

EX.007

From: Michel, Frederic [redacted]
Sent: 24 December 2010 11:24
To: ZEFF JON
Subject: Private

Dear Jon,

Hope all is well.
I guess next few weeks will be busy for us both!
Our legal team has informed me you will be heading the DCMS Sky transaction review.
We will do our very best to be as helpful as possible in the oral and written evidence.
Have a nice Christmas,
Looking forward to seeing you soon,
Warmest regards
Frederic

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: [redacted]
Mob [redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 1 Virginia St, London E98 1XY), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone.

Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have

EX.0.08

[Redacted]

From: SECRETARY OF STATE'S OFFICE
Sent: 05 January 2011 17:21
To: [Redacted]
Subject: OFCOM'S REPORT ON NEWS CORP/BSKYB PROPOSED MERGER

Dear Mr Michel

OFCOM'S REPORT ON NEWS CORP/BSKYB PROPOSED MERGER

As you know, Ofcom provided the Secretary of State with the above report on 31st December. We are awaiting a redacted copy from Ofcom which we can send you but, in advance of that, the Secretary of State would like to offer you a meeting to discuss the process which we will follow from now on. Can I suggest that someone gets in touch with this office with a view to having the meeting later this week?

The Secretary of State would like to stress that this is not a meeting to discuss the substantive points raised in the report. Once you have a copy of the report he will, of course, consider any points which you may subsequently wish to raise, and be happy to meet again.

[Redacted]
Department for Culture, Media and Sport
[Redacted]

EX.0.09

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 05 January 2011 20:40
To: ZEFF JON
Subject: Re: Private

Dear Jon

Thanks a lot.
Yes, I'm scheduling for me and James to come see the SoS tomorrow or Friday.
We look forward to it.
Hope to see you then?
Let's talk beforehand if you want.

Warm regards

ed

Frederic Michel
Director, Public Affairs, Europe
News Corporation
tel: [Redacted]
mob: [Redacted]

----- Original Message -----
From: ZEFF JON [mailto:[Redacted]]
Sent: Wednesday, January 05, 2011 06:06 PM
To: Michel, Frederic <[Redacted]>
Subject: RE: Private

Dear Frederic

Related thanks for your good wishes and Happy New Year. I look forward to keeping in touch, and I know you're in contact with the Secretary of State's office about a possible meeting in the next few days.

Best wishes

Jon

-----Original Message-----
From: Michel, Frederic [Redacted]
Sent: 24 December 2010 11:24
To: ZEFF JON
Subject: Private

Dear Jon,

Hope all is well.
I guess next few weeks will be busy for us both!
Our legal team has informed me you will be heading the DCMS Sky transaction review.

EX.0.10

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 07 January 2011 11:19
To: [Redacted]
Cc: [Redacted]
Subject: RE: Private

Dear [Redacted]

Please use the following:

Frederic Michel,
Director
Public Affairs, Europe
News Corporation,
3 Thomas Square,
London E98 1EX
Tel: [Redacted]
Mobi: [Redacted]

My assistant, [Redacted] will look out for it.

Warm regards

Fred

-----Original Message-----

From: [Redacted]
Sent: 07 January 2011 11:16
To: [Redacted]
Subject: FW: Private

Dear Frederic,

Could you let me know what address we should use for correspondence, please.

[Redacted]

DCMS
2-4 Cockspur Street
London SW1Y 5DH

W: [Redacted]
M: [Redacted]

-----Original Message-----

From: ZEFF JON

Sent: 05 January 2011 16:39

To: [redacted]

Subject: FW: Private

To see contact details (should file this as well)

-----Original Message-----

From: Michel, Frederic [redacted]

Sent: 24 December 2010 11:24

To: ZEFF JON

Subject: Private

Dear Jon,

Hope all is well.

I guess next few weeks will be busy for us both!

Our legal team has informed me you will be heading the DCMS Sky transaction review.

We will do our very best to be as helpful as possible in the oral and written evidence.

Have a nice Christmas,

Looking forward to seeing you soon,

Warmest regards

Frederic

Frederic Michel

Director, Public Affairs, Europe

News Corporation

Tel: [redacted]

Mob: [redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 1 Virginia St, London E98 1XY), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone.

EX.0.11

[Redacted]
From: [Redacted]
Sent: 07 January 2011 20:34
To: [Redacted]
Subject: Re: Private

Hi [Redacted]

Just to let you know that the report has arrived!

Many thanks for your help with this and hope you have a great weekend.

Best wishes,

[Redacted]

3 Thomas More Square
Thomas More Street
London
E98 1EX

----- Original Message -----

From: [Redacted]
Sent: Friday, January 07, 2011 07:25 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: Private

Hi [Redacted]

The letter is ready and will be collected by the courier at 7.30 and taken to the address below. I will check at 7.30 that it has gone and let you know if there is a problem. If it hasn't turned up by, say, 9 call me and I will chase the couriers. My mobile is [Redacted] and my land line is [Redacted] (as my mobile has a baffling tendency to go straight to voice mail.)

Have a good weekend.

[Redacted]

-----Original Message-----

From: [Redacted]
Sent: 07 January 2011 18:34
To: BRAND STUART
Subject: RE: Private

Hi [Redacted]

Following on from our conversation, please find below my contact details if you need to contact me. I will be on email and mobile.

Just to confirm the report should be sent to:

Best wishes,

3 Thomas More Square
Thomas More Street
London | E98 1EX

Tel: +
Mob:

-----Original Message-----

From: Michel, Frédéric
Sent: 07 January 2011 16:10
To:
Subject: FW: Private

Please call and ask him for update on timing of report reaching us today...

-----Original Message-----

From:
Sent: 07 January 2011 11:16
To:
Subject: FW: Private

Dear Frederic,

Could you let me know what address we should use for correspondence, please.

DCMS
2-4 Cockspur Street
London SW1Y 5DH

W:
M:

-----Original Message-----

EX.012

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 14 January 2011 10:44
To: [Redacted]
Subject: RE: Private

Hi [Redacted]

We will be sending the documents by mid-afternoon today.

Best

Fred

-----Original Message-----

From: [Redacted]
Sent: 07 January 2011 11:16
To: [Redacted]
Subject: FW: Private

Dear Frederic,

Could you let me know what address we should use for correspondence, please.

[Redacted]

DCMS
2-4 Cockspur Street
London SW1Y 5DH

Y: [Redacted]
L: [Redacted]

-----Original Message-----

From: ZEFF JON
Sent: 05 January 2011 16:39
To: [Redacted]
Subject: FW: Private

To see contact details (should file this as well)

-----Original Message-----

From: Michel, Frederic [mailto:[Redacted]]
Sent: 24 December 2010 11:24
To: ZEFF JON
Subject: Private

EX.0.13

[Redacted]
From: Michel, Frederic <[Redacted]>
Sent: 14 January 2011 16:05
To: [Redacted] Michel, Frederic
Cc:
Subject: RE: Private

Hi [Redacted]

Probably in next 2-3 hours. The draft is being finalised by our counsel now.

Best

Fred

-----Original Message-----

om: [Redacted]
Sent: 14 January 2011 16:04
To: Michel, Frederic
Cc: [Redacted]
Subject: RE: Private

Hi Fred,

What's the latest ETA?

[Redacted]

-----Original Message-----

From: Michel, Frederic [Redacted]
Sent: 14 January 2011 10:44
To: [Redacted]
subject: RE: Private

Hi [Redacted]

We will be sending the documents by mid-afternoon today.

Best

Fred

-----Original Message-----

From: [Redacted]
Sent: 07 January 2011 11:16
To: [Redacted]
Subject: FW: Private

Dear Frederic,

Could you let me know what address we should use for correspondence, please.

EX.O.14

[Redacted]
From: [Redacted]
Sent: 18 January 2011 19:00
To: [Redacted]
Subject: meeting with SoS

Hi Fred,

As you will know, News Corp is seeing my SoS on Thursday. I was calling to see whether you would be agreeable to making this a joint meeting with Sky. However, I have since spoken to Sky who would prefer a separate meeting, so my question has become academic!

[Redacted]
DCMS
2-4 Cockspur Street
London SW1Y 5DH

W: [Redacted]
M: [Redacted]

EX.0.15

From: Michel, Frederic [redacted]
Sent: 24 January 2011 10:06
To: ZEFF JON; SMITH, Adam
Subject: FW: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Attachments: Final Submission to Ofcom - 23 November - non confidential version.pdf; ATT00001.htm; CO-#13207048-v18-Submission_to_Secretary_of_State (3).pdf
Importance: High

From: Michel, Frederic
Sent: 24 January 2011 09:54
To: Jon Zeff [redacted] Adam SMITH [redacted]
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Importance: High

Jon/Adam,

Attached are the non-confidential versions of our submissions for publication on Tuesday if the SoS goes ahead with a statement.

We will be sending further documents in the morning regarding our views of the process suggested by the SoS and further details on the UIL.

Warm regards

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

tel: [redacted]
mob: [redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited

EX.O.16

News Corporation

News Corporation/ British Sky Broadcasting Group Plc

Submission to Ofcom

1. EXECUTIVE SUMMARY AND CONCLUSION

- 1.1 This submission is made by News Corporation ("News Corp") in respect of the proposed acquisition by News Corp of the entire issued and to be issued share capital of British Sky Broadcasting Group plc ("Sky") that News Corp does not already own (the "Transaction").
- 1.2 The Secretary of State is considering whether to take appropriate measures to protect "legitimate interests" pursuant to Article 21(3) EUMR and issued a European Intervention Notice in relation to the Transaction on 4 November 2010. Ofcom issued an Invitation to Comment on media public interest considerations in relation to the Transaction on 5 November 2010.
- 1.3 This submission addresses issues which are relevant to Ofcom's initial investigation of the Transaction in relation to the public interest consideration specified in section 58(2C)(a) of the Enterprise Act.
- 1.4 This submission is structured as follows:
 - (a) **Section 2: Background to the parties and the Transaction**
 - (b) **Section 3: Legal framework and relevant public interest consideration and sufficiency of plurality**
 - (c) **Section 4: The Transaction will not change the quality of editorial influence over Sky News**
 - (d) **Section 5: No impact on setting of the news agenda**
 - (e) **Section 6: Sufficient plurality post-Transaction**
- 1.5 News Corp has engaged FTI Consulting and Perspective Consulting to prepare reports on media public interest considerations relevant to the Transaction. These reports are provided in **Annex I** and **Annex II** respectively.
- 1.6 A **Glossary** of abbreviations used in this submission is provided in **Annex III**.
- 1.7 In summary:
 - (a) In the UK, News Corp is mainly a newspaper enterprise for the purposes of the Enterprise Act and Sky is a media enterprise serving mainly a TV audience. This means that the only audience for whom plurality could conceivably be reduced as a result of the Transaction is a cross-media audience.
 - (b) The Transaction involves News Corp acquiring full legal control of Sky over which News Corp already has commercial influence and a degree of control, as recognised by the UK authorities.

- (c) In relation to TV broadcasting, commercial influence does not equate with editorial influence. This was found by the CC and confirmed by the CoA in the Sky/ ITV case. It cannot be assumed that the Transaction will bring about a significant actual change in the editorial independence of Sky News.
- (d) Furthermore, the regulatory framework and the deep culture of editorial independence in UK TV broadcasting combine to protect internal plurality within the media enterprise that will serve a cross-media audience post-Transaction.
- (e) In any event, even if Ofcom wanted to assess the Transaction on the basis that there will be no internal plurality constraint in relation to Sky News post-Transaction, there would be a sufficient plurality of voices available to cross-media audiences post-Transaction. The strength, number and range of cross-media voices has increased since enactment of the Communications Act and there is every reason to believe that this cross-media diversity will continue post-Transaction.
- (f) We also considered, following the Sky/ ITV precedent, whether there were particular individuals within the UK population who currently rely only on news content from Sky News and News International. This grouping was found to be of a minimal size (0.3% of the UK population).

1.8 This submission and its annexes contain confidential information which should not be disclosed to third parties without News Corp's prior written consent.

2. BACKGROUND TO THE PARTIES AND THE TRANSACTION

The Parties

- 2.1 **News:** News Corp is a diversified global media company with operations in eight industry segments: filmed entertainment; television; cable network programming; direct broadcast satellite television; integrated marketing services; newspapers and information services; book publishing; and other. News Corp had total assets as of 30 June 2010 of approximately US\$54 billion and total annual revenues of approximately US\$33 billion for the fiscal year ended 30 June 2010.
- 2.2 The activities of News Corp are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and Latin America.
- 2.3 News Corp is a Delaware corporation whose shares are listed on the New York and Australian Stock Exchanges. News Corp has a secondary listing on the London Stock Exchange.
- 2.4 In the UK, News Corp's main activities include (through News International Limited) the provision of newspapers and information services and (through HarperCollins Publishers Limited) book publishing.
- 2.5 News Corp owns 39.14% of the shares in Sky, and is entitled to exercise 37.19% of the voting rights in Sky. According to the UK CC, News Corp at present has a degree of control of Sky.¹
- 2.6 **Sky:** Sky is a holding company for a number of subsidiaries, which are active in a variety of economic sectors in the UK and Ireland, including:
- (a) the creation of "linear" TV channels (i.e., channels offering a series of programmes which are available to view at a scheduled time of broadcast). Sky's linear pay TV channels are supplied on a wholesale basis to cable, DTT, and IPTV operators for them to retail to their subscribers in the UK and Ireland. Sky also broadcasts a number of its TV channels FTA (or free-to-view) via DTH satellite and via DTT;
 - (b) the retail distribution of Sky's and third parties' linear pay TV channels via DTH, IPTV, the Internet (via *Sky Player*),² and mobile technologies;
 - (c) the retail distribution of Sky's and third parties' "audiovisual programming" (referring to all types of content that satisfies consumers' demand for audiovisual services, regardless of how they are made available to consumers) via the services known as *Sky Anytime* and *Sky Player*;
 - (d) the provision of retail telephony and broadband services to Sky's residential DTH subscribers;
 - (e) the provision of conditional access, access control, and EPG services to broadcasters and interactive service providers on Sky's DTH platform;
 - (f) through Sky's advertising sales house, Sky Media, the sale of advertising and sponsorship on Sky's and third parties' channels, and on other Sky services.
- 2.7 Sky is a public company whose shares are listed on the London Stock Exchange.

¹ CC Report, paragraph 5.64.

² *Sky Player* is an online application available over the Internet via PCs, games consoles and other consumer electronic devices.

The Transaction structure

- 2.8 The Transaction contemplates 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.
- 2.9 The Transaction is subject to the City Code on Takeovers and Mergers and would be implemented by way of a public offer or court approved scheme of arrangement.

Timetable and regulatory review

- 2.10 On 15 June 2010, News Corp made an announcement pursuant to Rule 2.4 of the City Code on Takeovers and Mergers of a possible offer to acquire the entire issued and to be issued share capital of Sky that News Corp does not already own.
- 2.11 Pursuant to a Cooperation Agreement entered into by News Corp and Sky on 15 June 2010, Sky has agreed to co-operate with News Corp in seeking any necessary merger clearances in relation to the Transaction from the relevant merger control authorities.
- 2.12 The Transaction is a concentration with a Union dimension and was notified to the Commission on 3 November 2010. The Commission's review of the Transaction at Phase I is pending.

Rationale of the Transaction

- 2.13 The acquisition of the entire share capital of Sky constitutes 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.³
- 2.14 The Transaction will allow News Corp to achieve, among others, the following two main objectives: (1) it will allow News Corp to diversify the geographic scope of its activities by acquiring a significant presence in two territories, namely the UK and Ireland, where, as of today, News Corp's activities in the TV sector are rather limited; and (2) it will allow News Corp to diversify its sources of earnings by consolidating a business, such as Sky's business, whose earnings are less dependent on advertising than other News Corp activities in the UK/ Ireland and elsewhere (and more linked to subscription fees paid by TV viewers).

³ News Corp has activities in the pay TV sector outside the UK and Ireland.

3. LEGAL FRAMEWORK: RELEVANT PUBLIC INTEREST CONSIDERATION AND SUFFICIENCY OF PLURALITY

Introduction

- 3.1 The Secretary of State is considering whether to take appropriate measures to protect "legitimate interests" pursuant to Article 21(3) EUMR and issued a European Intervention Notice in relation to the Transaction on 4 November 2010. Pursuant to such European Intervention Notice, the Secretary of State asked Ofcom to investigate and report to him in relation to the identified public interest consideration described in paragraphs 3.5 to 3.7 below. As Ofcom will be aware, News Corp has made detailed submissions to BIS explaining why, in its view, there is no substantive basis for intervention. In particular, the Transaction does not give rise to "exceptional circumstances" as to justify intervention in accordance with the DTJ Guidance, paragraphs 8.2 and 8.4, and we submit that this background should inform Ofcom's advice to the Secretary of State to enable him to determine conclusively the relevance of the identified public interest consideration.
- 3.2 As Ofcom is aware, the scope of its report and of the following determinations to be taken by the Secretary of State, is limited to plurality considerations. News Corp is aware that a number of third parties have made submissions that the Transaction will have detrimental effects on competition (for example, it has been suggested that the merged group may choose to bundle News Corp newspapers with Sky subscriptions with anticompetitive effects). Such theories are, in any event, unsubstantiated and are based on hypothetical assertions of what "may" or "might" occur following the Transaction, without evidence. They speculate on commercial behaviour and its impact on competition and therefore fall under the exclusive competence of the Commission.⁴
- 3.3 In light of the CC approach in the Sky/ ITV case, as endorsed by the CoA, an analysis of plurality involves the following:
- (a) a **qualitative** assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality, rather than a bare assessment of the number of controllers;
 - (b) in terms of **content types**, the focus of the analysis should be the provision of news, bearing in mind that any activities of Sky or News Corp in relation to the supply of raw news or content or other services to third parties which do not confer control over editorial policy are **not** relevant to the public interest consideration;
 - (c) in terms of **audiences**, the Transaction can only conceivably affect a cross-media audience, if at all; socio-economic groupings are not themselves relevant audiences for statutory purposes, but only categorisations which may apply to some members of an audience (or members of a readership).
- 3.4 After establishing what qualitatively changes post-Transaction, compared with pre-Transaction in respect of the provision of news to a cross-media audience, it is then necessary to assess whether or not that change would result in insufficient plurality in the UK.

The relevant public interest consideration

⁴ The BIS statement accompanying the European Intervention Notice notes that, given the size of the acquisition, the Commission will investigate the proposed acquisition on the grounds of competition and it will announce its own decision by 8 December.

- 3.5 The relevant public interest consideration, on which the Secretary of State has asked Ofcom⁵ to report, and we understand from our correspondence with BIS, is set out in section 58(2C)(a) of the Enterprise 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."

- 3.6 The manner in which an assessment of the sufficiency of media plurality is to be conducted was considered in detail by the CC in the Sky/ITV case. The CC took into consideration views expressed by Ofcom, written and oral submissions from a number of interested parties, contributions from academic and other experts, literature concerning plurality and the Parliamentary debates connected with the relevant provisions, in coming to its view as to what an assessment of plurality required. The CC's approach was accepted and followed by the Secretary of State.
- 3.7 On the one important point on which the CC's approach was challenged in the CAT, the CC's approach was ultimately endorsed by the CoA. The CoA concluded that, when assessing the plurality of the aggregate number of relevant controllers of media enterprises and considering the sufficiency of that plurality, the CC may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another. In light of this, it should not be necessary for Ofcom to re-open the debate in areas where the CC has already made clear findings.

Plurality requires an assessment of the range and number of voices

- 3.8 In Sky/ITV, the CC summarised its process as follows:

*"We took the concept of plurality of persons with control of media enterprises to refer both to the range and number of persons with control of media enterprises. We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences. We thought it important to draw a distinction between the plurality of persons with control of media enterprises and the implications of that plurality for the range of information and views made available to audiences. We also thought that it was appropriate to distinguish between the range of information, and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)."*⁶

- 3.9 The CoA confirmed that an analysis of plurality involves more than a bare assessment of the number of controllers and encompasses an assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality.

*"The word plurality can connote more than just a number exceeding one. It may carry an implication of range and variety as well. Certainly it has that meaning in subsection (2B). We consider that it does so in subsection (2C)(a) as well."*⁷

- 3.10 The so-called "deeming provision" in section 58A(4) and (5) of the Enterprise Act means enterprises may be treated as ceasing to be distinct if there is a change, if at all, in the quality of control (including from the lowest, material influence, to the highest, legal control) **but** does not preclude additional qualitative analysis.

⁵ In this submission, we refer to the assessment conducted by the Secretary of State and on which the Secretary of State has asked Ofcom to report.

⁶ CC Report, paragraph 30.

⁷ CoA Judgment, paragraph 90.

- 3.11 It is therefore necessary for the Secretary of State to consider to what extent the Transaction changes the *status quo ante* (in which News Corp already has a degree of control of Sky), so as to create a situation of insufficient plurality.

Focus of analysis should be news

- 3.12 The CC decided in Sky/ ITV that, in terms of content, the best metric to assess the range of information and views presented to the public (and to assess plurality) was the provision of news:

"We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences."⁸

"The parties overlap in a broad range of content, but news and current affairs are the genres most closely connected with the formation of public opinion about issues of national significance through the communication of a range of information and views. National news is an important genre of programming for both ITV and BSkyB. Considering all content genres, including current affairs, documentaries and satire, viewers rank news first in terms of 'societal importance', with a majority of the public saying that news helps them feel part of the democratic process. We also believe that news provision is a reasonable indicator of, and better defined than, a wider range of other content relevant to the formation of public opinion about issues of national significance. We therefore focused on national news and refer to the range of information and views communicated to audiences through the news as the 'plurality of news.'⁹

- 3.13 Consideration of other types of content provision, as raised in Ofcom's consultation document, does not assist in assessing plurality and, particularly, in light of the CC's clear finding in Sky/ ITV other content types should be regarded as irrelevant to a plurality analysis. Indeed, to date this seems to have been accepted even by third parties publicly expressing views about the merger who have focused their interest on news.

Supply of news content to broadcasters (in particular Channel 5) is not within the scope of the legal consideration of sufficiency of plurality

- 3.14 The Secretary of State is required to consider only the plurality of persons with control of *media enterprises*.
- 3.15 For the purposes of section 58 of the Enterprise Act, an enterprise is a media enterprise if it "consists in or involves broadcasting".¹⁰ A "media enterprise" is therefore **not** one which consists in or involves the provision of news content or services to broadcasters.
- 3.16 That the supply of news content or services is not itself the focus of the plurality assessment required by section 58 of the Enterprise Act is logical and consistent with the overall regulatory framework, where the focus is not on the provider of content or ancillary services but on the owner of channels and programming and editorial control. For example, the entity that is licensed and regulated to provide a broadcasting service under the Communications Act is "*the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control*

⁸ CC Report, paragraph 5.10.

⁹ CC Report, paragraph 5.32.

¹⁰ Section 58A(2), Enterprise Act.

of the content of individual programmes or of the broadcasting or distribution of the service)" (our emphasis).¹¹

3.17 This has important implications for assessment of sufficiency of plurality in relation to the Transaction. Any activities of Sky or News Corp in relation to the supply of raw news or content or other services to third parties which do not confer control over editorial policy are **not** within the scope of the public interest consideration.¹² In particular:

- (a) although Sky provides raw news data and content to Five, Channel Five is the relevant broadcasting licensee and controls the editorial policy of its channel;
- (b) although Sky has won the contract to supply news content to IRN, it does not control the editorial policy of the radio news service or the individual radio stations.

3.18 The regulatory framework thus draws a fundamental distinction between transactions and interests which confer influence over editorial policy and those which do not. Only the former are within the scope of a plurality assessment. The plurality assessment must focus on whether there is a sufficient plurality of persons exercising editorial control over media enterprises.

Concept of a relevant audience

3.19 The concept of an "audience" for a particular media outlet must be based on those people who are exposed to the views and opinions of that media outlet and who could therefore conceivably be impacted by any alteration in its presentation of the news. For a newspaper the assessment must relate to the voices available to the UK readership. For a television broadcaster the assessment must relate to the voices available to the audience which watches TV broadcasts in the UK. For a merger between a newspaper enterprise and a TV broadcaster the relevant audience is necessarily a cross-media audience. It is in this context that any possible reduction of plurality and its impact on "sufficiency" needs to be assessed.

3.20 For statutory purposes, socio-economic groupings or regions or "nations" of the UK are not the starting point of the analysis and are not themselves audiences. These groupings are not an "audience served by an enterprise", they are categorisations which may apply to some members of an audience (or members of a readership).

3.21 In Sky/ITV, when considering the audiences reached by News International and Sky, the CC concluded that there were no fundamental differences between socio-economic groupings or between regions, or "nations" of the UK.

"We investigated the extent of such differences further using data from TGI and Touchpoints. The results of this analysis are set out in Appendix I. Our view is that, whilst viewing shares and readership vary somewhat by socio-economic group, there are no fundamental differences in the significance of ITV, BSkyB and News International to particular sections of the UK population. Nor did we find any fundamental differences in the significance of ITV, BSkyB and News International between nations within the UK."¹³

3.22 As explained in the report by FTI at Annex I, there are no fundamental differences in the significance of Sky News and News Corp to particular sections of the UK population or

¹¹ Section 362(2), Communications Act.

¹² It is noted that the CC did not aggregate either Five News or radio services receiving news content from Sky into Sky News' audience share when it reviewed the Sky/ITV transaction.

¹³ CC Report, paragraph 5.50.

nations within the UK. The Transaction will not result in there being insufficient plurality in any sections of the UK population or nations within the UK.¹⁴

The Transaction can only conceivably affect a cross-media audience, if at all

3.23 In the UK, News Corp is mainly a newspaper enterprise for the purposes of the Enterprise Act¹⁵ and Sky is a media enterprise serving mainly a TV audience.¹⁶ This means that the only audience for whom plurality could conceivably be reduced as a result of the Transaction is a cross-media audience:

- (a) the number of controllers of **television** news broadcasters would not reduce as a result (Sky would remain under entirely separate control from the other main television news broadcasters: BBC, ITV and Channel 4)¹⁷; and
- (b) the number of controllers of **newspaper** enterprises would not reduce as a result (News International would remain in entirely separate ownership from the other main UK newspaper groups: the Daily Mail and General Trust, Trinity Mirror, Northern & Shell, the Telegraph Media Group, the Guardian Media Group, Independent News and Media and the Pearson Plc).

3.24 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 at the very least exposure to both television news and newspapers.

"Sufficiency" of plurality for relevant audience pre and post-Transaction

3.25 Once the Secretary of State has established what qualitatively changes post-Transaction compared with pre-Transaction, and for which audience, he must then assess whether or not that change will result in there being insufficient plurality in the UK.

3.26 The meaning of "sufficient plurality" is not developed in the Enterprise Act. The Explanatory Notes to the Communications Act state in relation to section 58(2C)(a) that "*[t]he first limb of this subsection is concerned primarily with ensuring that ownership of media enterprises is not overly concentrated in the hands of a limited number of persons*".¹⁸

3.27 There is no indication that Parliament considered plurality to be insufficient at the time of enactment of the Communications Act which represents a relaxation of controls on media ownership and, particularly, cross-media ownership. In these circumstances, it would be legitimate to assume that intervention on plurality grounds is warranted only when it reduces plurality to a level which is materially below that subsisting at the time of enactment of the relevant legislation. In such a rich and diverse media environment, which is even more true today than in 2002, it cannot be established that the Transaction gives rise to serious public interest concerns.

3.28 The CC described its process as follows in Sky/ITV:

¹⁴ See, further, FTI Report, paragraphs 6.19 to 6.23.

¹⁵ A "newspaper enterprise" means an enterprise consisting in or involving the supply of newspapers.

¹⁶ News Corp has other interests in the UK that are not relevant for present purposes, including the supply of content that is available on the Fox channels.

¹⁷ Ofcom has also requested data as to the audience share of Fox News in the UK. While it is true that News Corp does already control the Fox News Channel and that it could therefore be alleged that bringing Fox News and Sky under common control would reduce the number of controllers of news broadcasters, this would fail to take into account the exceedingly marginal position of Fox News in the UK. Fox News' share of news viewing is 0.08% (BARB, January to October 2010).

¹⁸ Explanatory Note 802.

"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. Moreover, in considering the sufficiency of persons with control of media enterprises, we have regard to the implications of the level of control exercised for the range of information and views available. We considered this in relation to both internal and external plurality."¹⁹

- 3.29 In Sky/ ITV, the CC (and the Secretary of State) treated Sky and News Corp as a single enterprise by virtue of News Corp's degree of control over the competitive policy of Sky. It found that, as a result of the transaction it was examining in that case, Sky had acquired material influence over ITV, an important UK broadcast news provider. Even in those circumstances the CC concluded that sufficient plurality remained for each major audience in the UK, both for a TV audience and a cross-media audience (taking into account the readership of News International's newspapers). As Ofcom will be well aware, Sky was required to divest its shareholding in ITV to below 7.5%, for reasons connected with **competition** and not media plurality.
- 3.30 In fact, a UK cross-media audience has actual or potential²⁰ access to a wide range of sources, including:
- (a) all TV news broadcast in the UK;
 - (b) all national and local radio services available in the UK;
 - (c) all national, daily and Sunday newspapers circulating in the UK;
 - (d) all news magazines circulating in the UK; and
 - (e) all news available online, including but not limited to news available on dedicated news websites, blogs and via aggregators.

Conclusion

- 3.31 Given the conclusions reached by the CC and the Secretary of State in the Sky/ ITV case, it is extremely difficult to see how a transaction which does not involve ITV (with its relatively greater broadcast news audience share), and the only impact of which is a change in the quality of control between two enterprises which were deemed, in any event, to form a single enterprise in the Sky/ ITV case, could have any adverse impact on the sufficiency of plurality for any audience within the UK. In any event, the remainder of this submission will show that this Transaction cannot jeopardise the editorial independence of Sky News, has no impact on setting the news agenda and does not result in there being insufficient plurality of voices for any relevant audience.

¹⁹ CC Report, paragraph 5.15.

²⁰ Section 58A(7)(b), Enterprise Act states that the criteria for determining who can be treated as comprised in an audience "may allow for persons to be treated as comprised in an audience if they are only potentially members of it".

4. THE TRANSACTION WILL NOT CHANGE THE QUALITY OF EDITORIAL INFLUENCE OVER SKY NEWS

Introduction

- 4.1 When analysing the possibility of the Transaction having an impact on plurality, it is important to distinguish between, on the one hand, the degree of News Corp's control over Sky's commercial and competitive policy and, on the other hand, whether such control would result in influence over the editorial policy of Sky News. Whilst the former is relevant for jurisdictional purposes, it is only the latter that is relevant to a plurality assessment. The two concepts are not aligned and this has been accepted by the CC and, ultimately, the CoA in the Sky/ ITV case.
- 4.2 News Corp already has a degree of commercial influence over Sky which results in "control" for Enterprise Act purposes, as recognised by a number of UK authorities. However, despite this degree of control over Sky, News Corp does not currently exert such control to influence editorial decisions of Sky News.
- 4.3 The key question is, therefore, whether the degree of News Corp's influence over Sky News' editorial agenda would change as a result of the Transaction, and whether plurality would be compromised as a result. The answer is clear. Although the Transaction would result in an acquisition of full legal control over Sky, it will not change the fact that Sky News enjoys and will continue to enjoy editorial independence. The same factors that have preserved editorial independence to date, as recognised by the CC, will ensure editorial independence going forward. Therefore, plurality cannot be compromised by the Transaction regardless of any change in the level of News Corp's control over Sky.

News Corp already has a degree of control over Sky

- 4.4 News Corp already has a degree of commercial influence over Sky which results in "control" for Enterprise Act purposes. This has been recognised by a number of UK authorities and is also evidenced by a number of factors that highlight the relationship between News Corp and Sky.
- 4.5 The UK authorities have found that News Corp currently has a degree of "control" over Sky:
- (a) 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."²¹
 - (b) The CC assumed that, for the purposes of its analysis of the impact of the ITV acquisition on plurality of news, "News Corporation had material influence over BSkyB."²² On that basis, it assessed the impact of the acquisition on plurality of news including the links with News Corp and concluded that plurality was not affected. This conclusion was endorsed by the UK Government.
 - (c) Ofcom took into account the links between News Corp 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."²³ It conducted an in-depth review of the Sky/ ITV transaction on the basis that it established an ownership link between ITV and News Corp whereby News Corp and Sky were deemed to be part of the same enterprise.

²¹ OFT Report, paragraph 25.

²² CC Report, paragraph 5.64.

²³ Ofcom Report, paragraphs 4.4-4.7.

(d) The CAT Judgment recites that Ofcom, in its initial report, "assumed that Sky is or may be controlled by News Corporation (39.1% shareholding held through a number of News Corporation subsidiaries)."²⁴

4.6 The factors which contributed to these findings remain relevant, in particular those concerning News Corp's shareholding in, and representation on, the Board of Sky.

(a) **Shareholding**

4.7 News Corp was a founding shareholder of Sky and has remained its major shareholder since it was listed in 1994. Currently, News Corp holds 39.14%²⁵ of the issued equity capital of Sky and is the largest shareholder in Sky. As at 28 July 2010, there were only two other shareholders with more than 3% of the equity capital of Sky, such shareholdings being 3.10% and 5.02%.²⁶

(b) **News Corp's representation on the Board of Sky**

4.8 Since the public listing in 1994, at any given time there have been between four and five directors on the Board of Sky that were (and are) affiliated with News Corp at the same time as holding their office. The position of Chairman has been occupied by Mr. Rupert Murdoch (1999 – 2007) and Mr. James Murdoch (2007 – present). Currently, there are 14 members of Sky's Board of Directors comprising 12 non-executive directors and two executive directors. The four non-executive directors which currently hold executive positions at News Corp are as follows:

- (i) **Mr. James Murdoch** (non-executive director and Chairman of Sky) was the CEO of Sky with effect from 4 November 2003. On 7 December 2007, he was appointed non-executive Chairman of Sky, having relinquished the role of CEO. Mr. Murdoch is Chairman and Chief Executive, Europe and Asia, at News Corp and is a member of News Corp's Board of Directors. Between May 2000 and November 2003, he was Chairman and CEO of the Star group (a News Corp wholly owned subsidiary).
- (ii) **Mr. David F. DeVoe** (non-executive director of Sky) is an executive director at News Corp and holds the position of both the Chief Financial Officer and Senior Executive Vice President of News Corp. Mr DeVoe has been a Director of News Corp and its CFO since October 1990. Mr. DeVoe has served as Senior Executive Vice President of News Corp since January 1996. Mr. DeVoe has been a director of NDS Group plc since October 1996.
- (iii) **Mr. Thomas Mockridge** (non-executive director of Sky) is the CEO of Sky Italia and the Chief Executive, European Television of News Corp where he oversees News Corp's television operations in Europe (outside the UK). Prior to joining Sky Italia, Mr. Mockridge held various roles at Star Group Limited and was previously CEO of Foxtel, News Corp's pay TV joint venture with Telstra.
- (iv) **Mr. Arthur Siskind** (non-executive director of Sky) is an executive director of News Corp and the Senior Advisor to the Chairman of News Corp. He was appointed as a director of Sky on 19 November 1991. Mr. Siskind has been the Senior Advisor to the Chairman of News Corp since January 2005. Mr. Siskind has been an Executive Director of News Corp since

²⁴ CAT Judgment, paragraph 247.

²⁵ 37.19% voting interest.

²⁶ Sky 2010 Annual Report.

1991 and was Group General Counsel of News Corp from March 1991 until December 2004.

(c) **Roles and responsibilities of the non-executive Chairman of Sky, Mr. James Murdoch**

4.9 From November 2003 until late 2007, Mr. James Murdoch was the CEO of Sky.²⁷ During that time, Mr. James Murdoch appointed and led the current senior management team of Sky. Mr. James Murdoch played a key role in devising and delivering Sky's key operational and strategic targets.

4.10 When Mr. James Murdoch announced that he wished to step down from Sky in 2007 and rejoin News Corp as its Chairman and Chief Executive of its European and Asian businesses, the Sky Board requested that he carry on in the capacity of non-executive Chairman.

4.11 [REDACTED].²⁸

Commercial influence does not equate with editorial influence

4.12 As stated above, the scenario which the Secretary of State must address in the current case is not a change from no control to full control over Sky. Instead, the Secretary of State must consider whether a change from News Corp's current degree of control over Sky to News Corp gaining full legal control of Sky would result in insufficient plurality for any relevant audience in the UK.

4.13 Despite its degree of control over Sky, News Corp does not currently exert editorial influence over Sky News.

4.14 In this context, it is important to refer to the CoA Judgment in Sky/ ITV:

"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."²⁹

4.15 The implication of this judgment is that one cannot assume that commercial influence necessarily translates into editorial influence. Equally, increasing the level of control to full legal control does not translate into the loss of Sky News' editorial independence.

4.16 In Sky/ ITV, the CC has recognised the editorial independence of Sky News:

"BSkyB and the BBC, which both provide news in-house, emphasized the rôle 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

²⁷ Prior to 2003, Mr. James Murdoch was an executive of News Corp, as were all prior CEOs of Sky.

²⁸ [REDACTED: CONTAINS BUSINESS SECRETS].

²⁹ CoA Judgment, paragraph 121.

that senior executives at BSkyB or its parent companies exerted influence on the Sky News agenda³⁰

- 4.17 For the reasons set out below, it is clear that a stepping up in the level of News Corp's degree of control over Sky to full legal control will not translate into a corresponding exercise of influence over Sky's editorial policy.

Sky News' editorial independence will be maintained

- 4.18 Editorial decisions are not subject to alteration as a result of the change of a shareholders' level of commercial influence. The CC report in the Sky/ITV case confirms that editorial decisions in TV news broadcasting are not taken at board level.

"We note that both BSkyB and ITV have said that the editorial content of ITV news would be unlikely to be a matter of strategic importance. We received no evidence to suggest that it features as a key policy objective for either company. We note, for example, that ITV's strategy update on 12 September 2007 made no mention of particular strategic objectives for news (with the exception of statements about a reduction in regional news). Our view that BSkyB's influence over ITV is likely to relate to matters of strategic importance suggests that BSkyB is unlikely to have the ability to exert material influence over ITV in relation to the editorial content of news.

*In addition, 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. Both ITV and ITN demonstrated a strong commitment to editorial independence. ITV said that 'it is not conceivable that a shareholder in ITV could successfully influence the editorial decisions of its news programming'. ITN had in the past broadcast news stories that were unfavourable either to the channel on which the news was provided (eg in relation to phone-in quizzes on Channel 4) or to other commercial interests (eg advertisers). We saw no reason why this should not continue" (our emphasis).*³¹

- 4.19 The acquisition by News Corp 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 Corp 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 Corp executives.
 - (e) News Corp has no special arrangements with Sky News which would confer on it control over editorial policy.

³⁰ CC Report, paragraph 5.57.

³¹ CC Report, paragraphs 5.67 and 5.68.

- 4.20 In addition, the regulatory landscape makes a significant contribution to safeguard a plural media environment. In relation to TV broadcasting, the Broadcasting Code requires that television news is presented impartially. This was recognised as an important factor by the CC:

*"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."*³²

- 4.21 Furthermore, the CC considered that the regulatory landscape applicable to news broadcasters which protects editorial independence, can be contrasted with the position vis-à-vis newspapers:

*"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. All respondents to our questionnaires told us that day-to-day editorial decisions for newspapers and allied websites were made by editors and journalists, and not by board directors or shareholders. However, boards usually play some role in the appointment of editors, and may also determine the overall political stance in line with the target audience for a particular newspaper title."*³³

- 4.22 Therefore, in order for Sky News to remain a news broadcaster it must remain impartial in the presentation of news. In particular, Sky News could not take one party line without risking losing its licence. Finally, Sky's editorial agenda is the outcome of a complex interplay of multiple factors, described in more detail in section 5 below.

Conclusion

- 4.23 News Corp's ability and incentive to influence the Sky News editorial agenda will not be affected by the Transaction. There is every reason to believe that the current situation will continue. Sky's editorial policy is shaped by a complex interplay of multiple factors described in more detail in section 5 below, against a regulatory framework which safeguards over-representation of one viewpoint. It is clear that the editorial independence of Sky News would not be jeopardised following the Transaction, and there is no evidence to support the assertion that it would be.

³² CC Report, paragraph 5.54.

³³ CC Report, paragraph 5.58.

5. NO IMPACT ON SETTING OF THE NEWS AGENDA

Overview

- 5.1 The plurality analysis also involves the assessment of the ability to "*influence opinions and control the agenda*" (our emphasis).³⁴
- 5.2 For the Transaction to influence or control the wider news agenda, two necessary conditions would need to hold, neither of which are likely:
- (a) Condition 1: News Corp would need to be able and have an incentive to actually exert control over the Sky News agenda; and
 - (b) Condition 2: any control exercised by News Corp over Sky News' agenda would need to lead in a significant change in the wider news agenda.
- 5.3 As explained in the report by Perspective Consulting at Annex II, neither of these conditions would be satisfied, since it is not the case that News Corp could "control the agenda" - within Sky News or more widely - as a result of the Transaction.
- 5.4 Plurality has increased since the Communications Act was enacted and there is every reason to believe that it will continue to increase with or without the Transaction. This situation raises the bar for intervention on grounds that the Transaction will lead to insufficient plurality.

No change in the Sky News agenda

- 5.5 Section 4 explained that News Corp does not currently exercise influence over Sky News' editorial agenda (despite the degree of control it already has over Sky). This would not be changed by the Transaction.
- 5.6 In addition to the reasons set out in paragraphs 5.1 to 5.5 above, there are a number of features of the provision and consumption of TV news which safeguard the independence of the Sky News agenda from shareholder influence.
- (a) Audiences have very particular expectations of TV news, which is a powerful force for similarity between outlets.
 - (b) Much of the TV news agenda is driven by events of the day and access to shared news gathering resources.
 - (c) Impartiality requirements in the regulatory framework, as mentioned in section 4, are important constraints, since they influence story choice as well as how stories are treated.
 - (d) For areas where plurality is most important (for instance, election coverage), it is inconceivable that a broadcaster would choose not to provide coverage of a key story of the day, and once covering a story, impartiality rules apply.
 - (e) TV news rooms have their own particular ethos, and imposing a newspaper approach will be difficult (and past transfers of senior newspaper staff to Sky have generally been unsuccessful).

No change in the wider news agenda

³⁴ DTI Guidance, paragraph 7.7.

- 5.7 Even if there were to be a change in Sky News' agenda following the Transaction, this would be highly unlikely to lead to a situation where News Corp could have a significant influence on the wider news agenda leading to insufficiency of plurality for any relevant audience.
- (a) There are numerous fierce competitors of News Corp and Sky. The BBC, in particular, is 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. It is most unlikely to become a follower of a News Corp/ Sky News agenda.
 - (b) Perspective estimates that Sky News currently has a 6.3% share of TV news consumption, suggesting a limited ability to influence third parties.³⁵
 - (c) News Corp/ Sky News outlets do not represent a particularly important source of stories for other outlets. As set out in the Perspective Report at Annex II, analysis of news sources quoted by news providers demonstrates that newspapers are by no means the sole source of the stories they represent. Looking specifically at UK sources, an analysis of sources cited by Reuters demonstrates the importance of the BBC as the leading source.³⁶
 - (d) Consumers are 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.
 - (e) The internet in particular has led to far more diverse consumption.³⁷ Online consumers benefit from news from news sources unavailable to them offline. Such consumers consume from a wider range of sources, exposing them to a far wider range of views. Moreover, the active mode of consumption online (for example, involving searching for a particular topic) makes users far less subject to the agenda choices of one or more traditional news outlets.

Increased and increasing plurality

- 5.8 There has been a dramatic increase in plurality since the Communications Act was enacted.
- (a) There has been an increase in the range of choice of TV news, and due to the rise of digital TV, many more households have access to that wider range.
 - (b) The internet has had a transformative effect. Many more people are online, and the news consumption of those online is up significantly compared to 2003. Moreover, online consumers are using a range of news sources dramatically greater than that used by a typical news consumer in 2003.
 - (c) While TV remains the most important source of news for consumers, it is predicted that the internet will shortly overtake newspapers.
- 5.9 While there are a variety of possible scenarios for the development of the UK media market in the future³⁸, there is consensus amongst commentators on a number of points:
- (a) Convergence will continue, with what were once entirely distinct media sectors (TV, radio, newspapers and so on) increasingly being consumed via a single

³⁵ See, further, Perspective Report, Figure 8.

³⁶ See, further, Perspective Report, Figure 4.

³⁷ See, further, paragraph 6.6(c) below.

³⁸ See, further, Perspective Report, section 6.

platform, the internet. As high speed broadband rolls out, the migration of TV online will accelerate. This will bring increased competitive intensity and plurality.

- (b) Consumers will be ever more active both in customising their own personal agenda (via news search, alerts and so on) and in influencing the wider news agenda (via Twitter, YouTube, blogs and so on). This marks a shift from less plural media to more plural media (since most consumers only take one newspaper, if any), and a shift away from areas where News Corp and Sky are stronger to areas where they are relatively weak.
- (c) We are at the beginning of a surge of consumption via mobile devices, which will bring the dynamics of plural, on-line consumption to areas (particularly out-of-home) that were previously the domain of paper based formats.

5.10 One consequence of these developments, as noted by Perspective³⁹ is that there will be a range of evolving approaches to news capture and production.

- (a) If newspaper organisations move into television, the very different editorial and technical demands of broadcast news, coupled with highly specific regulatory requirements, are likely to mean that TV and print newsrooms remain separate for the foreseeable future.
- (b) Where broadcasters move into new media, they will tend to place a central focus on high quality audio and video news, with text and graphics in a support role. For these ventures, the culture of the TV newsroom is likely to remain central, with audiovisual content tailored to meet the high technical and editorial specifications demanded by broadcasting use.

Conclusion

5.11 News Corp already has a degree of control over Sky. This does not translate into editorial influence over Sky News. Post-Transaction, News Corp would not have any materially increased influence over the Sky News editorial agenda than it does today. The Perspective Report shows that there is a range of constraints that will continue to make it impractical and unlikely for News Corp to influence Sky News' editorial agenda and the wider news agenda. Ultimately, a wide range of approaches will evolve to news capture and production in the future post-Transaction; and those which appeal best to consumers will be most successful.

³⁹ See, further, Perspective Report, pages 42 - 43.

6. SUFFICIENT PLURALITY POST-TRANSACTION

Overview

- 6.1 As mentioned in section 3, the only audience for which the combination of a broadcaster and a newspaper publisher could conceivably reduce plurality is a cross-media audience. Even if Ofcom assumes that there will be a "head court" 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.
- 6.2 In order to carry out the analysis, Ofcom must consider: (i) how to measure the variety of voices available to each audience; and (ii) what the Transaction changes (if anything).
- 6.3 The CC analysed the sufficiency of plurality for television audiences and cross-media audiences in 2007 and had no concerns in relation to the Sky/ITV case which focused not only a cross-media audience but also a single medium TV audience. Since 2007, the UK media landscape has evolved in ways which signal ever increasing plurality in news provision.
- 6.4 Therefore, the only reasonable conclusion is that the Transaction does not lead to insufficient plurality for any audience in the UK. We also considered, following the Sky/ITV precedent, whether there were particular individuals within the UK population who currently rely only on news content from Sky News and News International. This grouping was found to be of a minimal size (0.3% of the UK population).⁴⁰

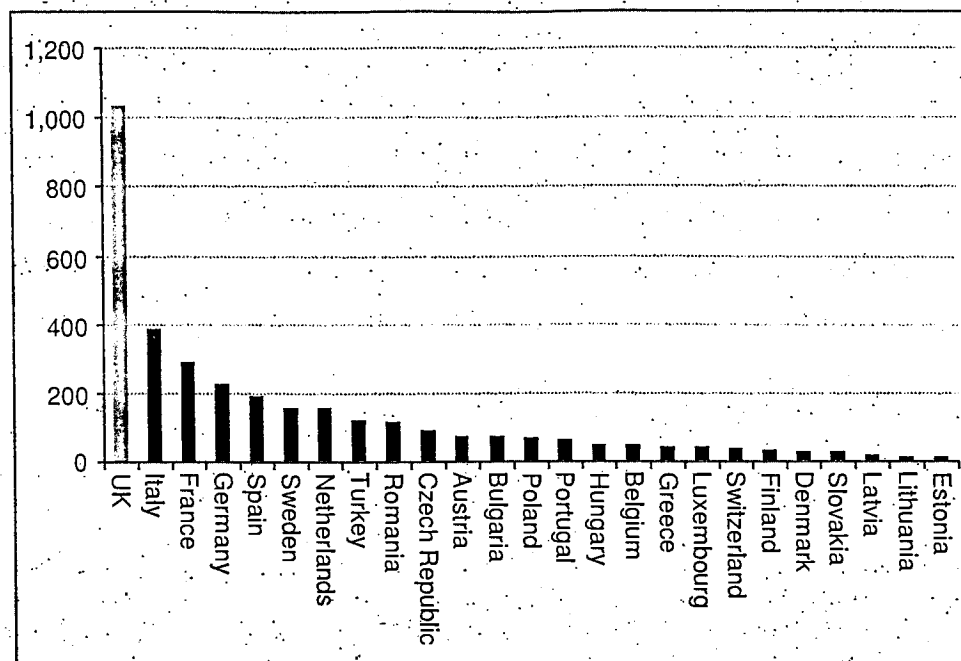
Media landscape

- 6.5 As it is shown in the FTI Report attached at Annex I, the level of plurality in the provision of news to UK audiences across different media platforms is increasing, in terms of both the number of voices and the range of voices. Considering the media landscape generally:
- (a) There is increased penetration of digital television meaning a greater proportion of the population has access to a wider variety of channels. Consumer survey results for the second quarter of 2010 show that take-up of digital television in UK households stood at 92.7%, up by 2.9 percentage points year on year,⁴¹ one of the highest in Europe.
- (b) The number of TV channels available in the UK significantly exceed any other country, as shown in **Figure 1** below.

⁴⁰ FTI Report, paragraphs 6.24 - 6.44.

⁴¹ Ofcom Digital Television Update - 2010 Q2.

Figure 1: Number of channels by country



Source: European Audiovisual Observatory/ MAVISE

Note: Includes regional variations; not on a consistent basis with Ofcom's figures

- (c) An increasing percentage of the UK population (currently standing at around 71%) have home broadband access.⁴²

News provision

6.6 Looking specifically at the implications for news provision, these changes increase the availability of a wide range of voices:

- (a) There is a significant increase in availability of TV news options to the UK audience over and above the traditional PSBs. The BBC maintains a significant lead in market share (31.4% of multichannel homes) and a wide variety of different dedicated digital news channels are now accessible to many UK consumers.⁴³ Furthermore, the BBC commands in aggregate around 75% of TV news consumption as shown in Figure 2 below.
- (b) The number of voices in newspapers and magazines has not materially increased but nor has it materially decreased. However the circulation of printed media is steadily declining and so is the importance of this medium on a cross-media basis as a source of news for UK consumers.
- (c) On the other hand, the internet has had a transformative effect on news plurality as a means of accessing multiple news sources.
- (i) There has been an explosion in the number of online news sources. comScore tracks 675 news websites in the UK of which more than 120 have over 100,000 UK visitors.⁴⁴

⁴² Ofcom Communications Market Reports.

⁴³ See, further, FTI Report, Figure 4.2.

⁴⁴ See, further, FTI Report, Figure 4.8.

- (ii) The internet is a converging medium, with offline news sources also tending to be the most important online news sources.⁴⁵ These trends are analysed in detail in sections 4 and 5 of the FTI Report. The internet also increased plurality in news reporting adding to conventional/offline news sources/providers. For example, news provision over the internet is characterised by news aggregators in addition to traditional news providers. News aggregators play a key role in online news provision. As the World Association of Newspapers has observed:

*"Today, the advent of internet and mobile news has only exacerbated the prominence of news agencies and has possibly caused more problems for newspapers. Instead of having to distribute their content through newspapers or television stations, news agencies can directly contact the consumer through new media."*⁴⁶

Aggregators present a vast range of sources to their audience, including many they would otherwise likely never come across. In the year to August 2010, UK visits to Google News were up 30%.⁴⁷ In the year to October 2010, 1,738 different sources⁴⁸ have appeared on the Google News homepage (and additional sources have appeared on individual story pages). Also, as a result of the creation of blogs, political website and user generated-content root stories are generated by a great variety of sources. The Perspective Report analyses a number of instances that show the importance of this phenomenon in terms of plurality.⁴⁹

News consumption

- 6.7 These developments in news provision are accentuated if looked at in the context of the trends in news *consumption*:
- (a) Crucially it is becoming easier and easier for UK consumers to access multiple sources of news. Most UK consumers use 3-4 different media platforms for news and follow 4-5 news sources daily.⁵⁰
- (b) As stated in the FTI Report, research shows that TV is the most popular medium for accessing news and BBC and ITV remain the most watched channels.⁵¹ Sky News, by contrast, accounts for approximately 6% of TV news consumption as shown in **Figure 2** below.

Figure 2: Share of TV news consumption; 2010 year to date

⁴⁵ See, further, paragraphs 5.7(e) and 5.8(b) above.

⁴⁶ World Association of Newspapers, 2006.

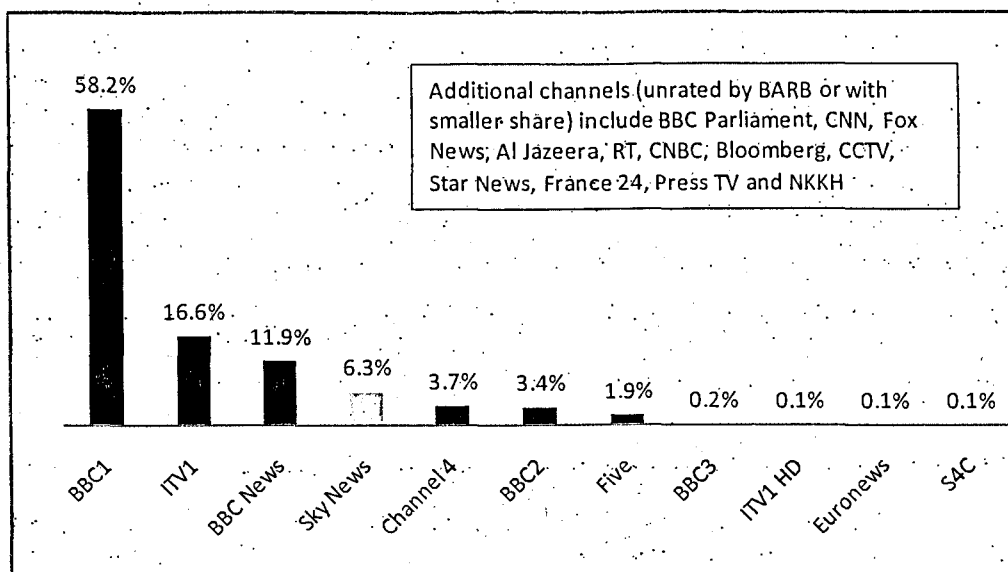
⁴⁷ Nielsen Online/TRP.

⁴⁸ Newsknife (subscription required) http://www.newsknife.com/members/front_relevant_news01.html

⁴⁹ See, further, Perspective Report, pages 16 - 22.

⁵⁰ See, further, FTI Report, paragraph 5.54.

⁵¹ See, further, FTI Report, paragraphs 5.51 - 5.53.



Source: BARB, Perspective Associates analysis

Notes: Channels include viewing of their +1 where appropriate
Volume of Viewing calculated based on DurMin and 000s

- (c) As noted above, circulation in printed media is in long term decline and so its importance as a source of news for consumers. The circulation of paid-for newspapers declined by 3.5% between 2003 and 2010.⁵²
- (d) The proportion of population accessing radio is up, while total time spent listening is down. BBC radio listening has remained more constant.
- (e) The internet is currently, according a recent Mintel report, the second most important source of news with around 46% of UK population using it regularly.⁵³
- (f) Time spent watching TV news and consuming news on the internet are about the around same.⁵⁴

6.8 Online news consumers have a tendency to be much more promiscuous in terms of their content consumption than those who rely primarily on more traditional media. The average of outlets used on the internet is about 3.5, much higher than TV and newspapers.⁵⁵ The internet makes it much easier to immediately access multiple views on a topic of interest, without having to wait for specific broadcast times, or purchase multiple copies of print newspapers (for example). Therefore, as the internet becomes an increasingly important source of news, it is to be expected that an increasing proportion of the population to be regularly exposed to a wide variety of "voices".

6.9 Against this background, there is a high degree of variety and range of voices available to a cross media audience which comfortably meets the criteria of sufficiency of plurality.

Sufficient plurality post-Transaction

6.10 This Transaction does nothing to alter this conclusion. In particular:

⁵² See, further, FTI Report, Figure 4.8.

⁵³ Mintel, Consumer Perceptions of News Media, September 2010. Internet figure rebased to allow for survey being online.

⁵⁴ Respectively 0.36 and 0.29 hours, Touchpoints.

⁵⁵ See, further, FTI Report, Table 5.1.

- (a) The importance of online as a source of news will continue to grow and so will the plurality of voices that is inherent in this medium.
- (b) As Perspective show, time spent on online news sites has grown by 214% since 2007, with 1,710 individual news and information sites tracked by comScore in the UK (excluding news content on social networks, blogs and emails) in July 2010.⁵⁶ Set against this growing and increasingly fragmented online landscape, Sky and News Corp will continue to have a diminutive share of voice.
- (c) The number of TV news voices remains unaltered as a result of this Transaction and will continue to be led by BBC and ITV, with a wide range of additional broadcast news voices accessible to most UK consumers.
- (d) The number of radio news voices is entirely unaffected, with again the BBC as the leading player.
- (e) The number of newspaper enterprises is not affected by the Transaction and, in any event, the relative importance of print newspapers as a source of news for UK audiences is in long term decline.

6.11 Furthermore, as set out in more detail in the FTI Report⁵⁷ FTI considered, following the Sky/ ITV precedent, whether there were particular individuals within the UK population who currently rely only on news content from Sky News and News International:

- (a) 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");
- (b) approximately 96% of the Sky/ NI Overlap Group rely on other news sources, in addition to Sky and News International sources;
- (c) only 0.3% of the Sky/ NI Overlap Group rely on only Sky and News International news sources.

6.12 These results are similar in magnitude to the findings of the CC in the Sky/ ITV case. The CC concluded that no more than 1 per cent of the UK population, and quite possibly less than this, received news from only ITV and/ or News International/ Sky. In the case of the Transaction, FTI found that only 0.3% of the population receive news only from Sky and News International.

6.13 FTI also found that no socio-economic grouping or nation in the UK was disproportionately affected.⁵⁸

6.14 In any event, consumers within the group of consumers currently relying primarily on Sky News and News International could easily switch to different news providers or expand their choices for the consumption of news if they chose to do so. 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.

7. CONCLUSION

7.1 There is 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.

⁵⁶ See, further, Perspective Report, page 27.

⁵⁷ FTI Report, paragraphs 6.24 - 6.44.

⁵⁸ FTI Report, paragraphs 6.19 - 6.23.

7.2 First, Sky News has always been editorially independent, regardless of the degree of control News Corp has enjoyed or exercised over Sky's commercial policy over the years. Secondly, the change to full control will not change this, as editorial independence for UK TV broadcasters is deeply rooted in the regulatory and cultural grain of the industry. Thirdly, in any event, any effect of the Transaction on cross-media audiences (if any) is likely to be minimal. Fourthly, the strength and number of cross-media voices has increased since enactment of the Communications Act and will continue to increase. There is clearly a sufficient plurality of voices available to cross-media audiences following the Transaction.

Hogan Lovells International LLP

Allen & Overy LLP

23 November 2010

-25-

Annex I

Measuring plurality in news

A report by FTI Consulting

Annex II

Past and future trends in plurality and the setting of the news agenda

A report by Perspective Consulting

-27-

Annex III

Glossary

The following main definitions are used in this submission:

BIS	Department for Business, Innovation and Skills
Broadcasting Code	Ofcom Broadcasting Code, the most recent version of which took effect on 1 September 2010
CAT	Competition Appeal Tribunal
CAT Judgment	<i>British Sky Broadcasting v Competition Commission and Secretary of State and Virgin Media Inc v Competition Commission and Secretary of State</i> ([2008] CAT 25), 29 September 2008
CC	Competition Commission
CC Report	Acquisition by British Sky Broadcasting Group Plc of 17.9% of the shares in ITV Plc, Report sent to Secretary of State (BERR), 14 December 2007
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CoA	Court of Appeal
CoA Judgment	<i>BSkyB v Competition Commission</i> [2010] EWCA Civ 2 – Case Nos C12008/3053 and 3066
Commission	European Commission
Communications Act	Communications Act 2003
COO	Chief Operating Officer
DTH	Digital direct-to-home
DTI	Department of Trade and Industry
DTI Guidance	DTI “Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers”, May 2004
DTT	Digital terrestrial television
Enterprise Act	Enterprise Act 2002
EPG	Electronic programming guide
EUMR	EU Merger Regulation (Council Regulation (EC) No. 139/ 2004)
European Intervention Notice	An intervention notice pursuant to section 67, Enterprise Act
Explanatory Notes	Explanatory notes to the Communications Act
FTA	Free-to-air
FTI Report	The report prepared by FTI Consulting at Annex I to this submission
IPTV	Internet Protocol television
News Corp	News Corporation
Ofcom	Office of Communications
Ofcom Report	Ofcom Report for the Secretary of State pursuant to Section 44A of the Enterprise Act 2002 of British Sky Broadcasting plc’s acquisition of a 17.9% shareholding in ITV plc, 27 April 2007
OFT	Office of Fair Trading
OFT Report	Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc, OFT Report to the Secretary of State for Trade and Industry”, 27 April 2007
Perspective Report	The report prepared by Perspective Consulting at Annex II to this submission
PSB	Public Service Broadcaster

Secretary of State
Sky
Sky/ NI Overlap Group

Secretary of State for Business, Innovation and Skills
British Sky Broadcasting Group plc
UK adults who actively watch Sky News or visit SkyNews.com
and actively read News International newspapers or actively visit
News International websites

EX.O. 18

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 24 January 2011 11:07
To: ZEFF JON; SMITH, Adam
Subject: Fwd: News/Sky - Strictly Private and Confidential (0012561-0000367)
Attachments: CO-#13334122-v1-Opinion_of_Lord_David_Pannick_QC.PDF; ATT00001.htm; CO-#13326012-v9-Letter_to_DCMS_re_UIL_Consultation.pdf; ATT00002.htm

Please see attached
Fred

Sent from my iPhone

Begin forwarded message:

From: [Redacted]
Date: 24 January 2011 11:00:30 GMT
To: [Redacted]
Cc: [Redacted]
Subject: Fw: News/Sky - Strictly Private and Confidential (0012561-0000367)

From: [Redacted] AllenOvery.com
To: [Redacted]
Cc: [Redacted]

Sent: Mon Jan 24 10:58:54 2011
Subject: News/Sky - Strictly Private and Confidential (0012561-0000367)

Dear [Redacted]

Please find attached a letter from [Redacted]

Kind Regards

[Redacted Signature]

Senior Associate
Allen & Overy LLP

www.allenoverly.com/antitrust

One Bishops Square
London
E1 6AD

Tel: + 44(0) 20 3088 0000
DDI: [Redacted]
Fax: + 44(0) 20 3088 0088

EX.019

OPINION

1 I am asked to advise News Corporation in relation to the transaction by which it wishes to acquire the shares in British Sky Broadcasting Group plc that it does not already own.

2 In my opinion :

(1) The Secretary of State has power to accept undertakings from News Corporation in lieu of a reference to the Competition Commission.

(2) If the Secretary of State were to accept the undertakings offered by News Corporation, a third party would be most unlikely to succeed in a judicial review of that decision.

The background

3 Now that the Secretary of State has received the advice from OFCOM, Article 5(3) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 SI No. 1592 confers power on the Secretary of State to make a reference to the Competition Commission if he

"believes that it is or may be the case that -

(c) taking account only of the relevant public interest consideration or considerations concerned, the creation of the situation operates or may be expected to operate against the public

interest".

4 : Paragraph 3(2) of Schedule 2 to the Order adds :

"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 she considers appropriate undertakings to take such action as she considers appropriate".

5 News Corporation has offered undertakings to the Secretary of State. Those undertakings would mean (in particular) that

- (1) Sky News would become an independent United Kingdom public limited company.
- (2) Shares in the new company would be distributed to the existing shareholders of Sky, as far as possible, in the same proportions as their existing shareholding (so News Corporation would have 39.1%).
- (3) The corporate governance structure of the new company would also replicate the effect of the existing governance structure of Sky.
- (4) There would also be a number of commercial agreements,

including a long-term carriage agreement.

The power of the Secretary of State to accept undertakings

6 I am asked whether the Secretary of State has power to accept undertakings in lieu of a reference despite the advice of Ofcom under Article 4A of the Order that a reference should be made to the Commission.

7 In my opinion, the Secretary of State has a broad discretion to decide to accept undertakings in lieu even where OFCOM have advised that there should be a reference:

(1) Paragraph 5(3) confers a power on the Secretary of State ("may make a reference"). It does not impose a duty to make a reference.

(2) Parliament deliberately chose not to impose a duty on the Secretary of State to make a reference :

(a) The Secretary of State is addressing public interest considerations.

(b) The Secretary of State may be satisfied that the undertakings address the public interest concerns which informed the OFCOM advice.

(c) The Secretary of State will wish to consider this matter in the context that, at this interim

stage, he is concerned only with possible damage to the public interest if the transaction proceeds, and not with any established mischief.

A judicial review by a third party

8 I am also asked about the prospects of a third party being able to bring a successful judicial review to challenge a decision by the Secretary of State to accept the undertakings offered by News Corporation. In my opinion, any such claim would, in principle, face formidable difficulties and have weak prospects of success. That is because :

(1) The breadth of the discretion enjoyed by the Secretary of State is suggested by the language of paragraph 3(2) of Schedule 2 to the Order. The Secretary of State is given power to accept undertakings in lieu for the purpose of "mitigating" the possible adverse effects, as well as for the purpose of "remedying" or "preventing" such effects. The Secretary of State is given a power to accept undertakings even if they only mitigate the possible adverse effects because they are only possible adverse effects and the Secretary of State has a duty to consider the public interest as a whole.

(2) Paragraph 3(2) also refers to the judgment of the

Secretary of State as to what he considers is "appropriate", language which emphasises the breadth of the discretion.

- (3) Whether the undertakings offered are "appropriate" to address the potential mischief (and given that it is only a potential mischief) is a matter of degree for the judgment of Secretary of State. A court would be most reluctant to intervene.

9 OFCOM was concerned about the loss of Sky News as an independent news broadcaster. See paragraph 5.46 of its report. The undertakings offered by News Corporation appear to me to address the concerns identified by Ofcom as to the risk to plurality. They would maintain Sky News as a distinct enterprise. If the Secretary of State were to accept the undertakings as "appropriate" in all the circumstances, I do not see how a third party could realistically expect to succeed in a judicial review application.

LORD PANNICK QC

BLACKSTONE CHAMBERS,

TEMPLE,

LONDON EC4Y 9BW

20 January 2011

IN THE MATTER OF

NEWS CORPORATION

and

UNDERTAKINGS TO
THE SECRETARY OF STATE

OPINION

Allen & Overy
One Bishops Square
London E1 6AD
Tel : 0203 088 0000
Fax : 0203 088 0088

Ref

EX.0.20

BY EMAIL ONLY

STRICTLY CONFIDENTIAL

[Redacted]

Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

Allen & Overy LLP
One Bishops Square
London E1 6AD United Kingdom

Tel +44 (0)20 3088 0000
Fax +44 (0)20 3088 0088
Direct [Redacted]

Our ref 0012561-0000367 CO:13326012.9

24 January 2011

Dear [Redacted]

News Corporation - British Sky Broadcasting Group Plc

On 18 January 2011, News Corporation (News) submitted to the Secretary of State for Culture, Olympics, Media and Sport (the **Secretary of State**) proposed undertakings in lieu (**UIL**) of a reference to the Competition Commission (the **CC**) of its proposal to acquire the shares in British Sky Broadcasting Group plc (**Sky**) that News does not already own (the **Transaction**) under paragraph 3 of Schedule 2 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (the **Order**) (the **UIL Proposal**).

Following our meeting on 21 January 2011 News has prepared draft undertakings reflecting and expanding on News' initial UIL Proposal (the **Draft Undertakings**) which will be sent to you by courier shortly.

A decision by the Secretary of State to clear the Transaction or to accept UIL and start consultation on the Draft Undertakings can be taken promptly at this stage. The decision on UIL rests with the Secretary of State under paragraph 3 of Schedule 2 of the Order and the Secretary of State has a broad discretion if he decides to accept undertakings. If, contrary to News' submission, the Secretary of State were minded to refer the Transaction to the CC, the Secretary of State should, taking into account the Draft Undertakings, have all the necessary information to take a decision in principle that he is minded to accept News' UIL Proposal in order to remedy, mitigate or prevent such of the potential effects adverse to the public interest which Ofcom identifies as potentially resulting from the Transaction in its report dated 31 December 2010 (the **Ofcom Report**) which the Secretary of State still believes to be of concern.

Given the extent of the Secretary of State's statutory discretion in accepting UIL, News believes that any judicial review challenge to a decision by the Secretary of State to accept UIL would be most unlikely to succeed. This is confirmed by the attached legal opinion from [Redacted]

Moreover, on the basis of the Draft Undertakings, the Secretary of State is in a position to carry out the public consultation provided for under Schedule 10 of the Enterprise Act 2002 (EA) and Schedule 3, paragraph 2(3) of the Order.

Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. It is regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen & Overy LLP or an employee or consultant with equivalent standing and qualifications. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners is open to inspection at its registered office, One Bishops Square, London E1 6AD.
Allen & Overy LLP or an affiliated undertaking has an office in each of: Abu Dhabi, Amsterdam, Antwerp, Athens, Bangkok, Beijing, Bratislava, Brussels, Bucharest (associated office), Budapest, Doha, Dubai, Düsseldorf, Frankfurt, Hamburg, Hong Kong, Jakarta (associated office), London, Luxembourg, Madrid, Mannheim, Milan, Moscow, Munich, New York, Paris, Perth, Prague, Riyadh (associated office), Rome, São Paulo, Shanghai, Singapore, Sydney, Tokyo and Warsaw.

Given that the UIL Proposal, together with the Draft Undertakings, provide the Secretary of State with a comprehensive and clear cut solution to any perceived concerns, and for the reasons set out below, News submits that the most transparent, expeditious and procedurally sound way for the Secretary of State to proceed is to:

- (i) publish a preliminary decision that he is minded to accept undertakings from News based on the UIL Proposal and the Draft Undertakings; and simultaneously
- (ii) publish the Draft Undertakings for public consultation; and simultaneously
- (iii) publish the Ofcom Report in respect of the Transaction.

The Secretary of State has the legal power to accept undertakings and that no statutory consultation is envisaged prior to the Secretary of State taking a decision in principle, therefore not consulting the OFT or Ofcom in advance does not in any way weaken the Secretary of State's decision or leave it open to a successful challenge on the basis of procedural error. As discussed below, this is indeed how the relevant statutory provisions are designed to be applied. The Secretary of State would be at liberty to involve the OFT or Ofcom in parallel with or subsequent to the public consultation process, should he be so minded.

Role of the OFT

We understand that you are considering whether the Secretary of State should involve the OFT based on s.93 EA which states:

"(1) Subsections (2) and (3) apply where—

(b) the Secretary of State is considering whether to accept undertakings under paragraph 1, 3 or 9 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.

(2) The Secretary of State (in this section "the relevant authority") may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under paragraph 1, 3 or 9 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.

(3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT's consultations within such period as the relevant authority may require.

(4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under paragraph 1, 3 or 9 of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.

(5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.

(6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the OFT shall give such advice as it considers appropriate."

Section 93 EA provides that the Secretary of State "may", but is not required to, involve the OFT. Section 93 (5) EA makes it clear that "The powers conferred on the relevant authority [i.e. the Secretary of State] by subsections (1) to (4) are without prejudice to the power of the relevant authority [i.e. the Secretary of State] to consult the persons concerned itself."

Under the EA, the OFT has only a limited potential role with respect to UIL offered under Schedule 2 of the Order, which relates only to issues regarding the *implementation* of any such UIL. Typically, the Secretary of State would only require the OFT to advise on UIL once the views of the relevant authority in relation to remedies were known. Since News has offered the Draft Undertakings, the Secretary of State would have to provide first a decision setting out the undertakings that would be acceptable *before* the OFT is engaged under s.93(2) EA. This is consistent with the literal reading of s.93(2) EA which envisages that the OFT would consult with the relevant parties on the "*undertakings which the relevant authority would be prepared to accept*" (emphasis added). This requirement postulates that the Secretary of State has expressed at least a view in principle on such undertakings and such view would guide the OFT in discharging its duty to assist the relevant authority under s.93 EA.

In this case, News submits that the essence of this statutory role should be respected and, should the Secretary of State wish to involve the OFT, the most appropriate, expeditious and transparent approach would be for the OFT to be involved only *after* the Secretary of State's decision in principle to accept undertakings has been published. In addition, the advice of the OFT could be sought in parallel with the public consultation on the Draft Undertakings.

Should the Secretary of State be minded to seek advice from the OFT before the decision in principle to accept undertakings and before the start of the statutory consultation on the Draft Undertakings, he should, at the minimum, indicate to both the OFT and the parties the nature of the undertakings that he would be minded to accept, and request the OFT to advise on that basis as to whether the Draft Undertakings offered by News would meet his requirements. This would guide the discussions between the OFT and the parties and is what s.93 EA envisages.

Role of Ofcom

You have also indicated that you are considering whether the Secretary of State should seek Ofcom's advice on this matter.

Ofcom does not have any defined statutory role in relation to undertakings. This stands in clear contrast to Ofcom's role in advising the Secretary of State on the media public interest consideration under Article 4A of the Order, where Ofcom's report is a necessary step in the administrative process (albeit that it is not binding on the Secretary of State). This is also in contrast with the EA provision relating to the role of OFT which gives the OFT (but not Ofcom) a specific potential role in relation to the implementation of the undertakings. In fact Ofcom has given no advice on undertakings in the Ofcom Report. Had Parliament envisaged a role for Ofcom in relation to this stage of the process, it would have included this in the statutory framework.

On that basis, seeking advice from Ofcom at this juncture would complicate and slow down the decisional process, which News believes is neither necessary nor appropriate. Should the Secretary of State be minded to seek advice from Ofcom, News submits that the most appropriate, expeditious and transparent approach would be for him to do so during the required public consultation period.

Publication of the Ofcom Report

We also understand that the Secretary of State is now considering publication of the Ofcom Report in advance of taking a decision in principle on the issue of UIL and/or consulting on the Draft Undertakings.

In the previous case in which media plurality was concerned (Sky/ITV), Ofcom's report was published simultaneously with the Secretary of State's decision on substance. In this case the Secretary of State has recently indicated to Parliament on 20 January 2011 that he was in fact "*doing nothing different to what* [the then Secretary of State] *did* [in Sky/ITV]".

News is seriously concerned that departing from this precedent and taking the step of publishing the Ofcom Report at an interim point in discussions between News and the Secretary of State when neither the offer of

undertakings by News nor their content are public would only harm the process, producing an unfair outcome and giving unfair advantage to complainants. Given the level of press speculation about News' likely approach to undertakings, publishing the Ofcom Report at this stage would merely increase speculation and adverse comment enabling third parties to make uninformed representations. News believes that the publication of the Ofcom Report in isolation at this juncture would not assist the Secretary of State in his decision making (including on UIL) and would not promote constructive and informed public debate.

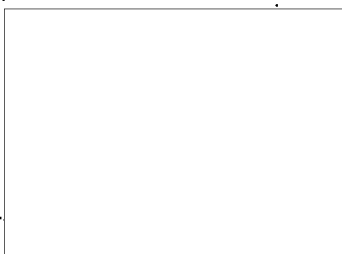
Conclusions

The UIL Proposal and Draft Undertakings provide the Secretary of State with a comprehensive and clear-cut solution to any perceived concerns and a decision can be taken promptly at this stage. If the Secretary of State adopted the course of action suggested by News of a simultaneous publication of the Ofcom Report, his decision in principle to accept undertakings and a notice of consultation on the Draft Undertakings, this would provide third parties with an informed opportunity to comment, as envisaged under the EA. This would be the most appropriate, expeditious and transparent course of action. There would be no possible basis to suggest that such an approach would involve procedural impropriety.

We would be grateful if you could confirm as a matter of urgency the process that DCMS will adopt and your proposed timeline. If the Secretary of State is minded to publish the Ofcom Report in advance of the publication of his decision in principle, News requests that he confirms this to News as soon as possible so that a non-confidential bundle of News' submissions can be provided to the Secretary of State for publication at the same time.

Should the Secretary of State make a public statement that he is considering an offer of undertakings by News prior to the public consultation, News requests confirmation that the Secretary of State will clarify that he will issue a public consultation inviting the views of third parties on any draft commitments that are offered by News and in accordance with the relevant statutory procedure.

Yours sincerely



cc: [redacted] News Corporation; [redacted] Hogan Lovells International LLP; [redacted] Allen & Overy LLP

Enc.

EX.0.21

[Redacted]

From: [Redacted]
Sent: 24 January 2011 13:34
To: [Redacted]
Subject: FW: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Attachments: Final Submission to Ofcom - 23 November - non confidential version.pdf; ATT00001.htm; CO-#13207048-v18-Submission_to_Secretary_of_State (3).pdf; ATT00002.htm; Annex 2 - FTI Report.pdf; ATT00003.htm; Annex 3 - Perspective Report.pdf; ATT00004.htm; Annex 4 - Response to Issues Letter.pdf; ATT00005.htm; Annex 6 - Perspective Sources Analysis.pdf; ATT00006.htm
Importance: High

I can open these.

From: Michel, Frederic [mailto:[Redacted]]
Sent: 24 January 2011 09:54
To: ZEFF JON; SMITH, Adam
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Importance: High

Jon/Adam,

Attached are the non-confidential versions of our submissions for publication on Tuesday if the SoS goes ahead with a statement.

We will be sending further documents in the morning regarding our views of the process suggested by the SoS and further details on the UIL.

Warm regards

Fred

Frederic Michel
 Director, Public Affairs, Europe
 News Corporation
 tel: [Redacted]
 mob: [Redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way.

EX.0.22

[Redacted]

From: [Redacted]
Sent: 24 January 2011 16:53
To: [Redacted]
Cc: [Redacted]
Subject: RE: As discussed

Hi [Redacted]

How are you getting on? We will need the version before we have replied to NC letter. Happy to clarify over the phone.

[Redacted]

From: [Redacted]
Sent: 24 January 2011 14:22
To: [Redacted]
Subject: As discussed

[Redacted]

Please can you confirm this is the correct email address.

As agreed, we are working on a non-confidential version of our recent submission to the Secretary of State (minus the annexes). We will send this to you this afternoon

In the meantime, we await to hear your response to News Corporation's recent letter, and confirmation that third party submissions (such as the one reported to have been sent by Slaughter and May) will be treated in the same way as News Corporation's and Sky's.

Kind regards

[Redacted Signature]

BSkyB | Grant Way | Isleworth | Middlesex | TW7 5QD

T: [Redacted]
M: [Redacted]

Information in this email including any attachments may be privileged, confidential and is intended exclusively for the addressee. The views expressed may not be official policy, but the personal views of the originator. If you have received it in error, please notify the sender by return e-mail and delete it from your system. You should not reproduce, distribute, store, retransmit, use or disclose its contents to anyone. Please note we reserve the right to monitor all e-mail communication through our internal and external networks. SKY and the SKY marks are trade marks of British Sky Broadcasting Group plc and are used under licence. British Sky Broadcasting Limited (Registration No. 2906991), Sky Interactive Limited (Registration No. 3554332), Sky-In-Home Service Limited (Registration No. 2067075) and Sky Subscribers Services Limited (Registration No. 2340150) are direct or indirect subsidiaries of British Sky Broadcasting Group plc (Registration No. 2247735). All of the companies mentioned in this paragraph are incorporated in England and Wales and share the same registered office at Grant Way, Isleworth, Middlesex TW7 5QD.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk. Communications via the GSI may be automatically logged, monitored and/or recorded for legal purposes.

EX.0.23

[Redacted]
From: [Redacted]
Sent: 24 January 2011 16:56
To: [Redacted]
Cc: [Redacted]
Subject: Re: As discussed

Ok - perhaps you could call me. I can get something to you straightaway after that

Thanks

[Redacted]

BSkyB | Grant Way | Isleworth | Middlesex | TW7 5QD

T: [Redacted]
M: [Redacted]

On 24/01/2011 16:52, [Redacted] wrote:

Hi [Redacted]

How are you getting on? We will need the version before we have replied to NC letter. Happy to clarify over the phone.

[Redacted]

From: [Redacted]
Sent: 24 January 2011 14:22
To: [Redacted]
Subject: As discussed

[Redacted]

Please can you confirm this is the correct email address.

As agreed, we are working on a non-confidential version of our recent submission to the Secretary of State (minus the annexes). We will send this to you this afternoon

In the meantime, we await to hear your response to News Corporation's recent letter, and confirmation that third party submissions (such as the one reported to have been sent by Slaughter and May) will be treated in the same way as News Corporation's and Sky's.

Kind regards

[Redacted]

BSkyB | Grant Way | Isleworth | Middlesex | TW7 5QD

T: [Redacted]
M: [Redacted]

EX.O.24

[Redacted]

From: [Redacted]
Sent: 24 January 2011 17:19
To: [Redacted]
Cc: [Redacted]
Subject: Re: As discussed
Attachments: Sky Response to Ofcom Public Interest Report-Final-130111-Non-confidential version[1].PDF

[Redacted]

As discussed, a version of our submission for you to publish is attached. We are happy for you to share it with Ofcom

I'd appreciate it if you could keep me posted (directly rather than via News Corp) re timings and process for publication, so that we are prepared at this end

Regards

[Redacted]

BSkyB | Grant Way | Isleworth | Middlesex | TW7 5QD

T: [Redacted]
M: [Redacted]

On 24/01/2011 16:52 [Redacted] wrote:

Hi [Redacted]

How are you getting on? We will need the version before we have replied to NC letter. Happy to clarify over the phone.

[Redacted]

From: [Redacted]
Sent: 24 January 2011 14:22
To: [Redacted]
Subject: As discussed

[Redacted]

Please can you confirm this is the correct email address.

As agreed, we are working on a non-confidential version of our recent submission to the Secretary of State (minus the annexes). We will send this to you this afternoon

In the meantime, we await to hear your response to News Corporation's recent letter, and confirmation that third party submissions (such as the one reported to have been sent by Slaughter and May) will be treated in the same way as News Corporation's and Sky's.

Kind regards

[Redacted]

EX.0.25

[Redacted]
From: [Redacted]
Sent: 24 January 2011 17:45
To: [Redacted]
Cc: [Redacted]
Subject: news corp documents

Importance: High

Hi Frederick,

We haven't received the disk yet. However, we have everything we need apart from Annex 5. If you could send us that separately, we can proceed.

Also, the submission to is still classified as "privileged and confidential" but I assume that this one to publish.

Could we have a word about sharing with Ofcom, please.



DCMS
2-4 Cockspur Street
London SW1Y 5DH

W: [Redacted]
M: [Redacted]

EX.0 26

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 24 January 2011 18:36
To: [Redacted]
Cc: SMITH, Adam
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions
Attachments: non-conf version of DCMS submission of 14 January 2011.pdf

[Redacted]

Here is the redacted version of our submission - CD-rom is on its way –

You should use this one rather than the one sent by email earlier today - the other submissions will be on the CD-rom

warm regards

Fred

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk. Communications via the GSI may be automatically logged, monitored and/or recorded for legal purposes.

EX.0.27

[redacted]

From: Michel, Frederic [redacted]
Sent: 24 January 2011 18:41
To: [redacted] Michel, Frederic
Cc: SMITH, Adam
Subject: RE: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions

Thanks a lot. appreciated

From: [redacted]
Sent: 24 January 2011 18:41
To: Michel, Frederic
Cc: SMITH, Adam
Subject: RE: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions

ed,

Many thanks. I will call later on your mobile to confirm that everything is definitely going ahead as planned.

[redacted]

From: Michel, Frederic [mailto:[redacted]]
Sent: 24 January 2011 18:36
To: [redacted]
Cc: SMITH, Adam
Subject: News Corporation's Submissions in response to the Ofcom Report - Non-confidential versions

[redacted]

Here is the redacted version of our submission - CD-rom is on its way -

You should use this one rather than the one sent by email earlier today - the other submissions will be on the CD-rom

warm regards

Fred

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

EX.O. 28

[Redacted]
From: Michel, Frederic [Redacted]
Sent: 24 January 2011 21:48
To: [Redacted]
Subject: Re: News/Sky - Strictly Private and Confidential (0012561-0000367)

Thanks a lot

Please do send me the statement ahead of the release to the press so we can adjust our communication. It would be much appreciated

Warm regards
Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: +44 [Redacted]
Mob: +4 [Redacted]

On 24 Jan 2011, at 21:44, [Redacted] wrote:

Fred,

Here is the reply sent to A&O.



DCMS

2-4 Cockspur Street

London SW1Y 5DH



The Treasury Solicitor
Broadcasting

2-4 Cockspur Street Tel
London SW1Y 5DH Fax
www.culture.gov.uk

EX.0
29

Your Ref 0012561-0000367
CO:13326012.9

Our Ref

24 January 2011

Allen & Overy
One Bishops Square
London E1 6AD

Dear

News Corporation – British Sky Broadcasting Group Plc

Thank you for your letter of 24 January 2011.

I note that draft undertakings will be received in these offices shortly.

We have taken on board the representations you made as to process, both at your meeting with the Secretary of State, and at our meeting on Friday. We understand that you are concerned that the process be transparent, expeditious and legally sound. The Secretary of State shares those concerns entirely.

Turning to the specific matters you raise:

Role of the OFT

We agree that the Secretary of State is not obliged, but has a discretion, to involve the OFT in process of consideration of undertakings. However, we do not agree that section 93 is as prescriptive as your letter implies. We do not read the section as requiring the Secretary of State to take an "in principle" decision to accept a proposal you have made before the OFT could become involved. Nor do we understand the basis for any suggestion that the OFT can only be involved in "issues regarding the implementation" of any UIL's, that does not seem to us consistent with the wording of s.93.

In addition, we would note that your reference to the words "...undertakings which [the Secretary of State] would be prepared to accept..." as support for an interpretation that the OFT can only be involved after an "in principle" decision seems to us not to recognise the impact of the directly preceding words of that sub-section: it is clear from them that the OFT can be required to consult with a view to discovering whether a person will offer such undertakings.

We consider that the statutory scheme permits the Secretary of State to take the view that he should consider whether to accept the undertakings your client has offered and allows him to



Department for Culture, Media and Sport

involve the OFT in that process of consideration. If the Secretary of State reaches a position that he proposes to accept the undertakings in lieu of a reference, he will, of course, put them out for consultation as required under the terms of the Enterprise Act.

Role of Ofcom

We were not entirely sure we understood your observation that Ofcom does not have any defined statutory role in relation to undertakings. We consider that accepting any undertakings in lieu of a reference would amount to the taking of enforcement action by the Secretary of State and, as such, would fall within the scope of s.106B of the Enterprise Act (read with the Legitimate Interests Order). On that basis it would seem to us that the Secretary of State is clearly permitted to seek Ofcom's advice.

Quite apart from the statutory powers, however, it seems to us that there is a real benefit in understanding the views of Ofcom (and the OFT) in relation to any proposals you are making. It would seem to us that understanding those bodies' thoughts earlier rather than later in the process will ensure that any undertakings the Secretary of State might be minded to accept would be more fully worked out and any potential difficulties dealt with. Equally, if they raised concerns that the undertakings were unworkable or insufficient, it would, again be better to know sooner.

Publication of the Ofcom report

As we discussed on Friday, the Secretary of State is required to publish the Ofcom report either on or before publication of his own decision on whether to refer a transaction subject to a European Intervention Notice. We do not accept that a decision to publish the report in advance of a substantive decision would harm the process. It is clearly envisaged by the statutory regime. In the present case the Secretary of State considers such a step appropriate.

Conclusions

You have asked that we confirm whether the Secretary of State is minded to publish Ofcom's report in advance of the publication of any decision he may make in principle on the undertakings offered by your client. We can confirm that it will be published tomorrow and we have already had contact with News Corporation and indicated that to them. You indicated that upon such confirmation, you will provide a non-confidential bundle of News' submissions for publication alongside that report.

In relation to your final question, we can confirm that the Secretary of State is concerned that the requirements of due process under the statutory scheme are complied with and will, therefore, ensure that if he proposes to accept undertakings in lieu from News Corporation, he will consult on those undertakings in line with the statutory procedure.

I also confirm receipt of your second letter of today's date, which enclosed the confidential version of your client's submissions.

Yours sincerely



EX.O. 30

[Redacted]

From: [Redacted]@BSKYB.COM>
Sent: 24 January 2011 21:50
To: [Redacted]
Subject: Re: News/Sky - Strictly Private and Confidential (0012561-0000367)

[Redacted]

Many thanks and for your voicemail
Speak soon

[Redacted]

On 24 Jan 2011, at 21:44, [Redacted] wrote:

[Redacted]

Here is a copy of the reply sent to A&O.



DCMS
2-4 Cockspur Street
London SW1Y 5DH

W: [Redacted]
M: [Redacted]

**

This email and its contents are the property of the Department for Culture, Media and Sport.
If you are not the intended recipient of this message, please delete it.
All DCMS e-mail is recorded and stored for a minimum of 6 months
The original of this email was scanned for viruses by the Government Secure Intranet virus

EX.0.31

[Redacted]

From: Ed Richards [Redacted]
Sent: 24 January 2011 21:34
To: [Redacted]
Cc: ZEFF JON
Subject: RE:

Many thanks [Redacted]

Just to let you know we think the NC response raises issues and makes points that we will have to address tomorrow since we believe they are completely incorrect.

It is unfortunate that we have only had sight of these at this late stage before having to respond to them in public.

We will be writing to the SoS formally about these issues in the next few days.

J

From: [Redacted]
Sent: 24 January 2011 21:30
To: Ed Richards
Cc: ZEFF JON
Subject:

Ed,

Below is the press statement which will issue at 7.30 tomorrow. The Parliamentary Statement at 9.30am is substantially the same.

[Redacted]

JCMS
2-4 Cockspur Street
London SW1Y 5DH

W: [Redacted]
M: [Redacted]

.....
25 January 2011

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.
- 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.

“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 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 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 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.

This email and its contents are the property of the Department for Culture, Media and Sport. If you are not the intended recipient of this message, please delete it. All DCMS e-mail is recorded and stored for a minimum of 6 months. The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free. Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

For more information visit www.ofcom.org.uk

This email (and any attachments) is confidential and intended for the use of the addressee only.

If you have received this email in error please notify the originator of the message and delete it from your system.

This email has been scanned for viruses. However, you open any attachments at your own risk.

Any views expressed in this message are those of the individual sender and do not represent the views or opinions of Ofcom unless expressly stated otherwise.

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk. Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

EX.O.32

[Redacted]
From: Michel, Frederic [Redacted]
Sent: 24 January 2011 21:48
To: [Redacted]
Subject: Re: News/Sky - Strictly Private and Confidential (0012561-0000367)

Thanks a lot

Please do send me the statement ahead of the release to the press so we can adjust our communication. It would be much appreciated

Warm regards
Fred

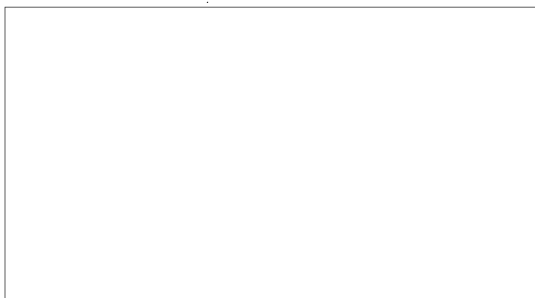
Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: [Redacted]
Mob: [Redacted]

On 24 Jan 2011, at 21:44, [Redacted] wrote:

Fred,

Here is the reply sent to A&O.



DCMS

2-4 Cockspur Street

London SW1Y 5DH

EX-0.33

[Redacted]
From: Michel, Frederic [Redacted]
Sent: 25 January 2011 08:58
To: SMITH, Adam; ZEFF JON
Cc: [Redacted]
Subject: News Corporation's response
Attachments: Response to statement by Secretary of State 250111 FINAL (2).pdf

Please see attached.

Best

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

tel: [Redacted]
mo: [Redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.



EX.O. 34

NEWS RELEASE

For Immediate Release

Contact: Alice Macandrew: +44 (0) 20 7782 6013
Miranda Higham: +44 (0) 20 7782 6462

Response to statement by Secretary of State for Culture, Olympics, Media and Sport

London, 25 January, 2011 – News Corporation continues to believe that its proposed acquisition of the shares in BSkyB it does not own will not lead to there being insufficient plurality in news provision in the UK. The company has put forward extensive and detailed evidence that the level of plurality in the UK has increased since 2003 (when the Communications Act was enacted) – and since the ITV plurality review in 2007 when no concerns were found about the sufficiency of plurality.

News Corporation believes that Ofcom's analysis is deficient in a number of ways. While Ofcom acknowledges that the combination of News Corporation and BSkyB would have a minimal impact on consumers and would not enhance News Corporation's ability to influence the news agenda, it nevertheless concludes that the transaction may be expected to operate against the public interest.

News Corporation has made a submission to the Department of Culture, Media and Sport setting out a number of issues with the Ofcom report. However, in the interests of progressing to a transaction, News Corporation has submitted an undertaking that we believe addresses Ofcom's concerns. We will continue to engage constructively with the regulatory process.

Notes to Editors:

On 21 December 2010, the European Commission cleared News Corporation's proposed acquisition of BSkyB under EU merger rules. The Commission concluded that the transaction would not impede effective competition in the European Economic Area or any substantial part of it.

News Corporation (NASDAQ: NWS, NWSA; ASX: NWS, NWSLV) had total assets as of September 30, 2010 of approximately US\$56 billion and total annual revenues of approximately US\$33 billion. News Corporation is a diversified global media company with operations in six industry segments: cable network programming; filmed entertainment; television; direct broadcast satellite television; publishing; and other. The activities of News Corporation are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and Latin America.

EX.O. 35

[Redacted]
From: Michel, Frederic [Redacted]
Sent: 27 January 2011 11:02
To: ZEFF JON
Cc: SMITH, Adam; [Redacted]
Subject: Timetable

Dear Jon,

Do you have further details on the next stages? Are we meeting OFT this week?

Warm regards

Fred

Sent from my iPhone

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 1 Virginia St, London E98 1XY), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone.

Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

EX.0.36

[Redacted]

From: SECRETARY OF STATE'S OFFICE
Sent: 16 February 2011 18:43
To: 'Michel, Frederic'
Cc: SMITH, Adam
Subject: RE: Confidential: Letter from to James Murdoch to Jeremy Hunt

Frederic

Thank you for your email, I can confirm receipt.

[Redacted]

Department for Culture, Media and Sport

[Redacted]

From: Michel, Frederic [mailto:[Redacted]]
Sent: 16 February 2011 18:31
To: SECRETARY OF STATE'S OFFICE
Cc: [Redacted]
Subject: Confidential: Letter from to James Murdoch to Jeremy Hunt

[Redacted]

Please see attached,
Can you please confirm receipt.
Best

Frederic
Frederic Michel
Director, Public Affairs, Europe
News Corporation
tel: [Redacted]
mob [Redacted]

From: [Redacted]
Sent: Wednesday, February 16, 2011 06:18 PM
To: Michel, Frederic
Cc: [Redacted]
Subject: Confidential: Letter from to James Murdoch to Jeremy Hunt

Please find attached letter from James Murdoch to Jeremy Hunt and an amended set of UIL reflecting the agreed points.

[Redacted]

[Redacted]

EX.0.37

[Redacted]

From: SECRETARY OF STATE'S OFFICE
Sent: 16 February 2011 18:44
To: [Redacted]
Subject: FW: Confidential: Letter from to James Murdoch to Jeremy Hunt
Attachments: DOC160211.pdf; Revised draft UIL mark-up.pdf; Revised draft UIL.pdf

From: Michel, Frederic [mailto:[Redacted]]
Sent: 16 February 2011 18:31
To: SECRETARY OF STATE'S OFFICE
Cc: SMITH, Adam
Subject: Confidential: Letter from to James Murdoch to Jeremy Hunt

[Redacted]

ase see attached,
 Can you please confirm receipt.
 Best

Frederic
 Frederic Michel
 Director, Public Affairs, Europe
 News Corporation
 tel: [Redacted]
 mob [Redacted]

From: [Redacted]
Sent: Wednesday, February 16, 2011 06:18 PM
To: Michel, Frederic
Cc: [Redacted]
Subject: Confidential: Letter from to James Murdoch to Jeremy Hunt

lease find attached letter from James Murdoch to Jeremy Hunt and an amended set of UIL reflecting the agreed points.

[Redacted]

[Redacted]

News Corporation
 2 Thomas More Square,
 London, E98 1EX

[Redacted]

"Please consider the environment before printing this e-mail"

EX.O. 38



**STRICTLY CONFIDENTIAL
CONTAINS BUSINESS SECRETS**

Rt Hon Jeremy Hunt, MP
Secretary of State for Culture, Olympics, Media and Sport

Department for Culture Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

16 February 2011

Dear Jeremy,

News Corp/BSkyB

Thank you for your letter of 15 February 2011.

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

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

Specifically:

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

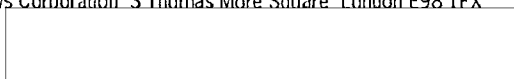
I attach an amended set of UIL (both in clean version and marked up to show changes against the draft that we sent to DCMS on 24 January 2011) reflecting these concessions and other points already agreed in our previous discussions with the OFT and Ofcom (**Draft UIL**).

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

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

James Murdoch
Chairman & CEO, Europe & Asia

News Corporation, 3 Thomas More Square, London E98 1FX



MOD300007464

- (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

News Corporation 3 Thomas More Square London E98 1EX



EX.0.41

[Redacted]
From: Michel, Frederic [Redacted]
Sent: 01 March 2011 08:54
To: ZEFF JON
Subject: Update _URGENT

Hi Jon,

Hope you're well.

Could we possibly speak this morning?

Warm regards,

Frederic

Frederic Michel
Director, Public Affairs, Europe
News Corporation
tel: [Redacted]
mob: [Redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk. Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

EX.O.42

[Redacted]

From: [Redacted]
Sent: 02 March 2011 12:00
To: [Redacted] Michel, Frederic
Cc: [Redacted] ZEFF JON
Subject: FW: PI Test
Attachments: Jeremy Hunt re PI Test News Corp BSKyB - 01 03 11.pdf; Jeremy Hunt re PI Test News Corp BSKyB final UILs for consultation.pdf

Importance: High

Fred, [Redacted]

As you are aware, we are planning to publish all the main documents relating to the merger, including Ofcom's two responses to the Secretary of State. Ofcom's view is that there is nothing in either of these reports which needs redacting (second one to follow). Can you confirm as soon as possible, please, as the SoS does not wish to take a decision until all the documents are ready for publication.

[Redacted] is going to speak to you separately about the OFT report.

[Redacted]

[Redacted]

DCMS
2-4 Cockspur Street
London SW1Y 5DH

W: [Redacted]
M: [Redacted]

From: [Redacted]
Sent: 01 March 2011 19:00
To: [Redacted]
Cc: [Redacted]
Subject: PI Test

[Redacted]

Please find attached Ofcom's letter to the Secretary of State and the final version of the UIL. Can you please acknowledge receipt of this e-mail ?

Regards

[Redacted]

EX.O.43

From: Michel, Frederic
Sent: 02 March 2011 13:53
To:
Subject: RE: News/Sky - letter to SoS

Thank you

From:
Sent: 02 March 2011 13:21
To: Michel, Frederic;
Subject: FW: News/Sky - letter to SoS
Importance: High

Fred,

FT second report for confidential redaction only please.

This email and its contents are the property of the Department for Culture, Media and Sport. If you are not the intended recipient of this message, please delete it. All DCMS e-mail is recorded and stored for a minimum of 6 months. The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free. Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

EX.O.44

[Redacted]

From: Michel, Frederic [Redacted]
Sent: 02 March 2011 14:44 [Redacted]
To: [Redacted]
Cc: [Redacted]
Subject: RE: News Corporation/BSkyB proposed merger: advice on proposed undertakings in lieu

Dear [Redacted]

Just tried to call you and [Redacted]

We are ok with the Ofcom report and don't have further redaction to suggest on it.

Warm regards,

Fred

-----Original Message-----

From: [Redacted]
Sent: 02 March 2011 12:00
To: [Redacted]; Michel, Frederic
Cc: [Redacted]
Subject: FW: News Corporation/BSkyB proposed merger: advice on proposed undertakings in lieu

The second Ofcom report.

[Redacted]

This email and its contents are the property of the Department for Culture, Media and Sport. If you are not the intended recipient of this message, please delete it.
 All DCMS e-mail is recorded and stored for a minimum of 6 months

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free. Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone.

Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

EX.0.45

[redacted]
From: [redacted]
Sent: 02 March 2011 17:09
To: [redacted]
Subject: RE: Documents to be published

[redacted] on which number I can call you?

From: [redacted]
Sent: Wednesday, March 02, 2011 5:08 PM
To: [redacted]
Subject: RE: Documents to be published (0012561-0000367)

[redacted]
My meeting has now been put back (it will be a late night, I suspect). Once we have established the documents we are proposing to publish, it would be a great help to get electronic versions from you.

[redacted]

From: [redacted]
Sent: 02 March 2011 16:59
To: [redacted]
Cc: [redacted]
Subject: RE: Documents to be published (0012561-0000367)

[redacted]
I have realised that we only have hard copies of your letters of 18 and 24 January. We are not, incidentally, proposing to publish your second, longer letter of 24. Happy to discuss over the phone if that would help, though I am just off to meeting (about this, needless to say).

I am assuming that the revisions to the UILs or very minimal if they are to be meaningful for consultation purposes, but let us see what you suggest.

I would be very grateful if you could send the second Ofcom report to Sky.

[redacted]

From: [redacted]
Sent: 02 March 2011 16:43
To: [redacted]
Cc: [redacted]
Subject: RE: Documents to be published (0012561-0000367)

Thanks We will then send to OFT (copied to you and [redacted] in order to facilitate communications) our submissions on the two OFT reports and the 1 March UILs.

Have you been sent to Sky the second Ofcom report? If not I am happy to do so and ask them to confirm that they do not have confidentiality submissions to make.

Regards

From: [redacted]
Sent: Wednesday, March 02, 2011 4:40 PM
To: [redacted]
Cc: [redacted]
Subject: RE: Documents to be published (0012561-0000367)

[redacted]

We have the final say on redactions to the UILs but they should be agreed OFT first, or at least we would want their view.

Do please provide redacted versions of earlier UILs.

I will send you copies of the other documents you request.

Would you be able to see if Sky are similarly happy with the Ofcom reports?

Thanks for your help.

[redacted]

From: [redacted]
Sent: 02 March 2011 16:30
To: [redacted]
Cc: [redacted]
Subject: Documents to be published (0012561-0000367)

[redacted]

I will discuss with News. We are in touch with the OFT and we will revert to them about redactions on their reports.

OFT was not clear as to whether any proposed redactions to the UIL (and previous versions) should be agreed with you or with them. Can you please clarify. If you intend to publish earlier version of the UIL we will need to provide you with redacted versions of those documents too.

Sky has been in touch directly with OFT about information which they provided to them.

Could you please provide the actual documents that you intend to publish (other than the OFT/Ofcom reports and the Draft UIL dated 1 March) so that we avoid any confusion and can make representations as to any redactions needed.

Best wishes

[redacted]

From: [redacted]
Sent: Wednesday, March 02, 2011 4:16 PM
To: Michel, Frederic; [redacted]

Subject: RE: News/Sky - letter to SoS
Importance: High

Fred, [redacted]

Just to be clear about what we are proposing to publish tomorrow, here is a full list of the documents. Let me know if anything must be redacted from the 18 and 24 January letters enclosing the UILs.

Can you also check that Sky are OK with the documents, or do we need to do that?

[redacted]

From: Michel, Frederic [mailto:[redacted]]
Sent: 02 March 2011 13:53
To: [redacted]
Subject: RE: News/Sky - letter to SoS

Thank you [redacted]

From: [redacted]
Sent: 02 March 2011 13:21
To: Michel, Frederic; [redacted]
Subject: FW: News/Sky - letter to SoS
Importance: High

Fred, [redacted]

OFT second report for confidential redaction only please.

[redacted]

This email and its contents are the property of the Department for Culture, Media and Sport.

If you are not the intended recipient of this message, please delete it.

All DCMS e-mail is recorded and stored for a minimum of 6 months

The original of this email was scanned for viruses by the Government Secure Intranet virus scanning service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate Number 2009/09/0052.) On leaving the GSi this email was certified virus free.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its

EX.0.46

[redacted]
From: Michel, Frederic [redacted]
Sent: 09 March 2011 10:41
To: ZEFF JON
Subject: Public consultation - catch-up

Hello Jon ;

Hope you're well.

I thought it might be a good idea to catch-up at some stage during the consultation.

Let me know when is good to speak or pop in .

Warm regards

ed

Frederic Michel
Director, Public Affairs, Europe
News Corporation

tel: [redacted]
mob: [redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate

EX.0.47

[redacted]

From: ZEFF JON
Sent: 11 March 2011 16:52
To: Michel, Frederic
Subject: RE: Public consultation - catch-up

Fred

Sorry i haven't replied sooner – am in mtgs all afternoon, but could i ring you sometime before 10.30 on Monday morning?

Jon

From: Michel, Frederic [redacted]
Sent: 09 March 2011 10:41
To: ZEFF JON
Subject: Public consultation - catch-up

Hello Jon,

Hope you're well.

I thought it might be a good idea to catch-up at some stage during the consultation.

Let me know when is good to speak or pop in.

Warm regards

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

tel: [redacted]
mob: [redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited

EX.O. 48

[redacted]
From: Michel, Frederic [redacted]
Sent: 11 March 2011 16:54
To: ZEFF JON
Subject: RE: Public consultation - catch-up

Shall we speak at 9.30? my mobile please: [redacted]

Have a nice week-end

Fred

From: ZEFF JON [mailto:[redacted]]
Sent: 11 March 2011 16:52
To: Michel, Frederic
Subject: RE: Public consultation - catch-up

ed

Sorry i haven't replied sooner – am in mtgs all afternoon, but could i ring you sometime before 10.30 on Monday morning?

Jon

From: Michel, Frederic [mailto:[redacted]]
Sent: 09 March 2011 10:41
To: ZEFF JON
Subject: Public consultation - catch-up

Hello Jon ,

Hope you're well.

I thought it might be a good idea to catch-up at some stage during the consultation.

Let me know when is good to speak or pop in .

Warm regards

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation
tel: [redacted]
mob: [redacted]

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

EX.0. 49

[redacted]
From: ZEFF JON
Sent: 11 March 2011 17:50
To: Michel, Frederic
Subject: RE: Public consultation - catch-up

Great – will ring then. jon

From: Michel, Frederic [mailto:[redacted]]
Sent: 11 March 2011 16:54
To: ZEFF JON
Subject: RE: Public consultation - catch-up

Shall we speak at 9.30? my mobile please: [redacted]

Have a nice week-end

Fred

From: ZEFF JON [mailto:[redacted]]
Sent: 11 March 2011 16:52
To: Michel, Frederic
Subject: RE: Public consultation - catch-up

Fred

Sorry i haven't replied sooner – am in mtgs all afternoon, but could i ring you sometime before 10.30 on Monday morning?

Jon

From: Michel, Frederic [mailto:[redacted]]
Sent: 09 March 2011 10:41
To: ZEFF JON
Subject: Public consultation - catch-up

Hello Jon ,

Hope you're well.

I thought it might be a good idea to catch-up at some stage during the consultation.

Let me know when is good to speak or pop in .

Warm regards

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation
tel: [redacted]

EX.O. 50

[redacted]
From: Michel, Frederic [redacted]
Sent: 13 March 2011 22:12
To: ZEFF JON
Subject: Re: Public consultation - catch-up

Jon
Call me at 9am. Even better for me
Best
Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel: [redacted]
Mob [redacted]

On 11 Mar 2011, at 16:54, [redacted] wrote:

Shall we speak at 9.30? my mobile please: [redacted]

Have a nice week-end

Fred

From: ZEFF JON [mailto:[redacted]]
Sent: 11 March 2011 16:52
To: Michel, Frederic
Subject: RE: Public consultation - catch-up

Fred

Sorry i haven't replied sooner – am in mtgs all afternoon, but could i ring you sometime before 10.30 on Monday morning?

EX.0.51

From: Michel, Frederic
Sent: 25 March 2011 08:51
To: ZEFF JON
Subject: Update

Hi Jon

Shall we speak today?

Best

Fred

Frederic Michel
Director, Public Affairs, Europe
News Corporation

Tel:
Mob:

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of News International Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 1 Virginia St, London E98 1XY), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by News International Limited or any member of its group. News International Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone.

Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

EX.0.52

[Redacted]
From: Michel, Frederic [Redacted]
Sent: 13 July 2011 14:35
To: SMITH, Adam; ZEFF JON
Subject: News Corporation Statement regarding BSkyB
Attachments: 130711_NWS Corp Statement re BSkyB FINAL.pdf

"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

This e-mail and any attachments are confidential, may be legally privileged and are the property of NI Group Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated. If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way. Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by NI Group Limited or any member of its group. NI Group Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability for viruses introduced by this e-mail or attachments.

This message and its attachments may contain legally privileged or confidential information. It is intended solely for the named addressee. If you are not the addressee indicated in this message (or responsible for delivery of the message to the addressee), you may not copy or deliver this message or its attachments to anyone. Rather, you should permanently delete this message and its attachments and kindly notify the sender by reply e-mail. Any content of this message and its attachments that does not relate to the official business of News America Incorporated or its subsidiaries must be taken not to have been sent or endorsed by any of them. No representation is made that this email or its attachments are without defect.

This email was received from the INTERNET and scanned by the Government Secure Intranet anti-virus service supplied by Cable&Wireless Worldwide in partnership with MessageLabs. (CCTM Certificate number 2009/09/0052.) In case of problems, please call your organisation's IT Helpdesk.

Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

EX.0.53

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION (IN WHOLE OR IN PART) IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF SUCH JURISDICTION

NEWS RELEASE

13 July 2011

**NEWS CORPORATION WITHDRAWS PROPOSED OFFER
FOR BRITISH SKY BROADCASTING GROUP PLC**

News Corporation ("News Corp") announces that it no longer intends to make an offer for the entire issued and to be issued share capital of British Sky Broadcasting Group PLC ("BSkyB") not already owned by it*.

Chase Carey, Deputy Chairman, President and Chief Operating Officer, News Corporation, commented: "We believed that the proposed acquisition of BSkyB by News Corporation would benefit both companies but it has become clear that it is too difficult to progress in this climate. News Corporation remains a committed long-term shareholder in BSkyB. We are proud of the success it has achieved and our contribution to it."

Enquiries:

News Corporation Alice Macandrew Telephone: +44 (0)20 7782 6013 Teri Everett Telephone: +1 212 852 7070	Investors and analysts Reed Nolte Telephone: +1 212 852 7092
Deutsche Bank Gavin Deane James Agnew Telephone: +44 (0)20 7545 8000	J.P. Morgan Cazenove Harry Hampson Hugo Baring Telephone: +44 (0)20 7588 2828

* For the purposes of Rule 2.8 and other relevant provisions of The City Code on Takeovers and Mergers ("City Code"), News Corp reserves the right to announce an offer or possible offer or make or participate in an offer or possible offer for BSkyB and/or take any other action which would otherwise be restricted under Rule 2.8 of the City Code within the next six months in the event that:

- (i) there is an announcement other than by News Corp or any subsidiary of News Corp of an offer or possible offer for or a merger or possible merger with BSkyB; or
- (ii) BSkyB announces a whitewash proposal for Rule 9 purposes or a reverse takeover not involving News Corp or any subsidiary of News Corp.

In the event that News Corp is permitted pursuant to the City Code to announce an offer or possible offer for BSkyB, News Corp reserves the right to do so at any price and at a price less than 700 pence per BSkyB Share in the event that either: (i) it is recommended by the Board of BSkyB; or (ii) there is an announcement by a third party of an offer or a possible offer for BSkyB at a price lower than 700 pence per BSkyB Share; or (iii) BSkyB declares, makes or pays a dividend which is in excess of its stated dividend policy at the time of this announcement; or (iv) it is so permitted by the City Code.

Any such offer or possible offer by News Corp or any subsidiary of News Corp will be subject to obtaining any required regulatory approval.

A copy of this announcement will be available on News Corp's website at www.newscorp.com.

Deutsche Bank and J.P. Morgan Cazenove are acting as financial advisers to News Corp.

Further information

Deutsche Bank AG is authorised under German Banking Law (competent authority: BaFin – Federal Financial Supervisory Authority) and authorised and subject to limited regulation by the FSA. Details about the extent of Deutsche Bank AG's authorisation and regulation by the FSA are available on request. Deutsche Bank AG, London Branch is acting as financial adviser to News Corp and no one else in connection with the contents of this announcement and will not be responsible to any person other than News Corp for providing the protections afforded to clients of Deutsche Bank AG, London Branch, nor for providing advice in relation to any matters referred to herein.

J.P. Morgan Limited, which conducts its UK investment banking business as J.P. Morgan Cazenove and is authorised and regulated in the United Kingdom by the Financial Services Authority, is acting for News Corp and for no one else in connection with the matters set out in this announcement and will not be responsible to anyone other than News Corp for providing the protections afforded to clients of J.P. Morgan Limited nor for providing advice in relation to any matters set out in this announcement.

The distribution of this announcement in jurisdictions other than the United Kingdom and the availability of any offer to shareholders of BSKyB who are not resident in the United Kingdom may be affected by the laws of relevant jurisdictions. Therefore any persons who are subject to the laws of any jurisdiction other than the United Kingdom or shareholders of BSKyB who are not resident in the United Kingdom will need to inform themselves about, and observe, any applicable requirements.

EX.0.54

[Redacted]

From: [Redacted]
Sent: 27 July 2011 10:44
To: [Redacted]
Cc: [Redacted]
Subject: Minutes of Meetings with the Secretary of State
Attachments: Minute SoS with News Corp 6 January 2011.doc; Minute SoS with News Corp 20 January 2011.doc

Dear Frederic,

I refer to the recent work involved with News Corporation's bid to purchase the remaining shares in BSkyB. As you know the Secretary of State has been keen to publish documents and letters relating to the proposed acquisition. I am preparing to publish, on the Department's website, the minutes of meetings he had with interested parties. I note that he held meetings with News Corporation on 6th and 20th of January. I attach minutes of these meetings and would welcome any comments by the end of the week, as we are looking to publish them next week.

Best regards

[Redacted Signature]

Media Directorate
Dept for Culture, Media & Sport
2-4 Cockspur Street
London SW1Y 5DH

[Redacted]