from them if they wanted to challenge my thinking.

"On 10 January I met with Ofcom to seek clarification on a number of aspects of their report.

"In response to my letter of 7 January BSkyB and News Corporation provided written representations challenging elements of Ofcom's report on 13 and 14 January respectively. These documents have today been published. After considering these responses and consistent with section 104 of the Enterprise Act 2002 I therefore met again with News Corporation on 20 January to hear representations on the issues they highlighted.

"As a result of these meetings and my consideration of the Ofcom report and subsequent submissions from the parties involved I still intend to refer the merger to the Competition Commission. On the evidence available, I consider that it may be the case that the merger may operate against the public interest in media plurality.

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"News Corporation says that it wishes me to consider undertakings in lieu which it contends could sufficiently alleviate the concerns I have such that I should accept the undertakings instead of making a reference. It is appropriate for me to consider such undertakings. In considering whether to accept undertakings in lieu, I will ask the Office of Fair Trading, under section 93 of the Enterprise Act 2002 as an expert public body with experience in negotiating undertakings in lieu, to be involved in the process from this stage. I will also ask Ofcom under section 106B for advice whether undertakings in lieu address the potential impact on media plurality.

"If this process produces undertakings in lieu which I believe will prevent or otherwise mitigate the merger from having effects adverse to the public interest, and which I propose to accept, I will then publish the undertakings in lieu and (as required under the Act) begin a formal 15 day consultation period during which time all interested parties will be able to express their views.

"It is in the nature of this process that I cannot give clear dates for each step as we move forward. My main concern is not to work to an arbitrary timetable but to ensure that I reach my decision in a fair and even-handed way which is transparent and ensures that all concerns are properly considered."

NOTES TO EDITORS

On 3 November 2010 News Corporation notified the European Commission of its intention to acquire the shares in BSkyB that it does not already own. On 4 November 2010 the Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. He asked Ofcom to

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investigate and report back to him by 31 December 2010 providing advice and recommendations on the public interest consideration in section 58 of the Enterprise Act 2002. This public interest consideration concerns the sufficiency of plurality of persons with control of media enterprises.

On 21 December 2010 the European Commission cleared the proposed acquisition of BSkyB by News Corporation. The Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area or any substantial part of it. The Commission made it clear that its decision did not prejudice the Secretary of State's jurisdiction in relation to the merger's impact on the separate question of sufficiency of plurality in the media.

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Timeline

Timeline: News Corp/BSkyB Merger

3 November 2010: News Corporation notified the European Commission (EC) of its intention to acquire the shares in BSkyB that it did not already own.

4 November: the Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. He asked Ofcom to investigate and report back to him by 31 December 2010.

5 November: Ofcom published a consultation on the public interest test.

21 December: the EC cleared the proposed acquisition of BSkyB by News Corporation on competition grounds.

21 December: responsibility for media competition issues passed to Secretary of State for Culture, Media and Sport.

30 December: The Office of Fair Trading's report on jurisdiction sent to the Secretary of State.

31 December: Ofcom's report on the public interest issues relating to News Corporation's proposed acquisition of BSkyB sent to the Secretary of State.

6 January 2011: Secretary of State met News Corporation to set out the process

7 January: Secretary of State wrote to News Corporation and BSkyB.

10 January: Secretary of State met Ofcom to seek clarification on a number of aspects of their report.

13 January: BSkyB response to Secretary of State's letter.

14 January: News Corporation response to Secretary of State's letter.

18 January: News Corporation's undertakings in lieu (UIL) sent to Secretary of State.

20 January: Secretary of State met News Corporation.

24 January: Revised version of UILs sent by News Corporation.

25 January: Secretary of State published a written statement and related documents.

27 January: Secretary of State wrote to the OFT and Ofcom requesting them to discuss the undertakings in lieu with News Corporation.

11 February: OFT and Ofcom reports sent to Secretary of State.

15 February: Secretary of State wrote to News Corporation.

16 February: News Corporation replied with revised UILs.

17 February: Secretary of State wrote to the OFT and Ofcom asking for their advice on the revised UILs.

1 March: Ofcom and the OFT send reports to the Secretary of State.

2 March: Secretary of State met Ofcom and OFT to seek clarification on a number of aspects of their reports.

3 March: Secretary of State announced the launch of a consultation which sought views on UILs.

21 March: Consultation closed with over 40,000 responses submitted.

24 March: The Secretary of State met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media and Slaughter and May.

15 April: The Secretary of State met representatives from Avaaz.

22 June: Ofcom and OFT submit advice to the Secretary of State along with Carriage and brand licence agreements.

30 June: The Secretary of State announced his decision that following consideration of the responses to the consultation, he proposed to accept the revised UIL of a referral to the Competition Commission, but before doing so there would be a further public consultation on the revised UILs.

8 July: Consultation closed with over 156,000 responses submitted.

11 July: the Secretary of State wrote to the OFT and Ofcom to ask whether any new information had come to light with might cause them to reconsider any part of their advice.

News Corporation withdrew the offer of UILs.

The Secretary of State's statement explained that following the withdrawal of the UIL, he was referring the proposed merger to the Competition Commission.

13 July: News Corporation withdrew its bid to buy the remaining shares in BSkyB that it did not already own.

Minutes from meetings

Note of a Meeting with News Corporation re BSkyB merger – 6 January 2011

Attendees

DCMS

1. Secretary of State (SoS), Jon Zeff (Director, Media), Patrick Kilgarriff (Director, Legal), Adam Smith, (Special Advisor),

News Corporation

2. James Murdoch (Chairman, CEO Europe & Asia, News Corporation), Frederic Michel (Director, Public Affairs), Matthew Anderson (Strategy and Corporate Affairs Director), Jeff Palker (General Counsel).

Points Discussed

3. The SoS made the following opening remarks:

   i. The purpose of the meeting was to set out the process that will be followed from this point. Given that News Corp had not yet seen the OFCOM report there would be no substantial discussion at this stage of its substance. A full copy would be sent to News Corp tomorrow (7 January) with redactions for commercially sensitive material. In the meantime the report summary would be made available to News Corp at the end of the meeting.

   ii. SoS gave assurances that the process will be fair and legally robust and any decisions taken by the SoS would need to be reasonable. The OFCOM recommendation and advice the advice the Secretary of State said he had received from Counsel meant he was minded to refer the merger to the Competition Commission (CC).

   iii. The decision on whether to refer the matter to the CC was not about whether the merger would reduce plurality but whether the SoS believed that it may be the case that the merger may be contrary to the public interest in plurality. The threshold for referral was therefore very low.

   iv. The next step was for News Corp to consider the OFCOM report and decide whether to make representations. These should be made in writing within a week. The SoS would consider any representations before deciding whether to proceed with the referral.

   v. In the event that the SoS was minded not to refer, the SoS would invite other interested parties to submit representations. This process would ensure that all interested parties, including News Corp, would have had the opportunity to state their cases.

4. The following points were made in discussion by News Corporation:

i. There were serious concerns around OFCOM's preliminary analysis contained in the report, including the general reasonableness and direction of their work. There were two areas where they could engage: i) providing a rebuttal of the OFCOM report itself and ii) to the extent that the SoS remained concerned there were issues of substance, to seek remedies that would allow the merger to move ahead without further investigation. There were ideas for possible remedies that News Corp had which they thought could be implemented as part of a fair process.

ii. News Corp would want to explore remedies ahead of a possible referral and under the Enterprise Act the SoS clearly has the power to accept undertakings in lieu of referral.

iii. Government needed to acknowledge the costs of a further review both to the public purse and to business and the implications for the prospective sale (ie whether it happens). This could lead to increased risk on the sale, the timetable could become an issue for News Corp shareholders and there may well be problems getting to a price with an open ended process. Referral in effect decreased the likelihood of the sale being completed.

iv. News Corp wanted a robust process but questioned the robustness of the process so far. News Corp was reserving all their rights including on the legitimacy of the OFCOM report and the initial decision to refer the matter to OFCOM.

Clarification on aspects of the OFCOM report

5. There were four areas where SoS wanted to seek clarification on the OFCOM report. For the sake of openness and transparency the SoS would share those questions, and the answers, with News Corp. They were:

   i. Clarification on the weight given to the impartiality requirements of the Broadcasting Code
   ii. Clarification on why the potential change in plurality is significant enough to move from sufficiency to insufficiency
   iii. Clarification on the number of people who will be served by fewer cross news services as a result of the merger
   iv. Clarification of the position of wholesale news provision

6. These questions were not asking for any additional work, but were to clarify points already contained within the report.

7. In subsequent discussion News Corp made the following points:

   i. Impartiality safeguards had previously been considered by Lord Pannick, and the conclusion had been that the requirements applied equally to choosing the news story as well as the presentation of the news story and there were sufficient safeguards in place.
   ii. DCMS should look at the precedent of past CC deals and take them into consideration as part of this process. Precedent showed that previous merger

decisions at a time when there was less plurality than at the present time had gone through with the conclusion that there was no plurality case to answer.

iii. One possible outcome could be a reduction in plurality if News Corp had to cease some services. There were also fiduciary duties to be considered.

iv. News Corp also questioned whether it was legally robust for the SoS to read submissions on this issue from other parties. Those in opposition to the merger had already had a chance to contribute to the OFCOM report.

v. If written representations were not successful News Corp would seek further meetings to discuss their submission and potential remedies as necessary. It would be unreasonable to refuse a remedy if what is proposed would work.

8. DCMS officials made the following points in discussion:

   i. The SoS would need to receive submissions from a range of interested parties in the event of a decision not to refer - there must be equal treatment for proponents of both sides.

   ii. Any representations could not be a re-submission of News Corp's evidence to OFCOM. Instead, it had to be an evidenced explanation of why the OFCOM report, in News Corp's view, was fundamentally flawed in its facts and analysis.

   iii. It was agreed to add clarification on the role played by precedent in the questions for OFCOM.

Timing

9. SoS said that he expected a decision by early next month at the latest – but the process would only last that long if he decided to accept News Corp's evidence and had to consult other interested parties.

10. It was agreed that subject of these discussions would be kept confidential at this stage but both sides would be open about the fact meetings that had taken place. It was expected that the OFCOM and any News Corp submissions would be released no later than the SoS' decision on referral.

Note of a Meeting between Secretary of State and OFCOM – 10 January 2011

Attendees

DCMS

Secretary of State (SoS), [redacted] Jonathan Cook and Adam Smith (Special Advisor)

OFCOM

Ed Richards, Nuala Cosgrove

Points Discussed

1. SoS explained that the purpose of the meeting was to seek clarification on aspects of the Ofcom report into the proposed News Corp/BSkyB merger. It was not to seek further work or advice not already contained in report.
2. SoS explained he had met James Murdoch (JM) on Thursday 6 January to set out the process that would be followed from this point. SoS had told JM that based on the Ofcom report he was minded to refer the matter to the Competition Commission (CC). Before referral however, and in order to ensure a fair and legally robust process, it was important that News Corp had the opportunity to submit any evidence they felt they had in relation to the facts and analysis contained in the Ofcom report. Should the SoS be persuaded by that evidence and be minded not to proceed to referral, he would then offer the opponents of the merger an opportunity to submit their evidence before taking a decision. In this scenario, a decision could take up until early February.
3. SoS said that he had agreed to provide News Corp with the minutes of today's meeting with Ofcom . Ofcom would be able to agree the minutes in advance.
4. SoS wanted to understand to what extent the proposed merger would lead to a material change in plurality. SoS understood the report to be saying that there is sufficient evidence at this stage that there may be a change.
5. Ofcom explained that in the 40 days given to it, Ofcom had not reached a view on whether concerns were conclusively established. Ofcom's role was to advise on whether there were concerns such that a fuller second stage investigation is warranted.
6. There were 5 areas where the SoS would be grateful for Ofcom's comments:

1. Clarification on the weight given to the impartiality requirements of the Broadcasting Code

7. Ofcom explained that the impartiality requirements of the Broadcasting Code were highly relevant and may contribute as a safeguard. However, they cannot by themselves ensure against potential influence on the news agenda by media owners. The requirement for "due impartiality" is not absolute and broadcasters' have a degree of editorial discretion in the selection of the news agenda. This was the view reached by the CC when it looked at the BSkyB/ITV deal. To rely on the impartiality rules alone would mean relying on behavioural

rather than structural solutions (ex post vs ex ante). These are generally considered much less effective, as they are applied after the event on a case by case basis. (See para 5.80 – 5.88 of the report).

2. Clarification on why the potential change in plurality is significant enough to move from sufficiency to insufficiency

3. Clarification on the number of people who will be served by fewer cross news services as a result of the merger

8. Ofcom explained that the report had looked at the likely relative ability to influence as a result of the merger. This wasn't just the number of news sources available as much as how they were used. The share of reference tables [found at pages 8 and 10] show that a merger of News Corp and Sky would see them moving from positions of 3rd and 4th respectively (behind the BBC and ITV) into 2nd behind the BBC. This was new and significant data, highly relevant to the issue in question.
9. In relation to multi-sourcing, the report recognises that after the merger, the level of multi-sourcing across the population as a whole decreases only slightly. The report notes that the size of the audience that relies solely on Sky or News Corp is very small and this would remain the case post the merger. Ofcom explained that the implications of multi-sourcing are complex and if this were referred for further investigation, this would be an area the CC could look at further. The question here was whether News Corp in moving from a shareholding of 39% to 100% could be considered to make sufficient difference to warrant further investigation from a plurality perspective. After considering the Broadcasting Code, multi-sourcing and the growth of online news provision all to be relevant, Ofcom's view was that it remained reasonable to believe that the merger may raise plurality concerns and these should be investigated further. .

4. Clarification of the position of wholesale news provision and its relative importance

10. Ofcom explained there were three layers in relation to provision of news: retail, wholesale and the newswires. In relation to the newswires, Ofcom's view was that editorial control was exercised primarily in newsrooms rather than in the production of the newswires and, as such, newswires were not included in the assessment. In the event of a reference, this may be something the CC could look at further. Wholesale was considered relevant as the bulk of editorial decision-making was decided by the provider. Ofcom recognised that while contracts could be cancelled and/or new contracts secured, its view was that these decisions, as seen with radio companies, were highly likely to be taken on price and other strategic questions rather than routine editorial judgments. In any event, Ofcom considered that for both the wholesale and the retail positions, a similar picture of an increase in ability to influence is shown by the research. (See paragraphs 5.21 to 5.52).

5. Clarification on the role played by precedent, given that the previous Competition Commission investigation into the proposed BSkyB deal with ITV identified no issues with plurality.

11. Ofcom explained that the CC report into the proposed deal with BSkyB/ITV found that there were competition concerns but no plurality concerns with the proposed acquisition of a 17.9% shareholding in ITV. With regard to plurality, a 17.9% shareholding is different to the current situation of moving to 100% ownership. The issue came back to whether there may be a material difference to plurality with News Corp moving from 39% shareholding to 100%. Ofcom's view, as set out in the report [paragraphs 5.3-5.7] was that the change in the level of control represents a material change to control of the company and one that may be considered to have subsequent consequences for plurality.

Note of a Meeting with News Corporation to discuss BSkyB merger - 20 January 2011

<u>Attendees</u>

DCMS

1. Secretary of State (SoS); Jon Zeff (Director, Media), Patrick Kilgarriff (Director, Legal), Daniel Beard (Counsel), Adam Smith (Special Advisor); Sue Beeby (Special Advisor),

News Corporation

2. James Murdoch (Chairman, CEO Europe & Asia, News Corporation), Frederic Michel (Director; Public Affairs), Matthew Anderson (Strategy and Corporate Affairs Director), Jeff Palker, (General Counsel), Andrea Appella (Deputy General Counsel).

<u>Points Discussed</u>

3. SoS made the following opening remarks:

   i. The News Corp submission made some strong points but on the basis of the evidence presented he was still minded to refer the case to the Competition Commission (CC).

   ii. It was essential to a robust outcome that the SoS act reasonably in coming to a decision. There was clear disagreement between the reports from News Corp and OFCOM respectively, and given the low threshold for referral, sending the case for further investigation was, in the SoS's view, the reasonable approach.

   iii. However, SoS acknowledged News Corp had additionally submitted an Undertakings In Lieu (UILs) aimed at addressing any potential impact on the sufficiency of plurality (of news) from the proposed merger. The legal framework was clear that undertakings were permissible at this stage, and it was reasonable to give the UILs appropriate consideration before taking a final decision on whether to refer.

   iv. This meeting would give News Corp the opportunity to discuss their submission, the subsequent UILs and the process to be followed from this point.

4. News Corp made the following points in discussion on their submission:

   i. The News Corp submission starts from the point that the evidence compiled in the OFCOM report was not a legitimate foundation to base a decision on whether to refer to the CC. There were fundamental errors in the analysis, particularly around measures of reach and share alongside inappropriate weighting given to key assessment areas, not least the treatment of wholesale news. There was also a disregard of the impact of internet news consumption and the safeguards that ensure editorial independence.

   ii. Moreover at the heart of the problem were errors in the way that OFCOM had undertaken the assessment of sufficiency of plurality. Plurality in the UK market had increased hugely in recent times. Instead of assessing whether there was likely to be a change in plurality, as a result of the proposed merger, OFCOM should have undertaken an assessment of whether there was currently a sufficiency of plurality in the market, and if so, whether the proposed merger moved this assessment to one of insufficiency. In doing this, News Corp felt Ofcom should have given due weight to the precedents set in the BSkyB/ITV deal which failed to identify plurality issues in the UK market.

iii. Had the assessment been undertaken in this way, Ofcom should have arrived at a different conclusion. There was a much higher threshold for CC referral than was suggested. Ofcom's approach to the 'Double May test' (set out in the 2003 Communications Act) would mean that all media mergers would be automatically referred to the CC.

iv. The dynamic analysis was wholly speculative and there was a need to ensure this aspect did not form part of the decision process.

v. OFCOM had not drawn the right conclusions despite acknowledging that multi-sourcing is relevant but not crucial to the decision, and that News Corp could not widen its influence on the overall news agenda as a result of this transaction.

vi. OFCOM should have given more weight to the presence of internal as well as external editorial independence constraints. The culture of internal editorial independence within News Corp was clearly recognised by Ofcom but this was not taken into consideration.

vii. The OFCOM assessment of minutes spent consuming news should have reflected the differences between reading a newspaper and watching a news programme on TV.

viii. The report reflected the bias displayed in the early part of this process, on which News Corp still reserved their rights.

ix. Under the Enterprise Act, SoS was not bound to follow Ofcom's recommendations. For the reasons explained in News Corp's submission, SoS's discretion to act in this case was key. This discretion was likely to reduce as the process and once CC had made recommendations.

5. In discussion of these points DCMS officials made the following observations:

i. The interpretation of the 'double may' test had been established in the IBA merger case and it was not clear how the SoS decision could reasonably diverge from this. In the Sky/ITV merger it had been established that it was appropriate to consider sufficiency in the context of a change as deciding absolutes in these cases was extremely difficult.

ii. While a benchmark might be attractive the idea was likely to be contentious. Benchmarks would be continually shifting with issues dealt with ex ante and every case assessed differently. While the statutory scheme didn't preclude such an approach it was difficult to see how it might be applied. There were many theoretical approaches to understanding sufficiency but it was not clear that there was any one right way to make an assessment. OFCOM had however clearly followed a precedent.

6. **Consideration of the UILs**

7. News Corp made the following points in relation to their proposed remedy:

    i. The main argument put forward by Ofcom and opponents of the merger was that it would result in the loss of Sky News as an independent voice. The UILs had therefore been constructed to ensure that there was no material change in the position of Sky News as an independent entity with independent status.

    ii. This would essentially be achieved by separating Sky and Sky News into two entities and proceeding with the merger without Sky News as part of the deal. News Corp would guarantee a level of funding on a long term basis to ensure financial viability of Sky News. This would allow Sky News to operate independently as a UK plc and means that news provision no longer forms part of the proposed merger.

    iii. Under the Enterprise Act, SoS has the power to accept UILs.

8. SoS explained that he was prepared to explore the proposal but would want to look very closely at the detail, including the implications for financial viability of an independent Sky News.

9. **Next steps**

10. SoS wanted to ensure the process remained fair and transparent for all interested parties and next steps should therefore be:

    a. Publish the Ofcom report (redacted for confidential information)
    b. Publish non-confidential version of News Corp's submission
    c. To announce that SoS was minded to refer to the CC, however News Corp have come back with a potential remedy which we were going to explore
    d. Alongside this, invite OfT to act on SoS's behalf to explore whether acceptable UILs could be reached.
    e. Ask OFCOM to offer specific advice on the UILs in relation to (i) plurality and (ii) financial sustainability
    f. Having worked through the detail, if SoS is minded to accept, there would follow statutory public consultation of 15 days, otherwise this would be referred to the CC

11. In advance of that SoS would need:

    a. An undertaking that the representations and UILs reflected the position of BSkyB.

b. A summary of the UILs and the News Corp submission ready for public release
c. Fully worked up UILs, upon which DCMS would seek OFCOM advice and publish in due course

Note of a Meeting with Media Organisations re News Corp Bid for BSkyB – 24 March 2011

Attendees

DCMS

1. Secretary of State (SoS), Paul Oldfield (Private Secretary), Sue Beeby (Special Advisor), Adam Smith (Special Advisor), Jon Zeff (Directors Media), [redacted] Daniel Beard (Counsel),

Others

2. [redacted] (OFCOM), Clive Maxwell (OFT) [redacted] OFT), [redacted] (Slaughter and May), [redacted] (Trinity Mirror), [redacted] Guardian Media Group), [redacted] Telegraph Media Group), [redacted] (Associated News and Media).

Points Discussed

3. The Secretary of State met with Slaughter and May and a selection of the media organisations they represent, as part of the consultation process following the SoS' decision not to refer the proposed News Corp acquisition of BSkyB to the Competition Commission.

4. The media organisations and their lawyers made the following points in discussion:
   i. The importance of a diverse strong media industry and the dangers of reduced diversity in the market place. Fundamentally the group of companies represented at the meeting did not believe that the proposed News Corp. takeover deal for BSkyB – including the UILs – would preserve the independence of Sky News.
   ii. As Sky News was beholden to BSkyB for revenue, distribution, advertising and cross promotion, Sky News would heavily fall under the influence of News Corp – whose shareholding in BSkyB would increase from 39% to 100% under the proposed deal.
   iii. Experience from other (newspaper) takeovers by News Corp. suggested that behavioural remedies had not preserved editorial independence for those publications.
   iv. Whether Sky would continue to cross-promote Sky News as heavily once it was spun off.
   v. The solution was not clear cut so the merger should therefore be referred to the Competition Commission.
   vi. Consistent with OFT/Competition Commission procedures, the proposed solution should be in place indefinitely until circumstances require a change, rather than it being in place only for 10 years, after which point it is reviewed. The media organisations also argued that in acting this way the SoS had put risk on the public, rather than the parties to the agreement.

5. In responding to these concerns the SoS made the following points in discussion:
   i. SoS stressed that his decision was not, and could not be based on market power, and that his decision was based on media plurality in relation to this specific transaction. He explained that he took some elements of competition law best practice in reaching his decision – ie taking advice of experts and publishing that advice, but this was not a decision made under competition law.
   ii. SoS said that the UILS were offered by News Corp to protect media plurality, and that OFCOM had confirmed that they met its concerns. They did in his view make

Sky News more independent and less subject to influence from News Corp. Enshrining that Sky News was subject to the principle of editorial independence and integrity, as well as the Broadcasting Code in the Mem & Arts was also an important step in ensuring the viability of Sky News as an independent news provider. SoS said that both the proposed carriage agreement and brand agreement would provide protection and certainty of funding and exposure for Sky News. SoS also said that the proposed corporate governance changes (including independent Directors etc) were legally binding, and were structural rather than behavioural remedies.

iii. SoS said that, if News Corp wanted to reacquire Sky news after 10 years, this could trigger a further media plurality public interest test.

iv. SoS also made clear he could only consider the UILs that News Corp. presented, rather than suggesting different remedies or solutions. OFCOM made clear that they did not believe that the UILs would be effective in perpetuity – given rapidly changing media landscape and therefore 10 years was sufficient to meet concerns over plurality.