

EX.P01

[redacted]

From: SMITH, Adam
Sent: 18 June 2010 15:15
To: Fares, David
Subject: RE: Time to chat today?

Manic today preparing for oral questions on Monday. Can we catch up after those?

From: Fares, David [redacted]
Sent: 18 June 2010 10:57
To: SMITH, Adam
Subject: Time to chat today?

Adam,

I hope all is well. I have had a crazy travel schedule but am back for 2 whole business days. Do you have time for a quick catch-up call today?

Best,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [redacted]
London: [redacted]

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EXA02

[Redacted]

From: SMITH, Adam
Sent: 09 August 2010 19:06
To: 'DFares@ [Redacted]'
Subject: Re: Time to chat tomorrow?

Sure. Although not much has changed from our end I don't think

From: Fares, David < [Redacted] >
To: SMITH, Adam
Sent: Mon Aug 09 18:54:48 2010
Subject: Time to chat tomorrow?
Adam,

Do you have time for a quick chat regarding costs tomorrow?

I nope all is well.

Thanks,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [Redacted]
London: [Redacted]

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EX. P03

[redacted]

From: SMITH, Adam
Sent: 11 August 2010 09:21
To: Fares, David
Subject: RE: Are you free to speak at 19:00 this evening?

Just left a message of your mobile – am around all day to speak.

From: Fares, David [redacted]
Sent: 10 August 2010 18:15
To: SMITH, Adam
Subject: Are you free to speak at 19:00 this evening?

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [redacted]
London: [redacted]

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EX. P04

[redacted]

From: SMITH, Adam
Sent: 16 August 2010 15:54
To: Fares, David
Subject: RE: Costs Follow-up

Only that i'm not sure anything will have changed Jeremy's mind but as I say I can't say much more until he's back.

From: Fares, David [redacted]
Sent: 16 August 2010 14:24
To: SMITH, Adam
Subject: RE: Costs Follow-up

No worries and thanks. Did you have any preliminary thoughts?

From: SMITH, Adam [mailto:redacted]
Sent: Monday, August 16, 2010 9:25 AM
To: Fares, David
Subject: RE: Costs Follow-up

I'm not going to be able to give a definitive position on this for a few days I'm afraid as Jeremy is on holiday.

From: Fares, David [redacted]
Sent: 16 August 2010 14:18
To: SMITH, Adam
Subject: Costs Follow-up

Adam,

Just wanted to check-in again to see if you had any thoughts on the information I sent you.

Thanks,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [redacted]
London: [redacted]

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EX. POS

[redacted]

From: SMITH, Adam
Sent: 01 September 2010 12:05
To: Fares, David
Subject: RE: Will you be at IAB with Jeremy Tomorrow?

Not going to be there no. am having a half day to play cricket – that counts as a holiday in my book!

From: Fares, David [redacted]
Sent: 01 September 2010 11:49
To: SMITH, Adam
Subject: Will you be at IAB with Jeremy Tomorrow?

If so, I look forward to seeing you there.

Hope you were able to get a holiday in notwithstanding the madness.

Best,
David

David Fares
Vice President, Government Relations
News Corporation
Tel: NY: [redacted]
London: [redacted]

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EXA10

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 30 April 2012 08:33
To: OLDFIELD PAUL
Subject: Fwd:

Begin forwarded message:

From: Adam Smith <[Redacted]>
Date: 2 March 2011 09:26:33 GMT
To: "Michel, Frederic" <[Redacted]>

guardian -

"News Corp has been talking progress for several days, and various people are trying to lead journalists to the notion that the company has offered up a structural rather than behavioural solution to solve the plurality problem caused by having the Sun, the Times and Sky News all in the one basket."

City AM -

"Senior B Sky B sources told City A.M. they expected Hunt to announce his decision as soon as this afternoon, which is likely to put the bid out to a 15-day public consultation, avoiding a Competition Commission inquiry which could take as long as six months."

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EX. P 11

[Redacted]

From: Adam Smith [Redacted]
Sent: 30 April 2012 08:34
To: OLDFIELD PAUL
Subject: Fwd: As discussed

Begin forwarded message:

From: Adam Smith <[Redacted]>
Date: 14 January 2011 17:54:52 GMT
To: Frederic Michel [Redacted]
Subject: As discussed

Thank you for getting in touch about the News Corp/BskyB transaction. I thought it would be helpful if I clarified the process that Jeremy Hunt is going through.

Ofcom delivered their report to the Secretary of State Jeremy Hunt on 31st December. He is now considering the report carefully. He has been clear that he will take as much time as necessary to come to a fully considered decision and he rightly believes that it is more important to come to the right decision rather than work to an arbitrary timescale. In taking this decision it is open to the Secretary of State to take representations however, it would detract from the decision making process to provide a running commentary on what, if any, discussions he is having. The Secretary of State will however, be publishing Ofcom's report but he has not taken a final decision about when this will happen. He has a statutory duty to publish it before or at the time of the announcement of his decision so it will be available for everyone to see at some point soon.

Due to the Secretary of State's quasi-judicial role it is not possible to provide any further details at the moment but needless to say he is committed to reaching a decision in a fair and even-handed way. Further details about this process will be announced once the Secretary of State's decision has been made public.

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EX.P12



From: Adam Smith <[redacted]>
Sent: 30 April 2012 08:33
To: OLDFIELD PAUL
Subject: Fwd: seen this?

Begin forwarded message:

From: Adam Smith <[redacted]>
Date: 19 January 2011 09:55:17 GMT
To: [fmiche](#) <[redacted]>
Subject: seen this?

Ivan Lewis Oxford Media Convention Speech January 2011

Check against delivery

When Ed Miliband appointed me to this position three months ago I promised to listen, learn and lead.

While this remains my approach I have come to realise that the media world moves at such a pace that induction is a luxury if not an indulgence.

In that short period we have seen the BBC Licence Fee Settlement, News Corp's bid to acquire Sky referred to Ofcom, the impact of the Daily Telegraph's undercover investigation into the way senior Lib Dems view the Conservative led Government and the suspension of a senior News International journalist in connection with ongoing phone tapping allegations.

But more important than any one issue or moment in time we have a revolution taking place in our global media environment. Industry innovation, convergence and changing consumer demand are resulting in exciting new opportunities and ask new questions of industry and Government. BBC iPlayer, Facebook, Twitter, Skype, Mumsnet, YouTube; all platforms which are revolutionising the way people communicate with each other and access content.

Today - I want to touch on the importance and potential of our Creative Industries, News Corp's bid for BSkyB and the future of the BBC.

Creative industries

As we reflect on the lessons of the global financial crisis it is clear that Britain's economy was over-dependent on the financial services sector and in Government Labour should have pursued a more active industrial policy, not simply as a response to the crisis, but as an integral part of economic policy.

These lessons are particularly apposite as we consider the challenges and opportunities facing our creative industries – a great British success story but in serious peril of falling behind without Government leadership and industry cohesion.

The Conservative led Government has said repeatedly that it views the creative industries as a key driver of jobs and growth however every signal they are sending the industry is to the contrary. Not only has there been no growth strategy but there has also been a total lack of leadership. Instead on this Government's watch we have seen:

- Delay on the roll out of broadband
- Confusion over IP with the announcement of a new review
- No to a video games tax break
- The abolition of the Film Council
- The BBC steamrolled through a licence fee settlement
- No progress on the Digital Economy Act
- And having stripped Vince Cable of his responsibilities for media policy there is still little clarity on how the transfer of Civil Servants and key areas of responsibility from BISS to DCMS will work in practice.

This is why I have called on the Government to set up a cross Government group chaired at Cabinet level working with industry representatives to produce an action plan during 2011.

The action plan should cover issues such as:

- Seeking a UK and EU regulatory framework which is fit for this new era of format convergence and content globalisation
- Seeking clear and robust intellectual property rights in the UK and EU
- Clarity about accountability and project management for broadband roll out
- The development of a demand led education and skills system
- Access to finance and business support for start-ups and innovation
- Tax policy in the context of global competition
- A strategy for accessing developing countries markets
- The interaction between public and private sector funding

In the period ahead I intend to be a champion for the Creative Industries – we “got it” in Government and we get it in opposition - that jobs and growth in our creative sector is integral to the future success of our economy.

NewsCorp's bid for BSkyB

I now want to touch on News Corp's bid for total ownership of BSkyB and be clear about where Labour stands.

We believe that media pluralism is essential to the integrity of our democracy. No single voice should dominate and all significant changes of ownership should be subject to a robust public interest test.

I called on Vince Cable last month to refer News Corp's proposed acquisition of BSkyB to Ofcom because there is a case to answer. His referral was right but

subsequent judgement so flawed that the whole process has been brought into disrepute.

A process which is further undermined by a Secretary of State now charged with this decision who is on the record as having a prejudicial view.

Jeremy Hunt could rebuild some confidence by releasing Ofcom's report with immediate effect. This would provide a basic level of transparency and clarify the legitimacy of any meetings he is having with interested parties.

The Secretary of State should act in the public interest, no more no less.

Unlike Vince Cable, I do not wish to declare war on Rupert Murdoch – in many ways Sky and News International have been pioneers in responding to the aspirations of consumers. For this they should be commended not condemned. They have a right to argue for a deregulated media with a lesser role for the state and a right to compete vigorously in a rapidly changing market.

But let me be clear, in Britain no commercial interest however big or small has a right to make the law or break the law.

That must be the non negotiable principle of our democracy – any democracy worthy of the name.

On plurality that means applying the public interest test free of political prejudice.

On phone hacking it means proper investigation by the CPS and the police of very serious allegations and the full cooperation of News International until the truth is finally established and justice prevails.

BBC

Turning to the BBC let me be unequivocal; the BBC is a force for good in our country and on behalf of our country.

The integrity of its global news coverage, the quality of its original content and its parenting of much of our creative innovation are a source of national pride.

It is clear that the British people have a similar affinity to a licence fee funded BBC as to an NHS free at the point of use funded through direct taxation. That is why successive Conservative Governments, despite their ideological instincts, have been unable to unpick the fundamental principles of these two unique British institutions.

However, that doesn't mean the BBC can count on unconditional public support without reform. The digital age has transformed the relationship between the media and citizens. People want more control and choice over their sources of information. Public service broadcasting should respond to this new dynamic. This is why I am keen to explore a radical change to governance which would lead to the BBC becoming a mutual organisation. Empowered licence fee payers could have an equal stake as members of the BBC. They could have the right to be consulted on BBC policy and strategy and elect some of the members of the BBC Trust. This would ensure a more accountable and responsive BBC. More representative of the citizens who pay the bills and use the service. 21st century public service broadcasting would benefit from more active citizens having a real stake in the future of the BBC.

I intend to explore this option as part of Labour's policy review process.

In the short-term I have proposed that the two candidates who will soon be nominated as suitable to be Chairman of the BBC Trust should be subject to scrutiny by the Culture, Media and Sport Select Committee prior to a decision by the Secretary of State. I hope the Government will see the virtues of an approach which will reduce the risk of political bias and ensure a more transparent appointment process.

In the period ahead Labour will defend the BBC against political interference and ideologically motivated attacks. We expressed serious concerns about the heavy handed way the Government railroaded the licence fee settlement.

But we will be a critical friend.

- Demanding maximum value for money including transparency on remuneration.
- Scrutinising the corporation's choices as it embarks on an unprecedented cuts exercise.
- Supporting the BBC's right to be at the cutting edge of the digital revolution and engage in commercial activities but also to recognise the need for consolidation and focus.

Conclusion

I want to end by saying this. I passionately believe that a diverse, innovative media is an integral part of our democracy. It is important to the success of our economy but it is far more important than that. It defines the character of our country. That is why I fundamentally disagree with Mark Thompson's view that a Fox News equivalent would be ok in the UK. We need to hold onto certain non-negotiable principles. But equally, we cannot afford to stand still as the digital revolution transforms the choices of consumers and the challenges faced by all media organisations. In the months and years ahead Labour will hold the Government to account but we will also work with you to develop a policy framework which strengthens our democracy and meets the economic challenges of the future. It will be an important part of how we make the transition from Opposition to being a credible alternative Government.

Ends

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EX. A13

[Redacted]
From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:46
To: OLDFIELD PAUL
Subject: Fwd: OFT update - Privileged & Confidential
Attachments: Letter to Allen Overy 02.02.11.docx.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 2 February 2011 12:46:02 GMT
To: "adamsmith" <[Redacted]>
Subject: FW: OFT update - Privileged & Confidential

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www.nm auk.co.uk

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2 February 2011

Allen & Overy LLP
One Bishops Square
London
E1 6AD

Direct line:

Dear

News Corporation/BSkyB merger

As you know, on 27 January 2011, the Secretary of State asked the Office of Fair Trading ("the OFT") and Ofcom to advise him on the undertakings offered by News Corporation in lieu of a reference to the Competition Commission ("UILs") in relation to its proposed merger with BSkyB.

He asked the OFT under section 93 of the Enterprise Act 2002 for their views on the practical and financial viability of the proposals set out in the UILs, anticipating that the OFT might require Ofcom's assistance with this. The OFT has informed us that it does require assistance from Ofcom in light of its sectoral knowledge. He also asked Ofcom, in accordance with section 106B of the Act, for advice on the extent to which we think the UILs address the potential impact on media plurality identified in our report. The Secretary of State asked Ofcom and the OFT to respond to him by Friday, 11 April 2011.

In order to provide the assistance and advice sought the OFT and Ofcom require a full detailed understanding of News Corporations proposed undertakings. The OFT and Ofcom have considered the most effective way of carrying out the Secretary of State's request to them, and agreed that it is essential, in order to be able to advise within the time stated, that we work together through a collaborative process. We also met DCMS to explain this process to them.

This collaborative process will be unworkable unless the OFT and Ofcom can communicate with one another on the basis of a consistent set of information. We understand from the OFT that your client objects to information provided to the OFT being shared by the OFT with Ofcom in this process on the basis that the information is confidential.

In light of the roles that Ofcom has been asked to fulfil in this context we can see no basis for News Corporation objecting to the OFT and Ofcom sharing any information which News Corporation considers is relevant to a full understanding of its proposed undertakings. Ofcom of course as a statutory regulator has strict obligations of confidentiality. In order for Ofcom to

Riverside House
2a Southwark Bridge Road
London SE1 9HA

Telephone + 44 (0)20 7981 3000
Facsimile + 44 (0)20 7981 3333

www.ofcom.org.uk

fulfill its functions of assisting the OFT and advising the Secretary of State as set out above it needs to consider the same information as the OFT.

We assume in proposing undertakings in lieu of a reference your client is keen to engage as proactively as possible with the OFT and Ofcom in the short time available.

That being so, please confirm that the OFT may share with us any information relevant to a full detailed understanding of your client's proposed undertaking which your client has provided to it.

Yours sincerely

[Redacted signature]

[Redacted name]

CC: [Redacted] OFT

EX.A15

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:45
To: OLDFIELD PAUL
Subject: Fwd: Restricted: Newscorp / BSKyB
Attachments: Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - cover letter to News covering questions 1 February 2011.pdf; ATT00001..htm; Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - questions for News 1 February 2011.pdf; ATT00002..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 2 February 2011 12:45:52 GMT
To: "adamsmith" <[Redacted]>
Subject: FW: Restricted: Newscorp / BSKyB

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EX. P16

OFFICE OF FAIR TRADING

[Redacted]

Allen & Overy LLP

Your ref 0012561-0000367

Our ref

Date 1 February 2011

Direct line

Fax

Email

[Redacted]

Dear [Redacted]

News / BSkyB

Information request

Further to our conversation earlier today, and your presentation to us yesterday on the proposed undertakings in lieu (UIL) offered by News Corporation (News) to the Secretary of State in relation to the above matter, I attach a list of questions for News in relation to the UIL.

These questions are designed to assist the OFT in preparing its advice to the Secretary of State under section 93 Enterprise Act 2002 (EA 02) and in particular responding to the request in the Secretary of State's letter of 27 January 2011 to the Chief Executive of the OFT that the OFT discover whether the UIL would be practically and financially viable. I would also note that Ofcom has been asked to provide any assistance the OFT may require in considering the UIL, as well as advising the Secretary of State on the potential impact of the UIL on the concerns they raised about media plurality in their report of 31 December 2010.

Given the short time period within which we are required to report to the Secretary of State, we would be grateful for a response to these questions as soon as reasonably possible. It would greatly assist us if you were able to provide what information you can by **midday on 3 February 2011**, following up with the remaining responses as soon as possible afterwards.



INVESTOR IN PEOPLE

Disclosure of information

We have discussed today the question of whether News would be willing to consent to the OFT disclosing to Ofcom information provided by News to the OFT. This is an issue that I have also discussed directly with at News this afternoon.

We note your position as set out in your email to me of this evening.

Having regard in particular to the fact that the Secretary of State has asked Ofcom to provide any assistance the OFT may require in considering the UIL, we will revert to you in due course in relation to any specific information that will need to be disclosed in order to facilitate the exercise of our own functions under section 93 EA 02 and/or Ofcom's functions under 106B EA 02.

As you have agreed today, we look forward to receiving from you confidential and non-confidential versions of your responses to the attached questions, the latter version of which may be freely disclosed by us to Ofcom.

We note that your email of this evening states that News *'has legitimate concerns about confidentiality of the information shared with you which [it] would only want to be circulated on a need-to-know basis and not discussed widely in intra-government communications'*. However, in relation to any specific information or category of information that is redacted from your responses, we would ask you to set out the reasons why you believe that disclosure of that information to Ofcom would be detrimental to News, having regard to the fact that Ofcom would itself be bound by restrictions on the use and further disclosure of such information.

Yours sincerely

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PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

QUESTIONS RE UNDERTAKINGS IN LIEU PROPOSAL (1)

1 FEBRUARY 2011

1. Introduction

- 1.1. The OFT sets out below questions it has in relation to the undertakings in lieu offered by News Corporation (News) in relation to its proposed acquisition of the remaining shares in BSkyB Group plc (Sky) (the UIL).
- 1.2. The questions below are based on the draft text UIL offer submitted to the Secretary of State, the memorandum explaining the UIL offer of Allen & Overy of 18 January 2011 and the presentation and commentary provided by News to the OFT at the meeting on 31 January 2011.
- 1.3. These questions are designed to assist the OFT in preparing its advice to the Secretary of State under section 93 Enterprise Act 2002 and in particular responding to the request in the Secretary of State's letter of 27 January 2011 to the Chief Executive of the OFT, that the OFT discover whether the UIL would be practically and financially viable.
- 1.4. The OFT requests a response to these questions by midday on 3 February 2011.
- 1.5. References to 'slides' are to page numbers of the slide deck supplied to the OFT at the meeting on 31 January.

2. Revenue and costs for NewCo

- 2.1. Over what period are the revenue streams to Sky News likely to build up? Slide 8 states 'NewCo will be profitable from day one' but a comment in the meeting suggested that the income may not be immediately in place?

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- 2.2. Please clarify how the cost and revenue projections that are detailed in the presentation (slides 9 to 14) have been estimated in more detail. Specifically, supported by evidence:
- 2.2.1. where comparative figures are available, please provide detailed actual cost and revenue figures for the historic performance of Sky News over the last five years;
 - 2.2.2. please provide details for the calculation of the carriage deal revenue;
 - 2.2.3. please provide details of any charges to Sky News that will be renegotiated over the 10-year period;
 - 2.2.4. please provide a detailed breakdown of last year's syndication and advertising revenue by component and compare this with previous years;
 - 2.2.5. where some revenue or charges would be newly created by the creation of NewCo, please advise the detailed basis for the calculation;
 - 2.2.6. please provide a more detailed breakdown of costs by category, comparing actual and projected costs;
 - 2.2.7. if some of the actual or projected costs relate to intra-company charges, please explain the nature of the charges and the methodology for determining their size. How will these charges be determined in the future?;
 - 2.2.8. where services are provided by Sky, have Sky agreed the bases for the projected costs? Who would be the appropriate contact in Sky to confirm these costs from their perspective?;
 - 2.2.9. what proportion of the revenue and costs of NewCo will be determined by News Corp through its ownership of Sky?

3. Risks for NewCo

- 3.1. Slide 14 identifies events that could lead to a reduction in profitability through reduced income or increased costs. Please quantify and explain the events identified. Please also clarify the period over which the 5 per cent inflation assumption is made.

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- 3.2. Please detail any other contracts or agreement renewals that come up for renewal over the period and account for 5 per cent or more of costs or revenue, with a description of the contract, the associated cost or revenue and an indication of the likelihood, in your view, of different financial outcomes.
- 3.3. From a financial perspective, what circumstances could risk a shortfall in income or an increase in costs of £1m or more over the projected period and how big is the risk? We note that five items are identified in your slide 14.

4. Financial structure of NewCo – balance sheet perspective

- 4.1. Please clarify the expected balance sheet structure for NewCo when it is floated on AIM.
- 4.2. In the meeting, an initial cash injection of £ [] was mentioned, but this did not seem to affect shareholders funds. Would the cash be provided as a loan or as an initial capital injection?
- 4.3. How would NewCo's balance sheet structure e.g. asset resources provide support for any loans NewCo chose to raise?

5. Long term viability of NewCo – the carriage agreement

- 5.1. Please provide evidence, by reference to equivalent examples, of why a 10 year carriage agreement will be of sufficient duration for NewCo to be said to be viable in the long term.
- 5.2. Please provide relevant evidence on the comparability of the overall value of the envisaged carriage fee agreement, relative to industry norms.
- 5.3. Please explain the assumptions for the pspm fees (see slide 11). How does this break down in expected real terms between basic, HD [] [] over the years projected? How does this compare with other third party channel deals you have entered?
- 5.4. Please provide details of the lengths of the carriage agreements that Sky currently has with other providers (see slide 18), including the three longest duration carriage agreements.
- 5.5. Please explain how NewCo's business model, viability and commercial position would be impacted by an expiry of the 10 year carriage

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agreement. In particular, whether the finite nature of the carriage agreement would:

- 5.5.1. affect NewCo's ability to attract and retain talent;
- 5.5.2. impact on NewCo's borrowing ability; and
- 5.5.3. otherwise impact on NewCo's ability to develop and expand its business.

In responding to the questions in this paragraph 5.5, please explain why NewCo's position under the UIL would be as strong as its current position within Sky.

- 5.6. What would be the impact for NewCo of Sky developing an alternative supplier of news programming during the carriage agreement?
- 5.7. Please specify precisely what would constitute a 'material breach' of the carriage agreement (paragraph 4.4(iii) of the UIL and slide 18).
- 5.8. How will any requirements for further supply of Sky News, e.g. to new media channels, be agreed? Are any additional requirements to be included in the contractual arrangements?

6. Brand licensing agreement

- 6.1. Please provide the brand licensing agreement with Sky Deutschland (see slide 19).
- 6.2. Please explain why the brand licensing agreement is structured in a 7 year + 7 year + 3 year format given the carriage agreement is for 10 years (see paragraph 4.5 of the UIL).
- 6.3. Please specify what would constitute a 'material breach' of the brand licensing agreement (paragraph 4.6(iii) of the UIL and page 19 of the presentation).
- 6.4. What specific terms in the brand licensing agreement would allow costs to increase and will any potential increase be capped?

7. Existing contracts relating to Sky News

- 7.1. Please provide a full list of third party consents that are required in relation to the transfer of Sky News to NewCo (see slide 17). Please

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also confirm the third party consents required for **each** of the contracts listed in paragraph 4.2 of the UIL.

- 7.2. Please confirm what is meant by 'the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering' in paragraph 4.2(iv) of the UIL.
- 7.3. Please provide the length and remaining duration of each of the contracts listed in paragraph 4.2 of the undertakings.
- 7.4. Please explain how the expiry of the existing capacity agreement with Arqiva in respect of the broadcast of Sky News on Freeview will impact upon the business of NewCo (para 4.2 (ii) UIL).

8. Operational agreements

- 8.1. Please provide details of the staff currently engaged principally in the Sky News business who will not transfer to NewCo (paragraph 4.1(ii) of the UIL).
- 8.2. Please comment on the absence of a non-solicitation obligation in relation to the staff transferred to Sky News.
- 8.3. Please explain which assets (including personnel, licences, contracts etc.) of the Sky News business will not be transferred to NewCo (paragraph 4.1(i) of the UIL).
- 8.4. Please comment on what is meant by 'Arrangements will also be made for NewCo to have the use of assets which are not used exclusively in the Sky News business on normal market terms if so requested by NewCo' (paragraph 4.1(i) of the UIL). Specifically:
 - 8.4.1. what assets are envisaged and how extensive are they?
 - 8.4.2. how are 'normal market terms' to be agreed?
 - 8.4.3. what is the position in the event that terms could not be agreed?
- 8.5. Please explain what would happen in the event that Sky and NewCo were unable to agree operational agreements as detailed on page 20 of the presentation and paragraph 5.1 of the UIL.

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8.6. Please explain how, in practical terms, NewCo will be independently viable given its physical proximity to Sky (in terms of the lease of the Sky News land and buildings).

9. Shareholding structure in NewCo

9.1. Please explain what you believe would be likely to happen to the shareholder profile of NewCo once it was admitted to trading.

9.1.1. Would the existing shareholders of Sky wish to retain shares in NewCo?

9.1.2. What could the impact be on NewCo of a large number of its shares changing hands soon after admission to trading?

9.2. Please provide the investment bank opinion confirming NewCo would be appropriate for admission to trading on AIM (referred to in slide 25).

9.3. Please explain what legal form the voting restriction in paragraph 3.1(i) of the UIL would take, other than the restriction in the UIL.

10. Governance of NewCo

10.1. Please explain what protection there would be against NewCo amending the protections detailed in page 21 of the presentation intended to be built into its Articles of Association (so as to provide superior corporate governance protections to those required by an AIM listing). (Note: NewCo would not be a signatory to the UIL).

10.2. Please comment on how the board of NewCo would be determined and appointed. Please confirm whether NC or Sky would have any representatives on the board.

11. Implementation of the UIL

11.1. Please explain why a 9 month period would be required in the event that the transaction is not recommended to effect the spin-off of Sky News into a publicly traded company (paragraph 2.1 of the UIL and slide 23). Please explain whether, and if so, why, this is the shortest time that is feasible.

11.2. Please explain why, in the event that the transaction is not recommended, no interim protection would be required for the period pending 'spin-off' of Sky News.

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12. News' future acquisition of shares in NewCo

12.1. Please explain why the fact that further acquisition of shares by News would be subject to the takeover code and could lead to a 'relevant merger situation' (slide 24) means that a non-reacquisition clause is not required to be included in the UIL. In providing your answer, please explain why the standard provision in OFT undertakings in lieu does not, in your view, apply in this situation.

13. Monitoring

13.1. Please explain your view that the structure of NewCo, and the obligations imposed on it, would reduce the monitoring burden on the OFT in terms of compliance with the UIL.

13.2. Please explain whether you believe there would be value in having a monitor appointed (potentially with an arbitrator function in relation to the obligation on News to agree further agreements).

14. Clear-cut standard for UIL

14.1. Please explain why you believe the UIL satisfy the 'clear cut' standard that the OFT applies in relation to UIL, in particular with regard to:

14.1.1. the dependence of NewCo on Sky for its principal revenue stream, having regard to the finite duration of the carriage agreement and the brand licensing agreement;

14.1.2. the fact that the brand licensing agreement is terminable in the event of a change of control of NewCo; and

14.1.3. the nature and extent of the ongoing links between Sky and NewCo.

15. Other queries on the UIL

15.1. Please explain why post-closing, Sky should be treated as an 'Affiliate' of News for the purposes of paragraph 6.3 of the UIL.

OFT

1 February 2011

EX.A17

[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:47
To: OLDFIELD PAUL
Subject: Fwd: Response to OFT questionnaire
Attachments: CO-#13383197-v6-Response_to_OFT_request_1_February.pdf; ATT00001..htm; CO-#13387996-v1-Annex_2
_-_Trade_Mark_Licence_Agreement_-_Sky_Sky_Deutschland.PDF; ATT00002..htm; CO-#13398062-v1-Annex_3
_-_Summary_of_licence_provisions_on_transfer_term_and_duration.PDF; ATT00003..htm; CO-#13398035-v1-Annex_4_-_AIM_Opinion_Letter.PDF; ATT00004..htm; CO-#13387963-v1-Annex_5_1_-_Sky_Voting_Agreement_dated_21_September_2005.PDF; ATT00005..htm; CO-#13388002-v1-Annex_5_2_-_Sky_Memorandum_dated_19_October_2005.PDF; ATT00006..htm; CO-#13391685-v2-Annex_1_-_NewCo_Business_Plan.pdf; ATT00007..htm

Begin forwarded message:

From: "Michel, Frederic" [Redacted]
Date: 4 February 2011 17:08:26 GMT
To: "adamsmith" [Redacted]
Subject: FW: Response to OFT questionnaire

Please find attached the response to the OFT questionnaire, which has been submitted this evening.

Andrea

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

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

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News Corporation

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

UNDERTAKINGS IN LIEU PROPOSAL (1)

RESPONSE TO OFT QUESTIONS OF 1 FEBRUARY 2011

1. Introduction

This response is submitted on behalf of News Corporation (**News**) in response to the questions posed by the OFT on the evening of 1 February 2011 and supplements: (i) the undertakings in lieu (**UIL**) proposal made by News to the Secretary of State for Culture, Olympics, Media and Sport (**Secretary of State**) on 18 January 2011 and documented in the draft UIL presented on 24 January 2011 and (ii) the presentation made to the OFT in the meeting of 31 January 2011.

We understand that the OFT is tasked with advising the Secretary of State on whether the UIL proposed by News, in the context of News' proposal to acquire the remaining shares in British Sky Broadcasting Group plc (**Sky**) which it does not already own (the **Transaction**), would be practically and financially viable.

The OFT's role is to advise the Secretary of State in order to inform his decision as to whether or not to exercise his discretion under paragraph 3 of Schedule 2 of the Enterprise Act (Protection of Legitimate Interests) Order 2003 (the **Order**) to accept undertakings. The relevant provision reads:

"The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as [he] considers appropriate undertakings to take such action as [he] considers appropriate."

In this case, the relevant public interest consideration (**PIC**) is that set out in section 58 (2C)(a) of the Enterprise Act 2002: *"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"*.

The context of assessment of the practical and financial viability of the UIL proposed by News is one where a potential adverse effect to the public interest taking account of the PIC has been raised but where there is no concern as to competition being maintained on any relevant market, the Transaction having been unconditionally cleared by the European Commission.

The crucial factor in the UIL proposal is the maintenance of Sky News as a distinct broadcast news voice, contributing to the sufficiency of plurality of news provision in the UK. Maintaining the status quo as regards the continuation of Sky News as a distinct media enterprise with an independent news voice clearly addresses the PIC which is potentially of concern in this case.

News is offering a remedy which is clear-cut, structural, and maintains the existing degree of independence of Sky News.

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The Sky News enterprise will be transferred to a new company (**NewCo**), which will pursue its core business of news provision. NewCo will be established as a separate publicly traded legal entity with corporate governance arrangements reflecting those of Sky. As explained below, this provides a clear-cut and structural remedy which can be implemented unilaterally by News based on the UIL. In fact the UIL is akin to an upfront remedy which does not require that a competition authority subsequently approve a suitable purchaser. It is therefore more clear-cut than a number of other structural remedies that are commonly accepted by regulatory authorities.

Spin-offs which are comparable to the one proposed, commonly take place in the context of business restructurings. Relevant examples in similar sectors include Time Warner's spin-off of AOL and Time Warner Cable, Liberty Media's spin-off of DirectTV, Cablevision Systems Corp's proposals to spin off Rainbow Media and Sara Lee's proposed spin-off. Cable and Wireless also split into two separate companies last year.

Indeed we would note that Sky itself was, prior to its listing in 1994, a wholly owned subsidiary of News which founded Sky (and which established its Sky News division). The corporate governance provisions that News is proposing for NewCo replicate Sky's governance structure as a company listed on the London Stock Exchange with a premium listing. The voting arrangements which restrict News' ability to vote its shares to 37.19% of Sky's voting share capital have been in place since September 2005. Neither News nor Sky are new to establishing the proposed corporate structure for NewCo that is simply designed to replicate the existing degree of independence of Sky.

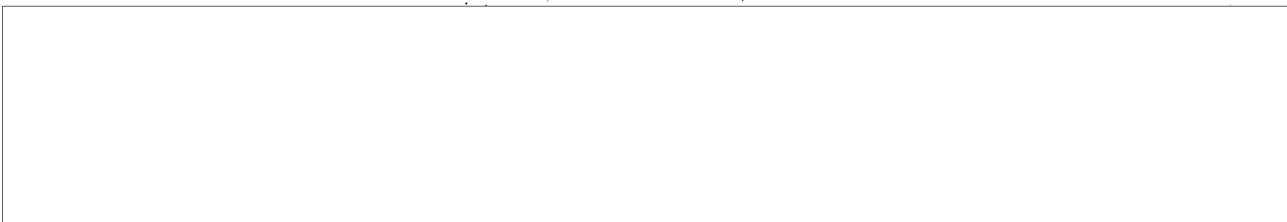
By preserving the pre-Transaction position in relation to news provision, the proposed structure would unequivocally preserve a sufficient degree of media plurality in the UK.

The remainder of this response deals with the specific questions raised by the OFT.

2. Revenue and costs for NewCo

2.1 Over what period are the revenue streams to Sky News likely to build up? Slide 8 states 'NewCo will be profitable from day one' but a comment in the meeting suggested that the income may not be immediately in place?

We attach as **Annex 1** a presentation providing further details of NewCo's expected revenue and costs. **References to slides in the responses to the OFT question refer to the slide deck attached at Annex 1.**



2.2 Please clarify how the cost and revenue projections that are detailed in the presentation (slides 9 to 14) have been estimated in more detail. Specifically, supported by evidence:

2.2.1 where comparative figures are available, please provide detailed actual cost and revenue figures for the historic performance of Sky News over the last five years;

Please refer to slides 4 – 17, which provide detailed actual cost and revenue figures for each cost and revenue category. The slides provide three years prior to projections: for FY2011 (latest forecast), FY2010 (actual) and FY2009 (actual).

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Note that Sky News has not historically received a carriage fee for DTH distribution.

2.2.2 please provide details for the calculation of the carriage deal revenue;

Please refer to slides 5 – 7.

2.2.3 please provide details of any charges to Sky News that will be renegotiated over the 10- year period;

All charges from Sky to NewCo will be governed by contracts, with no scope to renegotiate charges except following the term or with the consent of both parties.

It is currently intended that only the following agreements will have a duration of less than ten years and will require renegotiation:

- the ad sales agreement;
- the broadcast operations and creative services agreement.

There are several UK providers of each of these services, and the shorter duration will enable NewCo to tender for the renewal of this contract should it wish to do so.

2.2.4 please provide a detailed breakdown of last year's syndication and advertising revenue by component and compare this with previous years;

Please refer to slides 8 – 10.

2.2.5 where some revenue or charges would be newly created by the creation of NewCo, please advise the detailed basis for the calculation;

Please refer to slides 5 – 7 (newly created subscription revenues from the Sky carriage agreement), 8 – 9 (commission and sales margin associated with Sky acting as a sales house for Sky Advertising and Sponsorship), 13 – 14 (incremental costs to NewCo of being a public company, and margin on supply of services from Sky), 15 – 16 (margin on supply of technical and broadcast services from Sky), and 17 (brand license, and incremental marketing costs associated with being an independent news channel).

2.2.6 please provide a more detailed breakdown of costs by category, comparing actual and projected costs;

Please refer to slides 11 – 17.

2.2.7 if some of the actual or projected costs relate to intra-company charges, please explain the nature of the charges and the methodology for determining their size. How will these charges be determined in the future?;

The actual and projected costs where an intra-company charge or allocation has been used are:

– Property and Facilities costs,

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2.2.8 where services are provided by Sky, have Sky agreed the bases for the projected costs? Who would be the appropriate contact in Sky to confirm these costs from their perspective?;

The basis for projected costs have been discussed with Sky. In general, supply contracts will be fixed for FY2011 on a cost plus basis [redacted] with the cost fixed and thereafter subject only to indexation for CPI. Sky will therefore bear the risk of increased costs, and reap the reward of cost savings, and NewCo will be protected from these possible fluctuations.

Sky can be contacted via its General Counsel, [redacted]

2.2.9 what proportion of the revenue and costs of NewCo will be determined by News Corp through its ownership of Sky?

News will not determine the costs or revenues of NewCo; this will be a matter for the Sky board. News has indicated to the OFT the basis on which it would propose to offer a 10 year carriage agreement to NewCo.

The basis for determining costs to be charged under ongoing services agreements between News/Sky and NewCo have been indicated in response to questions 2.2.7 and 2.2.8 above.

3. Risks for NewCo

3.1 Slide 14 identifies events that could lead to a reduction in profitability through reduced income or increased costs. Please quantify and explain the events identified. Please also clarify the period over which the 5 per cent inflation assumption is made.

Please refer to slides 21 – 23

3.2 Please detail any other contracts or agreement renewals that come up for renewal over the period and account for 5 per cent or more of costs or revenue, with a description of the contract, the associated cost or revenue and an indication of the likelihood, in your view, of different financial outcomes.

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3.3 From a financial perspective, what circumstances could risk a shortfall in income or an increase in costs of £1m or more over the projected period and how big is the risk? We note that five items are identified in your slide 14.

Please refer to slides 21 – 23, which set out what News regards as being five key risks. Note that the impact of these is substantially higher than £1m per annum.

4. Financial structure of NewCo – balance sheet perspective

4.1 Please clarify the expected balance sheet structure for NewCo when it is floated on AIM.

Please refer to slide 19.

4.2 In the meeting, an initial cash injection of £[redacted] was mentioned, but this did not seem to affect shareholders funds. Would the cash be provided as a loan or as an initial capital injection?

This would be provided as a capital injection as part of the business transfer before spin-off.

4.3 How would NewCo's balance sheet structure e.g. asset resources provide support for any loans NewCo chose to raise?

Should NewCo's directors take the decision to raise debt, they may choose to secure this against specific balance sheet assets, or against the company as a whole and hence its very stable and predictable revenue stream. It is likely that the latter would support higher levels of debt, should it be required. Please note that the business plan does not require any debt, and projects very strong levels of cash generation.

5. Long term viability of NewCo – the carriage agreement

5.1 Please provide evidence, by reference to equivalent examples, of why a 10 year carriage agreement will be of sufficient duration for NewCo to be said to be viable in the long term.

For any information/know-how based business, a 10 year agreement would represent an unusually long term agreement (please also see response 5.4 below). An agreement of such duration offers a significant long term revenue guarantee.

Most broadcasters operate in circumstances where their main revenue streams are secured for periods significantly shorter than 10 years. Even the BBC, which is mainly funded through the licence fee, continues to operate in circumstances where its funding is agreed by the Government for a shorter period than this (six years).

On the basis of the carriage agreement, a business plan that ensures viability for such a long period of time is most certainly, long-term and goes beyond what is standard practice.

5.2 Please provide relevant evidence on the comparability of the overall value of the envisaged carriage fee agreement, relative to industry norms.

There is no relevant comparator in the UK as the only other 24 hour news channel is BBC News which is part of the BBC and mainly funded by the licence fee.

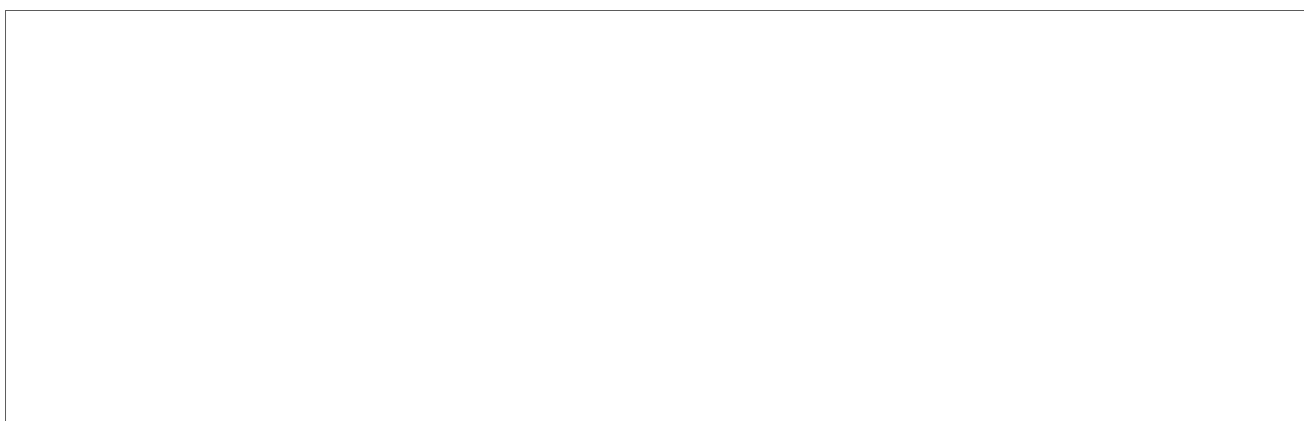
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Sky has always taken the view that the provision of Sky News (a high quality, Sky-branded news service) is an important part of its offering. It is on that basis that Sky has invested in Sky News over the last two decades and continues to fund the approximately £ [] net cost after advertising and syndication revenues of providing the channel.

In these circumstances, the terms offered by Sky to Sky News post spin-off will reflect the continued importance of Sky News as part of Sky's offering to its subscribers.

5.3 Please explain the assumptions for the pspm fees (see slide 11). How does this break down in expected real terms between basic, HD [] over the years projected? How does this compare with other third party channel deals you have entered?

Please see slide 5 in Annex 1.



5.4 Please provide details of the lengths of the carriage agreements that Sky currently has with other providers (see slide 18), including the three longest duration carriage agreements.

News believes that, typically, carriage agreements would last between 3 and 5 years. News is unable to provide specific Sky carriage agreements.

5.5 Please explain how NewCo's business model, viability and commercial position would be impacted by an expiry of the 10 year carriage agreement. In particular, whether the finite nature of the carriage agreement would:

5.5.1 affect NewCo's ability to attract and retain talent;

News believes that NewCo, as an independent company with long term committed revenues, would be an attractive draw for talent in this sector. NewCo will enjoy greater stability/predictability in key elements of its revenue stream and over a longer time period than any other TV news provider, and will have commercial and editorial freedom to develop its business and offerings.

Indeed, it might be considered that the position of NewCo as an employer will be more stable under the proposed structure than it is at present as a division of Sky, which does not generate profits as a stand alone business and which could be closed or scaled back, if this was decided by the board of Sky.

5.5.2 impact on NewCo's borrowing ability; and

News does not foresee any need for NewCo to borrow to finance its activities. The business plan for NewCo predicts cash generation of £ [] over the next decade.

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If NewCo, as an independent profit maximising entity, wished to borrow, for example to expand its offerings, it should be possible for it to borrow against its revenue streams (e.g. new carriage agreement, advertising).

5.5.3 otherwise impact on NewCo's ability to develop and expand its business.

As indicated in the response to question 5.5.2 above, NewCo should be in a comparatively strong position to invest and expand its activities if it wished to do so. In fact its strong balance sheet position would make it one of the most resilient core provider of news.

News would emphasise however that the key question to be addressed by the UIL is the maintenance of Sky News as a distinct and viable broadcast news voice contributing to media plurality, NOT its ability to develop and expand beyond its core news provision business.

In responding to the questions in this paragraph 5.5, please explain why NewCo's position under the UIL would be as strong as its current position within Sky.

See above.

5.6 What would be the impact for NewCo of Sky developing an alternative supplier of news programming during the carriage agreement?

Neither News nor Sky has any current plans to develop an alternative supplier of news. News anticipates that the revenue stream committed to Sky News under the carriage agreement will ensure that Sky News continues to provide to Sky a quality Sky-branded news service which Sky will be able to offer to its subscribers and will replace Sky's direct investment in news production. Given the level of investment that Sky (under News' full ownership) will continue to commit to Sky News under the carriage agreement, Sky would not have an incentive to provide a service in competition with Sky News.

In any event, if Sky or News found it in their interest to establish an additional news service (something which they have been in a position to do irrespective of the Transaction) this would add a voice to the media landscape thereby contributing to overall plurality.

5.7 Please specify precisely what would constitute a 'material breach' of the carriage agreement (paragraph 4.4(iii) of the UIL and slide 18).

A typical carriage agreement between Sky and a third party would contain provisions enabling Sky to terminate the agreement:

- in the event of a material breach of a warranty or other obligation under the agreement which is not remedied (if capable of remedy) within 30 (thirty) days of receipt of a written notice;
- in the event that the other party loses its licenses, becomes insolvent, enters administration, ceases or threatens to cease to carry on business or is unable to pay its debts.

The concept of material breach would, in particular, typically be linked to commitments relating to the nature and quality of the channel to be provided to Sky. These commitments would cover issues such as:

- (i) The description of the channel;
- (ii) The branding of the channel;

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- (iii) Transmission hours;
- (iv) Programming commitments, including minimum expenditure in news content;
- (v) Quality assurance, including commitments by the channel provider to retain the overall quality and appeal of the channel.

These commitments will not cover editorial content.

5.8 How will any requirements for further supply of Sky News, e.g. to new media channels, be agreed? Are any additional requirements to be included in the contractual arrangements?

The initial carriage agreement between Sky and NewCo will cover the supply by Sky to its subscribers by any transmission means and to any transmission device. Any other form of distribution by Sky would require a further negotiation between Sky and NewCo.

NewCo will be free to licence its content to new media platforms if it chooses to do so

NewCo will also grant Sky an exclusive wholesale right to distribute tablet apps (including apps for iPad and Galaxy tablets and smartphones) in the UK. NewCo will retain the right to distribute tablet apps direct to consumers and to licence distributors outside of the UK.

6. Brand licensing agreement

6.1 Please provide the brand licensing agreement with Sky Deutschland (see slide 19).

Please find attached at Annex 2 a copy of the requested agreement.

The agreement with NewCo in relation to Sky News is to be based on this agreement.

NewCo will receive a licence of the Sky brand for use in a manner consistent with the pre-Transaction activities of Sky News.

6.2 Please explain why the brand licensing agreement is structured in a 7 year + 7 year + 3 year format given the carriage agreement is for 10 years (see paragraph 4.5 of the UIL).

In relation to the brand licence, News has chosen to replicate the 7 year + 7 year + 3 year structure as this was arrived at following arms' length negotiations between Sky and Sky Deutschland (a listed German associate in which News has a 49% equity interest). The agreement was approved by Sky's Audit Committee comprising independent non-executive directors of Sky, as well as the supervisory board of Sky Deutschland which has a majority of independent directors.

News was therefore confident that this agreement would provide NewCo with a sufficient degree of certainty over its continued ability to use its current brand identity, further enhancing the long term viability of the NewCo business.

6.3 Please specify what would constitute a 'material breach' of the brand licensing agreement (paragraph 4.6(iii) of the UIL and page 19 of the presentation).

News expects that any brand licence agreement would contain clause similar to clause 6.1 of the Sky Deutschland Trade Mark licensing agreement contained in Annex 2 above.

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6.4 What specific terms in the brand licensing agreement would allow costs to increase and will any potential increase be capped?

The brand licensing agreement will be offered in exchange for a [] the revenues of NewCo. There will be no cap to the fee but the direct link between the fee and NewCo's financial performance de-risks NewCo's business plan.

7. Existing contracts relating to Sky News

7.1 Please provide a full list of third party consents that are required in relation to the transfer of Sky News to NewCo (see slide 17). Please also confirm the third party consents required for each of the contracts listed in paragraph 4.2 of the UIL.

Given that this section 7 is headed "Existing contracts relating to Sky News", News focuses here on the position under contracts between Sky and third parties. Further information on the transfer of staff, assets and licences to NewCo is provided in response to question 8.3 below.

A table showing the legal position on third party consents required under agreements between Sky and third parties is set out at Annex 3. This is not an exhaustive list at this stage.

(i) Carriage agreements with third parties

The carriage agreements between Sky and third parties for the supply of news content also cover other Sky channels/services. Of these agreements, only the agreement with Virgin Media generates material revenues.

The transfer of the benefit and burden of the relevant agreements from Sky to NewCo, will essentially require that either: (i) subject to any relevant third party consents, Sky enters into a back to back agreement with NewCo for the supply of the Sky News service; or (ii) NewCo enters into a new agreement with the relevant third party covering only the Sky News service. It is likely that some of these agreements will require third party consents, while others will not. We have summarised the position as currently understood in Annex 3.

(ii) DTT capacity

(iii) Channel 5 and IRN contracts

(iv) Contracts for the supply of content to Sky News/fixed newsgathering

The majority of the contracts associated with the provision of fixed newsgathering services to Sky News cover Sky channels in addition to Sky News. Transfer of these contracts would also require the consent of the relevant third parties.

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The most likely solution is that these contracts would be split with Sky and NewCo entering into new agreements with the relevant news services. News does not see any reason why this should not be achievable.

7.2 Please confirm what is meant by 'the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering' in paragraph 4.2(iv) of the UIL.

The contracts in question are for the supply of content/services to Sky News by organisations such as Reuters, the Press Association and Getty.

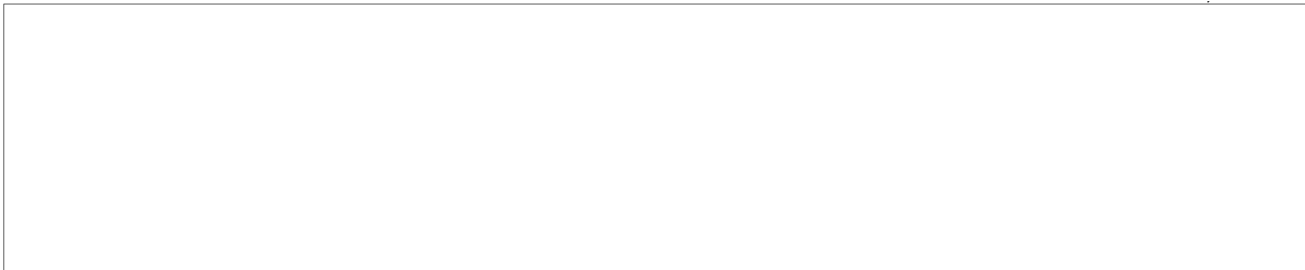
7.3 Please provide the length and remaining duration of each of the contracts listed in paragraph 4.2 of the undertakings.

See Annex 3.

7.4 Please explain how the expiry of the existing capacity agreement with Arqiva in respect of the broadcast of Sky News on Freeview will impact upon the business of NewCo (para 4.2 (ii) UIL).

As explained briefly at paragraph 7.1 above, the Freeview slot currently allocated to Sky News is allocated to Sky by Arqiva under an agreement which will terminate in [redacted]. At that point Sky will need to negotiate a new agreement with Arqiva for access to DTT capacity and will pay the commercial going rate for DTT capacity. Sky News will be in a similar position to Sky and will need to negotiate a new agreement with Arqiva on commercial terms.

Sky's internal cost projections as to the likely cost of this capacity in [redacted] have been factored into the business plan of Sky News.



8. Operational agreements

8.1 Please provide details of the staff currently engaged principally in the Sky News business who will not transfer to NewCo (paragraph 4.1(ii) of the UIL).

TUPE will operate to transfer staff employed in the Sky News business to NewCo in any event.

News envisages that the staff principally engaged in the Sky News business will be transferred to NewCo by operation of law.

8.2 Please comment on the absence of a non-solicitation obligation in relation to the staff transferred to Sky News.

Given that neither Sky nor News will be a direct competitor of the spun-off Sky News business and given that Sky will continue to have a vested interest in the continued provision of quality output from Sky News, News does not see that a non-solicitation obligation makes sense in this context.

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8.3 Please explain which assets (including personnel, licences, contracts etc.) of the Sky News business will not be transferred to NewCo (paragraph 4.1(i) of the UIL).

(i) Personnel

As explained in 8.1 above, the personnel of Sky News will transfer to NewCo by the operation of law.

News has also committed specifically to procuring that key editorial staff, including the positions of head of Sky News, the Executive Editor of Sky News and head of newsgathering at Sky News will be transferred to NewCo.

(ii) Tangible assets

It is intended that all tangible assets located in the existing Sky News building and other facilities used by Sky News for newsgathering would transfer to NewCo.

The two main exceptions to this principle are:

- The land and buildings at Osterley currently used by Sky News which will be offered to Sky News on a long term lease.
- Shared technical facilities such as data networks, transponder capacity, transmission and uplink and play out facilities. Sky will provide access to the relevant facilities under a service contract to the extent required by NewCo.

(iii) Licences

Sky News operates under two satellite and cable broadcast licences, TLCS License 402 (SD) and TLCS Licence 264 (HD). News anticipates that these licences will be transferred to NewCo (subject to Ofcom consent).

Ofcom's policy is to consent to a transfer/the granting of a licence where it is satisfied that the proposed transferee can comply with the conditions of the licence (e.g. the payment of licence fees and compliance with programme and advertising standards). News anticipates such consents will be secured promptly.

NewCo will also need to apply for new Digital Television Programme Service licence for DTT transmission (as Sky's existing licence also covers Sky 3, Sky3+1 and Challenge and so cannot be directly transferred). News anticipates that relevant licences will be secured promptly.

There may also be other statutory licences/other authorisations, for example in relation to the use of spectrum for wireless equipment in and out of the studio, as well as for the transmission of signals via satellite from the various outside broadcast trucks. News anticipates that the required new licences or authorisations will be secured promptly.

8.4 Please comment on what is meant by 'Arrangements will also be made for NewCo to have the use of assets which are not used exclusively in the Sky News business on normal market terms if so requested by NewCo' (paragraph 4.1(i) of the UIL). Specifically:

8.4.1 what assets are envisaged and how extensive are they?

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This was intended to refer to the shared technical facilities such as data networks, transponder capacity, transmission, and uplink and play out facilities referred to in the response to question 8.3 plus other facilities and services to which NewCo might require access while continuing to use the Osterley site.

Sky will offer to NewCo:

- A site support services agreement under which Sky will provide, among other things: canteen/food services, computer/IT services, finance systems, phone services, heating, lighting, security and cleaning, if required by NewCo.
- A broadcast and technical services agreement under which Sky will provide, among other things: services in respect of certain facilities such as the Astra transponder, uplink and playout services, transponder capacity for international feeds, land-lines for feeds in to Sky, satellite capacity for feeds in to Sky, card agreements allowing third parties taking content from Sky News to access Sky's signal.
- Other IP based support services.

To the extent needed by NewCo, Sky will also continue to make available additional services which are in any event available on the open market, including:

- broadcast operations (technical staff, e.g. camera operators)
- creative services (design specialists).

8.4.2 how are 'normal market terms' to be agreed?

News' current intention is that the price paid by NewCo would represent the cost to Sky of providing the services plus a margin.

This reflects normal commercial practice in setting up service arrangements between related companies.

8.4.3 what is the position in the event that terms could not be agreed?

These agreements would be in place at the time of the spin-off of Sky News.

NewCo would in any event be free to source services from third parties once its initial service agreements with Sky have expired if it chose to do so or subject to early termination provisions to be agreed in the relevant contracts. This will also give NewCo the ability to market test the terms being offered by Sky.

Sky has successfully negotiated similar broadcast and technical services agreements with a wide variety of third parties who provide content to Sky.

8.5 Please explain what would happen in the event that Sky and NewCo were unable to agree operational agreements as detailed on page 20 of the presentation and paragraph 5.1 of the UIL.

NewCo would be free to source services from third parties once its initial service agreements with Sky have expired if it chose to do so or subject to early termination provisions to be agreed in the relevant contracts. This will also give NewCo the ability to market test the terms being offered by Sky.

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8.6 Please explain how, in practical terms, NewCo will be independently viable given its physical proximity to Sky (in terms of the lease of the Sky News land and buildings).

The existing Sky News site, while forming part of Sky's broader Osterley site, is physically separated from Sky's other buildings and facilities.

9. Shareholding structure in NewCo

9.1 Please explain what you believe would be likely to happen to the shareholder profile of NewCo once it was admitted to trading.

9.1.1 Would the existing shareholders of Sky wish to retain shares in NewCo?

As with any demerger News would expect some movement in the share register with some holders seeking to dispose of their holdings and others wishing to increase their exposure.

For example, UK index tracking funds are very likely to sell their positions as AIM traded stock is not eligible for the FTSE All Share. Private/retail investors and institutions with a dedicated small cap focus are likely to increase their positions.

Attached is a table showing the leading investors in the FTSE and AIM:

Top 20 Holders in AIM			Top 20 Holders in the FTSE 100			
	AIM	FTSE100		FTSE100	AIM	
1	Market Makers	2.90	0.90	Legal & General Investment Management	3.63	0.58
2	BlackRock Investment Management	2.42	2.93	BlackRock Investment Management	2.93	2.42
3	Individuals	2.26	0.08	BlackRock Advisors	2.84	0.06
4	INVESCO Asset Management Limited	1.33	1.11	UK Financial Investments, Ltd.	2.06	0.00
5	M & G Investment Management Ltd.	1.16	1.42	M & G Investment Management Ltd.	1.42	1.16
6	Fidelity	1.15	1.08	Norges Bank Investment Management (NBIM)	1.26	0.11
7	Standard Life Investments Ltd.	1.10	1.10	Scottish Widows Investment Partnership Ltd.	1.20	0.40
8	JPMorgan Asset Management	1.05	0.34	Capital Research Global Investors	1.12	0.56
9	Schroder Investment Management	0.88	0.54	INVESCO Asset Management Limited	1.11	1.33
10	F&C Asset Management plc	0.84	0.41	Standard Life Investments Ltd.	1.10	1.10
11	AXA Framlington Investment Management Ltd.	0.80	0.13	Fidelity	1.08	1.15
12	Artemis Investment Management Ltd.	0.79	0.03	State Street Global Advisors	1.05	0.01
13	Gartmore Investment Management Limited	0.79	0.09	Market Makers	0.90	2.90
14	Aviva Investors Global Services Limited	0.75	0.66	AXA Investment Managers	0.83	0.07
15	AEGON Asset Management UK p.l.c.	0.59	0.41	Aviva Investors Global Services Limited	0.66	0.75
16	Legal & General Investment Management	0.58	3.63	Capital World Investors	0.66	0.15
17	Qatar Investment Authority	0.56	0.24	UBS Global Asset Management	0.64	0.31
18	Capital Research Global Investors	0.56	1.12	SAFE Investment Company Limited	0.61	0.00
19	Henderson Global Investors	0.56	0.17	Schroder Investment Management	0.54	0.88
20	Baillie Gifford & Co.	0.50	0.37	Threadneedle Asset Management Ltd.	0.53	0.12
		21.57	16.75		26.16	14.0

(Source: Citywatch)

9.1.2 What could the impact be on NewCo of a large number of its shares changing hands soon after admission to trading?

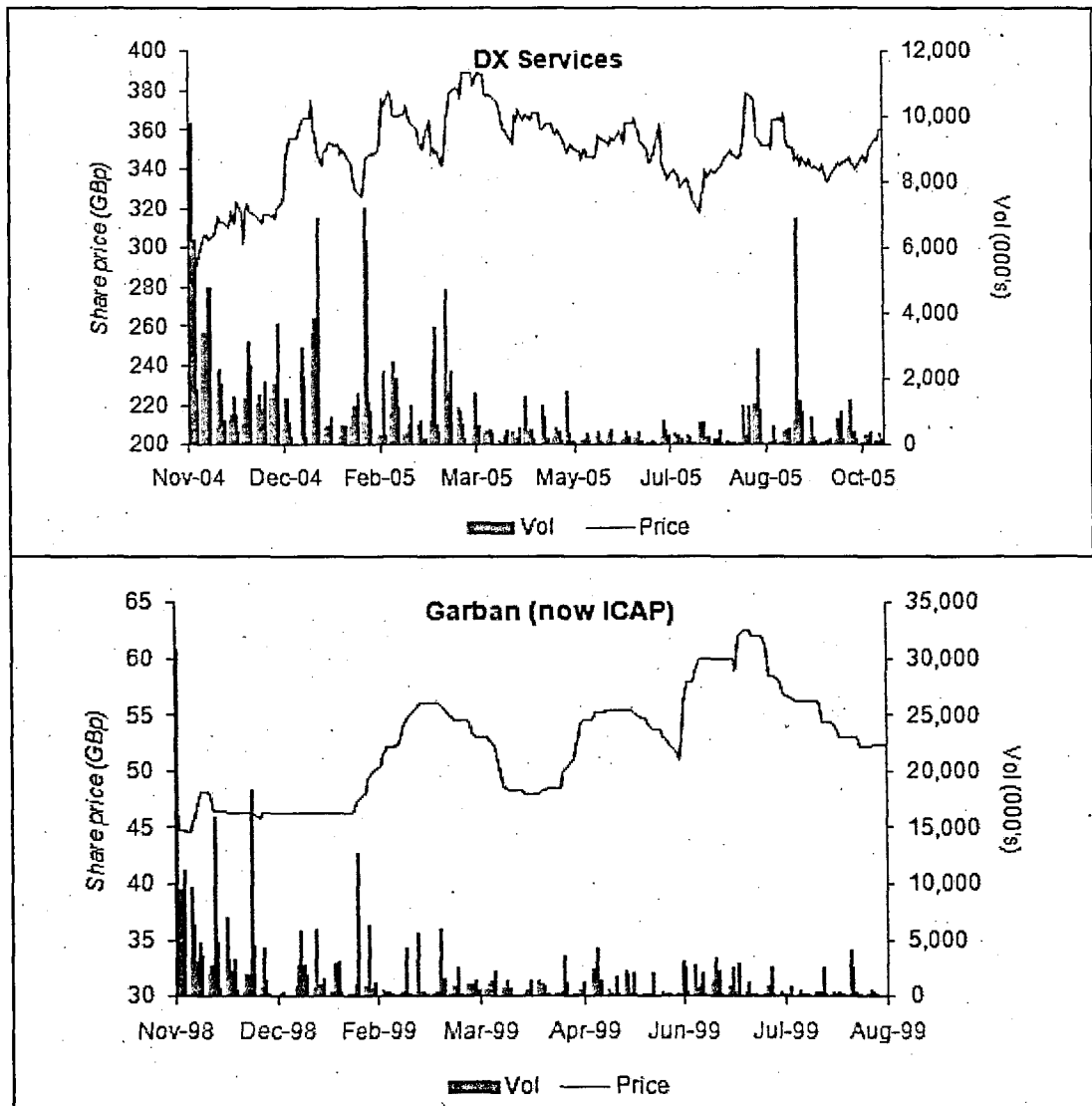
It might well be the case that a reasonably significant proportion of NewCo shares would change hands once such shares are publicly traded. Regardless of the identity of its shareholders, this would have no impact on the continued operation or viability of NewCo as a media enterprise.

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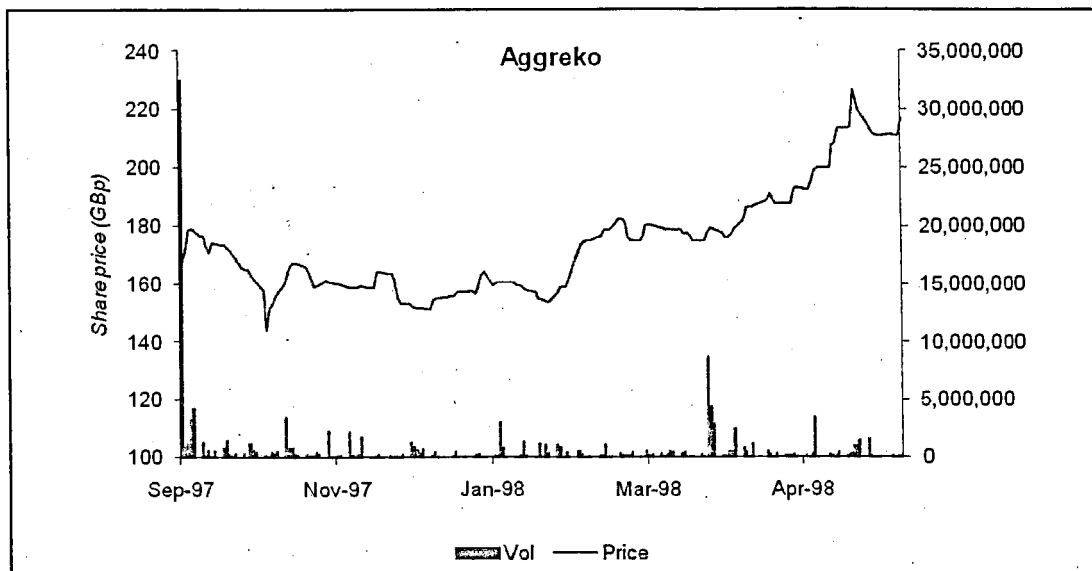
So long as NewCo continues to operate as a business and to produce a broadcast news channel which contributes to media plurality, News does not consider that this will have any impact on the issues to be considered by the Secretary of State when addressing the PIC.

News is not aware of any evidence that a large turnover of shares will have any effect on a newly listed company. It is common for elevated levels of volume immediately after an IPO, demerger or other corporate action before reverting to 'normal' levels of activity.

Below are some charts which show this trend in precedent demergers of similar size in the UK market.



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- 9.2 Please provide the investment bank opinion confirming NewCo would be appropriate for admission to trading on AIM (referred to in slide 25).

See Annex 4.

- 9.3 Please explain what legal form the voting restriction in paragraph 3.1(i) of the UIL would take, other than the restriction in the UIL.

We attach in Annex 5 copies of the voting agreement which News has entered into with Sky restricting its ability to vote its shares in general meetings of Sky to 37.19% of Sky's share capital except in certain defined circumstances. It is envisaged that News would enter into a similar agreement with NewCo to take effect on the admission to trading of NewCo's shares on AIM.

10. Governance of NewCo

- 10.1 Please explain what protection there would be against NewCo amending the protections detailed in page 21 of the presentation intended to be built into its Articles of Association (so as to provide superior corporate governance protections to those required by an AIM listing). (Note: NewCo would not be a signatory to the UIL).

Any amendments to NewCo's Articles of Association would require the approval of NewCo's ordinary shareholders in general meeting by the passing of a special resolution (which would require 75% of those shareholders who attend and vote at the meeting to vote in favour of the change).

Post-Transaction News will be able to exercise only 37.19% of the voting rights attaching to NewCo ordinary shares.

- 10.2 Please comment on how the board of NewCo would be determined and appointed. Please confirm whether NC or Sky would have any representatives on the board.

As set out in the UIL, the corporate governance structure of NewCo will be established to substantially replicate the effects of the existing corporate governance structure of Sky, in particular a majority of the board of NewCo will comprise non-executive directors determined by the board to be independent.

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As is presently the case with Sky, a minority of the board of NewCo will be News representatives, consistent with News' position as a 39.14% shareholder and News will have no entrenched right to board representation (again, as is presently the case with Sky).

Individual directors are appointed by the NewCo board or by shareholders at general meetings. The Corporate Governance and Nominations Committee makes recommendations to the full board which will in turn then appoint any relevant director having regard to those recommendations (in line with Sky's current practice). Any director appointed by the Board is required to stand for re-election by shareholders at the following Annual General Meeting.

11. Implementation of the UIL

11.1 Please explain why a 9 month period would be required in the event that the transaction is not recommended to effect the spin-off of Sky News into a publicly traded company (paragraph 2.1 of the UIL and slide 23). Please explain whether, and if so, why, this is the shortest time that is feasible.

Timing has been designed to ensure a reasonable period for News to achieve the steps which are required to be carried out to comply with the undertakings.

In particular, if the offer is not recommended, News may not be able to obtain board control of Sky immediately after it acquires a majority of the share capital of Sky. Once News acquires such a majority, News would follow the Companies Act 2006 procedure of requisitioning a general meeting of Sky to remove these directors and appoint others in their place. This could take up to two months to implement.

At that point News would proceed with the transfer of assets to NewCo and the entry into the relevant agreements as well as preparation of the necessary documentation for NewCo's listing on AIM. It is estimated that this could take between two and three months to implement.

Following this a general meeting of Sky would be convened to approve the dividend in specie to Sky's shareholders enabling the listing on AIM to proceed.

News will effect the spin off as soon as reasonably practicable but News believes that in these circumstances it would be reasonable for the UIL to allow a period of nine months to effect these arrangements.

11.2 Please explain why, in the event that the transaction is not recommended, no interim protection would be required for the period pending 'spin-off' of Sky News.

As noted above, the UIL are designed to remedy, mitigate or prevent a potential concern in relation to media plurality, not in relation to competition. In media plurality cases (unlike cases that have competition focus) there is no risk that a short period of single ownership that is clearly a step towards the maintenance of the status quo may irremediably damage plurality (as may but not necessarily be the case for competition cases). Continued ownership/control of Sky News for an interim period of less than a year, pending spin-off of that business, would not eliminate or weaken Sky News as a distinct broadcast voice contributing to media plurality in the UK.

On that basis there is no need to provide for interim protection. Ofcom acknowledged that there is, in any event, a culture of independence within broadcast news, this internal plurality will provide a more than sufficient safeguard of the ongoing independence on Sky News in the interim period.

Moreover, News will not be competing with NewCo post spin-off so there can be no concern that it would attempt to use an interim period to inflict long-term damage upon the Sky News business.

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Indeed, as a key supplier of news services to the Sky platform post spin-off, News has every commercial incentive to ensure that the Sky News business is protected and maintained throughout any possible interim period.

12. News' future acquisition of shares in NewCo

12.1 Please explain why the fact that further acquisition of shares by News would be subject to the takeover code and could lead to a 'relevant merger situation' (slide 24) means that a non-reacquisition clause is not required to be included in the UIL. In providing your answer, please explain why the standard provision in OFT undertakings in lieu does not, in your view, apply in this situation.

As a UK plc, NewCo will be subject to the Takeover Code. News' level of shareholding in NewCo will be such that any further acquisition of shares by News in NewCo will trigger a mandatory bid under the Takeover Code.

As a consequence, any further acquisition of shares would lead to a "relevant merger situation" with consequent statutory regulatory approvals under the Enterprise Act.

The proposed UIL seeks to preserve the status quo including all the regulatory protections provided for by the Enterprise Act. An outright ban on future acquisitions of shares would be unnecessary and would go beyond what is necessary to protect the sufficiency of plurality creating a discriminatory and unjustifiable regulatory asymmetry against News. This case must be distinguished from the ordinary example of a merger where there is a competition issue for two reasons: (i) News already has a 39.14% shareholding in Sky; and (ii) there would be no competition issue raised by Transaction so that protections ordinarily needed to preserve the commercial freedom of a fully independent competing business need not apply.

As such, any further restriction on subsequent acquisitions by News of NewCo shares would be redundant and not necessary to ensure the sufficiency of plurality of media enterprises.

13. Monitoring

13.1 Please explain your view that the structure of NewCo, and the obligations imposed on it, would reduce the monitoring burden on the OFT in terms of compliance with the UIL.

The UIL provide a structural solution to the plurality concerns identified by Ofcom in its Report. NewCo would be established as a new company with its own shareholders and with a board with a duty to act to promote the success of the company. Moreover extensive corporate governance arrangements will be adopted by NewCo substantially replicate the effect of Sky's corporate governance arrangements. As such, there will be no ongoing monitoring burden on the OFT.

The UIL proposal is akin to a clear-cut upfront solution which also removes the requirement for subsequent approval of buyers, a requirement that is often accepted in structural remedies. This remedy therefore involves less monitoring than typical alternative structural disposals.

13.2 Please explain whether you believe there would be value in having a monitor appointed (potentially with an arbitrator function in relation to the obligation on News to agree further agreements).

For the reasons set out in detail below, the UIL is a clear-cut, structural, solution. There would therefore be no need for the appointment of a monitor to oversee its implementation. Any such appointment would be a waste of resources.

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Moreover, it is not clear what is meant by "further agreements". News envisages that all relevant agreements between News (and/or Sky) and NewCo will be entered into as part of the transfer of the Sky News business to NewCo in advance of the spin-off. News considers that the terms on which such agreements will be offered are reasonable and transparent, as detailed in response to questions 5, 6 and 8 above. These arrangements are workable and have already been used in practice.

Any subsequent agreements will be entered into by Newco's board with the corporate governance safeguards set out in the UIL and above.

As such, there is no need for the appointment of a monitor to oversee the entering into of subsequent agreements.

Finally, News notes that since Sky News currently operate as part of Sky, the operation of the business is not subject to direct public scrutiny. NewCo will operate as a separate business whose core business is TV news provision and whose shares are admitted to trading publicly. Therefore Sky News' business performance as the core activity of NewCo will operate under increased transparency compared to the status quo.

14. Clear-cut standard for UIL

14.1 Please explain why you believe the UIL satisfy the 'clear cut' standard that the OFT applies in relation to UIL, in particular with regard to:

As noted above, this remedy is a structural one.

- The Sky News enterprise will be transferred to a new company (NewCo), established as a separate legal entity, which will pursue its core business of news provision.
- NewCo will have its own shareholders (initially substantially the same shareholders as in Sky) and will be publicly traded. News will agree to have its voting rights restricted to 37.19% of NewCo's share capital on the same basis as is currently the case for its interest in Sky.
- NewCo will have its own board (comprising a majority of independent directors) which will have a duty to promote the success of the company and it will operate under a corporate governance structure substantially replicating that currently applicable to Sky.

Given its structural nature the UIL does not require ongoing monitoring as NewCo will continue to operate as a distinct, profit maximising enterprise under the direction and supervision of its board, as Sky currently does in relation to its business.

In fact the UIL is in effect an upfront remedy which does not require that a competition authority subsequently approve a suitable purchaser. It is therefore more clear-cut than a number of other structural remedies that are commonly accepted by regulatory authorities.

14.1.1 the dependence of NewCo on Sky for its principal revenue stream, having regard to the finite duration of the carriage agreement and the brand licensing agreement;

The UIL has been structured so as to ensure the continuation of Sky News as a distinct media enterprise with an independent news voice, thereby addressing the relevant PIC. However, this does not require that all the links between Sky and NewCo are entirely severed (as might be the case if competition concerns were at issue and the goal was to establish an ongoing competitor to

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News/Sky). The relevant consideration is that the current degree of editorial independence is preserved and that NewCo is financially viable.

NewCo will be established as a separate legal entity, free to pursue its core business of news provision; it will have its own shareholders and will be publicly traded; News will agree to have its voting rights in NewCo restricted to 37.19% of the votes cast in general meeting; NewCo will have its own board (comprising a majority of independent directors) which will have a duty to promote the success of the company; and it will operate under a corporate governance structure substantially replicating that currently applying in the context of Sky. These arrangements preserve the current degree of editorial independence of Sky News,

A 10 year carriage agreement means that NewCo will have a reliable revenue stream for a much longer period than is typical in this sector. Far from increasing NewCo's reliance on News, this will in fact allow NewCo independently to plan for future investment and expansion based on a quantifiable and relatively stable cash flow over the medium to long term.

Similarly, the grant of a licence to use the 'Sky News' brand allows NewCo to generate significant revenue streams from third parties. Again, this clearly does not increase NewCo's reliance on News. Neither the carriage agreement or the brand licence have any impact on editorial content.

14.1.2 the fact that the brand licensing agreement is terminable in the event of a change of control of NewCo; and

Change of control provisions are a standard mechanism in brand licensing agreements to protect the value of the brand built up by the grantor. A change of control provision is also contained in the Sky Deutschland trade mark agreement. There is nothing unusual with respect to the inclusion of such a provision in the proposed licence to NewCo (indeed, it would be highly unusual *not* to include such a provision in this sector).

A change of control provision in no way renders the UIL less clear-cut. Moreover, in the context of the issues addressed by the UIL (i.e. Ofcom's concerns as to the Transaction's impact on the sufficiency of plurality of persons with control of media enterprises), it would seem perverse to suggest that a termination of the brand licensing agreement in the context of an acquisition of the Sky News business by an independent third party could give rise to any plurality-related concern.

14.1.3 the nature and extent of the ongoing links between Sky and NewCo.

As discussed above, the carriage agreement and the brand licence will enable NewCo to take independent investment and strategic decisions with the security of relatively stable and quantifiable revenue streams, thereby making the UIL more clear cut than a number of other structural remedies that are commonly accepted by regulatory authorities.

Other commercial agreements between Sky and NewCo will be entered into on arms' length terms, as detailed above.

Upon expiry of the initial terms of these agreements or subject to early termination provisions to be agreed in the relevant contracts, NewCo will be free to negotiate extended or revised terms with Sky or to enter in alternative agreements with third parties.

15. Other queries on the UIL

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15.1 Please explain why post-closing, Sky should be treated as an 'Affiliate' of News for the purposes of paragraph 6.3 of the UIL.

The last sentence of paragraph 6.3 of the UIL should be amended to read as follows: "*Until the Closing Date, Sky shall not be treated as an Affiliate of News for the purposes of this paragraph.*" This is because until Closing Date (as defined in the UIL) News is unable to exercise control over Sky as an independent listed entity.

Allen & Overy LLP on behalf of News Corporation

3 February 2011

EX.A23

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:47
To: OLDFIELD PAUL
Subject: Fwd: OFCOM request for information
Attachments: NC_Sky_UIL_-_request_for_information_to_NC_03-02-2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 4 February 2011 17:08:45 GMT
To: "adamsmith" <[Redacted]>
Subject: FW: OFCOM request for information

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

The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

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EX. P24



3 February 2011

[Redacted]

News Corporation
3 Thomas More Square
London
E98 1EX

[Redacted]

Direct line: [Redacted]
Direct fax: [Redacted]

[Redacted]

Dear [Redacted]

News Corporation/BSkyB merger UILs – request for information

I am writing to request information in connection with Ofcom's assessment of the undertakings offered by News Corporation in lieu of a reference to the Competition Commission in respect of its proposed merger with British Sky Broadcasting plc ("BSkyB"). This request is made on an informal basis.

Background

On 27 January 2011, the Secretary of State asked the Office of Fair Trading ("the OFT") and Ofcom to advise him on the undertakings offered by News Corporation in lieu of a reference to the Competition Commission ("UILs") in relation to its proposed merger with BSkyB.

He asked the OFT under section 93 of the Enterprise Act 2002 for their views on the practical and financial viability of the proposals set out in the UILs, anticipating that the OFT might require Ofcom's assistance with this. The OFT has informed us that it does require assistance from Ofcom in light of its sectoral knowledge. He also asked Ofcom, in accordance with section 106B of the Act, for advice on the extent to which we think the UILs address the potential impact on media plurality identified in our report.

We are requesting information from you in order to inform this work.

Information requested

News Corporation is requested to provide Ofcom with the information specified in the annex. The specified information is requested to be provided in the manner and form specified, by sending it in electronic or hard copy format to [Redacted] or giving it to [Redacted] in person at: Ofcom, 2a Southwark Bridge Road, London, SE1 9HA. Please e-mail your response to [Redacted] Please provide the information by **midday on Monday 7 February 2011.**



Further information

If the questions we are asking do not capture any further information you consider of relevance to our work, please provide it.

Confidentiality

In the response please indicate out in a separate annex marked "Confidential information" any document or information which you consider to contain confidential information and supply a written explanation as to why it should be treated as such. You should also supply an edited paper and/or electronic version of the document or information or answer.

It is for Ofcom to determine whether or not the information is to be disclosed in accordance with Part 9 of the Enterprise Act 2002. Information provided will be disclosed to the OFT should we consider it relevant to their work.

Offences

I draw your attention to section 117 of the Enterprise Act 2002 (a copy of which is enclosed) which sets out the offences created by the Act in relation to the provision of false or misleading information to Ofcom in connection with its functions under Part 3 of the Act.

Yours sincerely,

[Redacted signature box]

[Redacted box]

CC:

[Redacted box] *News Corporation*
[Redacted box] *Allen & Overy*
Office of Fair Trading



Annex: Information request – News Corporation

A. Financial independence of Newco

1. Please specify the basis upon which you intend to calculate the “market rate” that you propose to be charged for the following revenue or cost items, explaining the basis for calculation if the charge is proposed to either above market rate (in terms of revenues) or below market rate (in terms of costs)
 - a. Carriage deal with Sky
 - b. Carriage deals with third parties
 - c. Sky Brand licence fee costs
 - d. Costs associated with land and building lease
 - e. Facilities and support costs
 - f. Broadcast & creative costs
 - g. Technology costs

2. Please provide detail on the proposed contractual terms for the following main revenue and cost agreements, with particular reference to the points below

a. Carriage agreement

- i. How has the subscriber fee been calculated?

--	--

- ii. To what extent would the carriage fee be affected by a fall in subscriber numbers? To what extent is the rise guaranteed as opposed to being dependant on specific market developments (e.g. rise in Sky HD subscribers)? Will there be a fixed fee component that would guarantee a minimum level of income, or some other form of minimum revenue guarantee?
- iii. Would Newco be free to drop exclusivity on HD contractually? What would be the effect on total carriage revenue for Newco, under a non-exclusivity scenario, including possible other sources of revenue in your view e.g. third party carriage fees from other platforms?
- iv. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered (e.g. new market / technical developments such as greater use of HD content on DTT, or 3DTV)?

b. Brand licensing agreement

- i. How has the Brand licence fee of [] been arrived at? How does this compare with similar market rates?
- ii. What would be the rights and restrictions on the brand licensing agreement? Would it allow for example distribution of the Sky News channel on alternative platforms or to other platform operators internationally?
- iii. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered?



- c. Ad sales agreement
 - i. What are the underlying assumptions made on the growth of TV advertising underpinning the assumptions on Newco advertising revenues?
 - ii. What would be the costs associated with the provision of ad sales services by Sky to Newco?
 - iii. What provision would there be for amendments to contractual terms and/or break clauses for each of (a) Newco and (b) Sky; and how would these be triggered?
 - d. Other revenues
 - i. What are the underlying assumptions (including volume assumptions) used in calculating revenue from other platforms including mobile TV and tablets?
 - ii. Please provide details in relation to the terms of the existing Sky News syndication agreements (duration, end date(s), including optional end-dates/options to extend, revenues associated) and assumptions used in the forward projection of syndication revenues in your model
3. Please provide details of any other anticipated limitation on Newco's ability to diversify future revenue sources, including but not limited to:
 - a. limitations to new contracts of wholesale news provision by Newco to third parties
 - b. limitations on international distribution of Sky News channel
 - c. limitations to content syndication
 - d. any non-compete agreements
 4. Please provide detail on the proposed terms for the following potential contracts between Newco and Sky:
 - a. Land and building lease (as identified in the UILs and in the slides sent to Ofcom on dated 2 February 2011)
 - b. Broadcast and creative services (as identified in slides to Ofcom)
 - c. Facilities and support costs ((as identified under the overall heading of overhead and corporate within slides to Ofcom)
 - d. Broadcast and technical services agreements (as identified in the UILs)
 - e. Production if there is any proposal for provision of services by Sky to Newco or use of Sky assets by Newco
 5. Please provide a detailed breakdown of the anticipated technology and production costs items (identified in slide 13 of the slides sent to Ofcom) for Newco, by
 - a. Payments to Sky, indicating the specific cost items
 - b. Payments to 3rd parties, indicating the specific cost items
 - c. Internal Newco costs, indicating the specific cost items
 6. Please provide details of platform access costs (for example, conditional access and EPG) for Newco access to Sky platform, and indicate which cost item they have been included in within the slides sent to Ofcom.
 7. Please provide the specific assumptions in relation to the projected marketing costs (included in the slides to Ofcom under 'overhead / corporate' on slide 10). How is it proposed to market the Newco service, and who will undertake this activity? What proportion of the total costs for marketing the Newco service will be funded by Newco itself as opposed to Sky?



8. How far are Sky News and Sky Sports News integrated today, and what barriers may there be in separating these out? What arrangements are going to be put in place for the sharing of assets and resources between Newco and Sky Sports News operations? What assets and resources are likely to be covered by these arrangements?
9. What will be the arbitration process for resolving any contractual disputes, related for example to contract variations or renegotiations?

B. Shareholding composition

10. Following the proposed share transfer, what would the structure of Newco shareholdings be, based on the current Sky shareholding structure? Which organisations would hold more than 1% of Newco shares, and what would their shareholding be?

C. Governance

11. Who would Chair the Newco Board? Would it be an independent director?
12. What would be the process to ratify the independence of Newco non-executive directors?
13. Would the Newco editor be a member of the Newco Board?
14. Would the Newco Board put in place specific arrangements to assume overall responsibility and accountability on editorial policies and decisions?
15. What would be the practical arrangements for appointment and removal of the editor and other senior editorial roles of Newco, as well as creation of new senior editorial roles in Newco?

EX. A.25

[redacted]

From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:47
To: OLDFIELD PAUL
Subject: Fwd: <no subject>

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 5 February 2011 22:19:35 GMT
To: "adamsmith" <[redacted]> <[redacted]>
Subject: <no subject>

Ofcom BSkyB bid data questioned
By Ben Fenton
Financial Times, 5 February 2011, p. 2

Opponents of News Corp's proposed bid for British Sky Broadcasting are using misleading figures to make the point that the combined company would have an overpowering position in the UK, a leading media figure said on Friday, writes Ben Fenton.

David Elstein, former chief executive of Channel 5 and before that, head of programming for BSkyB, said numbers included in Ofcom's initial report on the bid showed the hypothetical merged company would hold a 23.7 per cent share of news consumption by UK adults, while the BBC held 43.5 per cent.

But he said that consumption of News Corp's UK newspapers should not be counted in the same way as TV news because much of what people read there was not news but features, puzzles or other material.

Revising those figures, and removing the services Sky News provides for independent radio stations and Channel 5, would leave the combined entity with 11.8 per cent and the BBC on 54.5 per cent, Mr Elstein said.

He was speaking at a seminar in London discussing the bid. There, lawyers agreed that the government's investigation of whether the takeover would reduce plurality - the diversity of voices in the UK media - below a sufficient level, would eventually be a subjective decision for politicians because there was no legal definition of "sufficiency".

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EX. A26



From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:50
To: OLDFIELD PAUL
Subject: Fwd: Response to OFT request for information
Attachments: CO-#13427570-v6-Response_to_OFT_questions_7_February.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 8 February 2011 21:16:00 GMT
To: "adamsmith" <[redacted]> <[redacted]>
Subject: Fwd: Response to OFT request for information

See attached...let me know feedback...

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 <<http://www.nmauk.co.uk>>

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EX. P27

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News Corporation

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

UNDERTAKINGS IN LIEU PROPOSAL

RESPONSE TO OFT QUESTIONS OF 7 FEBRUARY 2011

Defined terms in this response shall have the same meaning as in News' response to the OFT's questions of 1 February (the **First OFT Response**). This response contains highly sensitive commercial information and therefore News requests the confidential treatment of the entire content of this response.

Questions for News

- 2.1. *Non-solicitation – News states that neither Sky nor News will be a direct competitor of the spun-off Sky News business and therefore a non-solicitation clause is unnecessary. However, what would prevent News launching a neighbouring channel, such a current affairs channel, from which it might acquire staff from Newco? Would News be willing to give a short non-solicitation clause in respect of the employees transferred to Newco?*

Unlike those cases in which a non-solicitation clause is typically required by the OFT in the context of UILs, the Transaction does not involve an acquisition of a direct competitor where the viability of a business to be divested could be threatened if the party who is required to dispose of that business for competition reasons were to poach key staff.

As explained in response to questions 8.2 and 5.6 of the First OFT Response, neither News nor Sky plans to develop a competing supplier of TV news and there is no reason to believe that Sky will seek to acquire staff from NewCo.

News also does not believe that a non-solicitation obligation would make sense in a context where News/Sky continues to rely on NewCo producing quality news output.

It is in any event News' current practice when dealing with companies in which it has an interest never to solicit staff directly but rather, were it to be interested in seeking to employ a staff member currently employed by that company, to approach the company's CEO and to discuss the issue. This would not, of course, fall within the definition of "solicitation" of staff.

For this reason, and without prejudice to its views as to the lack of need for such protection, News would be prepared to give a standard non-solicitation commitment for a short period of time if the OFT took the view that such a commitment was needed.

- 2.2. *Enforcement – at present, the Secretary of State is reliant in terms of the success of the UIL on (a) News' incentives in relation to the continuation of Newco and (b) on Newco's contractual rights under the carriage agreement and brand license agreement vis-à-vis News. Would News be willing to offer commitments to the Secretary of State within the UIL that it would not terminate the carriage agreement and brand license agreement without the prior written consent of the*

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OFT (such consent to be given only in the event that the OFT was satisfied there had been a material breach of the agreement that had not been cured)?

NewCo will be an independent company, with independent shareholders and with a board consisting of a majority of independent directors. There is no reason to believe that NewCo would not be in a position to enforce its contractual rights.

All agreements between Sky/News and NewCo will contain provisions relating to choice of law and jurisdiction as is customary in commercial agreements. Moreover, News is prepared, as set out further in response to question 13, to commit to a more specific dispute resolution mechanism (e.g. arbitration) if the OFT considers that an ad hoc mechanism is needed.

These mechanisms will be more than sufficient to enable NewCo to protect its own interests.

News does not believe that it would be appropriate for the OFT to have an ongoing monitoring role in this context where there is every reason to believe that News' compliance with its contractual commitments will be effectively self-policing.

Any disputes about material breaches would be resolved through the relevant dispute resolution mechanism.

- 2.3. *Brand licensing agreement – at present, paragraph 4.3 of the UIL requires that the form of the carriage agreement must be approved by the Secretary of State before the UIL are accepted (the 'Effective Date'). Given the importance of the brand licensing agreement, would News be willing for a similar approval mechanism to be adopted in relation to the brand licensing agreement?*

News is willing to provide that the Secretary of State should also approve the form of the Brand Licensing Agreement before the Effective Date.

Should the Secretary of State be minded to accept the proposed UIL and issue a consultation notice, News' suggestion would be that detailed heads of terms for both the Carriage Agreement and the Brand Licensing Agreement are provided to and agreed with the Secretary of State while a public consultation on the UIL is ongoing.

- 2.4. *Corporate governance – Articles – although News is clearly not in a position to change the Articles of Newco itself, would News be willing to give an undertaking that it would vote against a change to the Article of Association designed to remove the superior governance provisions and board design detailed in paragraph 3.1(ii) – (iv) of the UIL?*

A change in the Articles of Association of NewCo would require the approval of 75% of the votes cast at a general meeting.

Therefore News would only have the power to prevent a change in the Articles of Associations of NewCo insofar as it remains a shareholder with voting rights of more than 25% of the votes.

On that basis News is prepared to agree to vote against any change in NewCo's Articles of Association which would remove the governance provisions provided for in sections 3.1 (ii) to (iv) of the draft UIL for so long as no single shareholder group has more than 50% and News has the right to vote more than 25% of the shares in NewCo.

- 2.5. *Corporate governance – Board – please comment on whether Newco might struggle to attract suitable talent for its board given the significantly contracted focus of its activities compared to Sky.*

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News believes that a position on the board of NewCo, an independent media company active in news provision, will be an attractive one for a director to hold.

Recently Channel 4 appointed four new non-executive directors, who are leading figures in retail, law, property and consumer product sectors. There is a high interest among qualified executives to gain closer knowledge and understanding of digital media businesses. Moreover, NewCo's reputation for quality is likely to draw interested candidates.

Many companies of similar size operate successfully with committed and appropriately experienced boards.

2.6. Corporate governance – Board – the proposed UIL require that the majority of the board shall comprise ‘non executive directors determined by that board to be independent’. What is meant by ‘independent’ in this context? How would such a requirement be enshrined in Newco going forward?

Please refer to question 12 of News' response to Ofcom's information request of 3 February 2011 (the Ofcom Response).

Provision B.1.1 of the UK Corporate Governance Code (the Code) requires the board to determine whether each director is independent by reference to the following principles set out below:

"The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- *has been an employee of the company or group within the last five years;*
- *has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;*
- *has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;*
- *has close family ties with any of the company's advisers, directors or senior employees;*
- *holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;*
- *represents a significant shareholder; or*
- *has served on the board for more than nine years from the date of their first election."*

The Articles of Association of NewCo will require that (i) for so long as no single shareholder group holds more than 50% of NewCo's shares, the majority of the board of NewCo shall comprise non-executive directors determined by that board to be independent; and (ii) NewCo shall adhere to the obligations imposed by the Listing Rules as regards compliance with the principles set out in the Code.

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2.7. Corporate governance - Board – how would the initial board members of Newco be determined?

Subject to the requirement of there being a majority of independent directors (as per draft UIL 3.1(ii)), NewCo's board will comprise a mix of executive and non-executive directors (being News affiliated directors and independent directors).

It is News' current intention to conduct a search of suitable candidates which would include the independent directors currently on the board of Sky.

2.8. Corporate governance – chairman of the board – please confirm whether there would be any requirement for the chairman of the board to be independent.¹

There will not be a requirement for NewCo's chairman to be independent. This is the current position in Sky, which the proposed UIL are seeking to replicate.

2.9. Corporate governance – material transactions – the UIL do not contain a definition of 'material transactions'? Should this term be defined (so as to include at least the carriage agreement and the brand licensing agreement).

In the case of Sky, the audit committee (which consists solely of independent directors) is required to approve any transaction between Sky or its subsidiaries and News or any of its subsidiaries:

- which involve or could reasonably involve the payment or receipt by Sky or its subsidiaries of amounts of £10 million or more but not exceeding £25 million; or
- which involves amounts of £25 million or more.

Any transactions between Sky or its subsidiaries and News or any of its subsidiaries involving amounts of £25 million or more, if approved by the audit committee, must also be approved by the board of Sky.

News is prepared to commit specifically that transactions between NewCo and News/Sky meeting equivalent thresholds would be "material transactions" requiring Audit Committee/Board approval within the terms of paragraph 3.1(iii) of the draft UIL.

In addition, as set out in paragraph 3.1(iii) of the draft UIL, the intention of News is to apply controls on transactions between NewCo and News/Sky which have equivalent effect to those imposed by Chapter 11 of the Listing Rules. The Listing Rules define in some detail the types of transactions which would be caught and which would require prior approvals. Indeed, the principles are widely cast to catch all transactions and arrangements (other than a transaction of a revenue nature in the ordinary course of business).

It is not envisaged that the Carriage Agreement or the Brand Licensing Agreement would require amendments. However, if any changes to either the Carriage Agreement or the Brand Licensing Agreement were needed and those changes were material, they would fall within the scope of the rules.

2.10. Enumeration of assets – would News be prepared to split out in greater detail (in the form of a Schedule used, eg, in the Form RM) the assets and people to be transferred / not transferred?

¹ We note your reply to Ofcom's question 11 that "the decision as to who should be the chairman of the board of NewCo will ultimately rest with the board of NewCo and that decision will be taken by the board as a whole which will include a majority of independent directors".

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The OFT considers this would be beneficial given that Sky News is not a distinct enterprise (in the way that most divestment businesses are in a UIL context).

News would be prepared to set out in greater detail the assets to be transferred / not transferred to NewCo in the form of a schedule but notes that such a schedule would have to be prepared in consultation with Sky. Given that such a document would likely take a number of days to draw up, News suggests that the best way forward would be for Sky to provide it to the OFT during the public consultation on the UIL (should the Secretary of State be minded to accept the UIL).

Likewise, News could ask Sky to prepare separately a list of key personnel to be transferred to NewCo. For confidentiality purposes, News expects that Sky will want to identify these personnel by job title / payroll number rather than name.

- 2.11. *Operational agreements – would News be willing to state in the UIL that it will provide the operational agreements detailed in paragraph 5 of the UIL, with termination rights for Newco, and pricing at cost price [redacted] included in the contracts, so that the uncertainty in the UIL as presently drafted is removed?*

As set out in detail at slide 15 of Annex 1 to the First OFT Response, News notes that the operational agreements listed at paragraphs 5.1(ii), 5.1(iii) and 5.1(iv) of the proposed UIL will involve charges to NewCo which will be set for the first year. [redacted]

- 2.12. *Licensing agreement:*



News can confirm that there will not be an increase in the brand loyalty fee if the licensing agreement is extended beyond the initial 7 years.

- 2.13. *Dispute resolution mechanism – would News be prepared to agree to the inclusion within the UIL of a dispute resolution mechanism in relation to the agreements between News and Newco*

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in order to assist in the resolution of any commercial disagreements between News and Newco (and therefore enhance the viability of Newco by avoiding protracted and expensive legal disputes with News)? Would News be willing to agree to the inclusion of some form of monitoring mechanism in relation to the observance of the contractual commitments (see question 2.2).

As noted above, NewCo will be an independent company, with independent shareholders and with a board consisting of a majority of independent directors. There is no reason to believe that NewCo would not be in a position to enforce its contractual rights. Moreover, as noted in the Ofcom Response, the agreements entered into between Sky and NewCo will contain contractual provisions governing disputes and providing recourse in the event of disagreement as to an appropriate dispute resolution mechanism as is common practice in agreements between distinct legal entities.

However, should the OFT feel it necessary to ensure the practical and financial viability of the proposed UIL, News would be willing to include a more specific dispute resolution mechanism (e.g. arbitration) in the agreements entered into between News and NewCo. These mechanisms will be more than sufficient to enable NewCo to protect its own interests and would therefore obviate the need for any formal monitoring in relation to the observance of the contractual commitments (as discussed in more detail in response to question 2.2).

2.14. Listing – would be the effect on Newco of it being de-listed from the AIM market?

If NewCo were to be delisted from AIM, we do not believe that there would be any impact on its commercial operations. A delisting would not have any impact on the commercial arrangements such as the carriage agreement or on the corporate governance arrangements including the Board composition.

The only immediate practical implication of such a delisting would simply be that the ability to trade shares in NewCo in the absence of another listing would be reduced. It could however be affected via alternative methods, such as trading over the counter or via a listing in a different market (e.g. Euronext).

2.15. Apps – please provide further details of the proposed exclusive rights to be granted by Newco to News in relation to tablet apps. What remuneration will Newco receive from these rights? Will these rights be in the carriage agreement?

News will not acquire any exclusive rights in relation to Sky News tablet apps with respect to retail sales or with respect to territories other than the UK. NewCo will be free to sell tablet apps to end-consumers.

The only exclusive right granted by NewCo to News with respect to tablet apps will be for the wholesale distribution of such apps in the UK. Consideration for these rights is included within the main pspm fees set out at slide 5 of Annex 1 of the First OFT Response.

2.16. Re-acquisition – please confirm whether News would be willing to give a commitment in the UIL not to acquire further shares in Newco such as to take its shareholding level beyond 39.1 per cent.

As noted in question 12.1 of the First OFT Response, the proposed UIL seeks to preserve the status quo including all the regulatory protections provided for by the Enterprise Act. An outright ban on future acquisitions of shares would go beyond what is necessary to protect the sufficiency of plurality, creating a discriminatory and unjustifiable regulatory asymmetry against News. This case must be distinguished from the ordinary example of a merger where there is a competition issue for two reasons: (i) News already has a 39.14% shareholding in Sky; and (ii) there would be no

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competition issue raised by the Transaction so that protections ordinarily needed to preserve the commercial freedom of a fully independent competing business need not apply. As such, any further restriction on subsequent acquisitions by News of NewCo shares would be redundant and not necessary to ensure the sufficiency of plurality of media enterprises.

Moreover, any further acquisition of NewCo shares by News would lead to a "relevant merger situation" with consequent statutory regulatory approvals under the Enterprise Act.

As such, News believes that any commitment not to acquire further NewCo shares is neither necessary nor appropriate for the purposes of remedying, mitigating or preventing any of the effects of the Transaction identified by Ofcom in its report of 31 December 2010 as being adverse to the relevant public interest consideration.

2.17. *Affiliate – please explain why Sky should not be treated as an affiliate of News until the Closing Date, given News' existing shareholding in Sky.*

The definition of "Affiliate" in the proposed UIL includes subsidiaries regarded as being under common control for the purposes of section 26 of the Enterprise Act 2002. Ordinarily, Sky would, for the purposes of this definition, be deemed to be an "Affiliate" of News. However, pre-transaction, Sky is an independent listed company with a board consisting of a majority of independent directors and, in fact, only Sky's independent directors are responsible for considering the terms of the Transaction. The Transaction has not yet been recommended by the Sky board. As such, News is unable to procure that Sky will comply with the proposed UIL as if Sky had itself given them.

2.18. *Financial projections – technical services and operational agreements: How long would the restrictions on price to cost plus un for?*

Please see the response to question 2.11 above.

In light of the additional concessions above which News has indicated it is prepared to make, News would also request the express inclusion in the UIL of a provision enabling News to apply to the Secretary of State for the removal or variation of any or all of the obligations contained in the UILs which is in any event provided for under of Schedule 2(3)(7) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003.

Allen & Overy LLP on behalf of News Corporation

8 February 2011

EX-P28

[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:51
To: OLDFIELD PAUL
Subject: Fwd: News Corporation/BSkyB Merger UILs - letter from [Redacted]
Attachments: Letter to [Redacted] 09.02.11.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" [Redacted]
Date: 9 February 2011 17:35:51 GMT
To: "adamsmith" [Redacted] <[Redacted]>
Subject: Fwd: News Corporation/BSkyB Merger UILs - letter from [Redacted]

Frederic Michel
 Director, Public Affairs, Europe
 News Corporation

Tel: + [Redacted]
 Mob: [Redacted]

From: [Redacted] mailto:[Redacted]@ofcom.org.uk]
Sent: Wednesday, February 09, 2011 03:48 PM
To: [Redacted] (Newscorp)
Cc: [Redacted]
 <[Redacted]>
Subject: News Corporation/BSkyB Merger UILs - letter from [Redacted]

Dear Mr [Redacted]

Please find attached a letter from [Redacted]

Yours sincerely

[Redacted Signature Block]

<[Redacted]@ofcom.org.uk>

EX.P29



9 February 2011

News Corporation
3 Thomas More Square
London
E98 1EX

Direct line:
Direct fax:

Dear

News Corporation/BSkyB merger UILs

I am now writing to you with a number of issues which we consider to be central to our advice as requested by the Secretary of State on the extent to which we think the UILs address the potential impact on media plurality identified in our report.

In that context, we have considered News Corporation's various responses to the information requests from the OFT and Ofcom, including the latest response to the OFT's questions dated 7 February 2011.

Having carefully considered the proposed UILs and your responses, we remain concerned about the extent to which the proposed UILs address the impact on media plurality as identified in our report.

In meeting those concerns, it is our view that the proposed UILs need to include:

1. The board of Newco to consist of a majority of independent directors. "Independent directors" being directors which have no other News Corporation or News Corporation associated interest;
2. We would expect the board of Newco, including the independent non executive directors, to have a combination of both senior editorial and business experience/expertise;
3. The Chairman of Newco be an independent non executive;
4. The creation of a sub-committee of the board of Newco to deal with editorial matters ("the Board Editorial Committee"):
 - i) Members of the Board Editorial Committee to contain a majority of independent non executive board members, one of whom is the Chair of the Board Editorial



Committee. We would expect the Chair to have senior editorial experience and expertise.

ii) We would expect the terms of reference for the Board Editorial Committee to include:

- the editorial independence and integrity of Sky News
- the hiring, firing or replacement of the Sky News Editor and all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal)
- any changes to the authority, reporting relationship and consultation rights of the Sky News Editor

Please note that in the context of assisting the OFT with its advice to the Secretary of State there are a number of other issues which we consider to be significant which we understand the OFT are intending to address with you and this letter does not therefore cover any of these issues.

As you know the Secretary of State has requested our advice by Friday 11 February. We therefore need a response from you by midday tomorrow. We would be happy to meet to discuss these matters at any time if that would be useful.

Yours sincerely

[Redacted signature box]

[Redacted box]

CC:

[Redacted] News Corporation
[Redacted] Allen & Overy
Office of Fair Trading

EX.P30

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:51
To: OLDFIELD PAUL
Subject: Fwd: Restricted - News / Sky - letter on key points re UIL from OFT
Attachments: Restricted - News - Sky - letter on key points 9 January 2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 9 February 2011 17:36:58 GMT
To: "adamsmith" <[Redacted]>
Subject: Fwd: Restricted - News / Sky - letter on key points re UIL from OFT

From: [Redacted] mailto:[Redacted]
Sent: 09 February 2011 03:58 PM
To: [Redacted]
Cc: [Redacted]
[Redacted]
Subject: Restricted - News / Sky - letter on key points re UIL from OFT
Importance: High
Sensitivity: Confidential

Dear [Redacted]

Please find attached a letter from [Redacted]

Thanks

[Redacted]

[Redacted] Assistant to [Redacted]
[Redacted] Office of Fair Trading |
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | T:
[Redacted]

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The Office of Fair Trading

Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX Switchboard (020) 7211 8000 Web Site: <http://www.oft.gov.uk>

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EX. P31

OFFICE OF FAIR TRADING

[Redacted]

Allen & Overy LLP
By email

cc. [Redacted] Ofcom

Your ref 0012561-0000367

Our ref

Date 9 February 2011

Direct line [Redacted]

Fax [Redacted]

Email [Redacted]

Dear [Redacted]

Proposed acquisition of BSkyB by News Corp

I refer to the proposed undertakings in lieu (UIL) offered by News Corporation (News) to the Secretary of State in relation to the above matter, as well as your responses to our questions of 1 February and 7 February.

The OFT has considered carefully your responses to both sets of questions in terms of determining what advice it should provide to the Secretary of State under section 93 Enterprise Act 2002 (EA 02) in particular as to whether the UIL would be practically and financially viable and effective over the medium and long term.

Given the limited time remaining in which the OFT is required to report back to the Secretary of State, the OFT does not propose to engage in a detailed consideration of revised wording for the UIL. However, the OFT believes it is appropriate at this point for it to identify to News a number of key areas where the OFT has concerns that the UIL may not be practically and financially viable over the medium and long term.



INVESTOR IN PEOPLE

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1. Absence of a non-reacquisition obligation

Firstly, the OFT is concerned at the lack of a non-reacquisition clause in the UIL. In your response to the OFT questions of 7 February (paragraph 2.16), you gave the following reasons why you believed that such an obligation was not justified:

- (i) the proposed UIL seeks to preserve the status quo including all the regulatory protections provided for by the EA 02;
- (ii) an outright ban on future acquisitions of shares would go beyond what is necessary to protect the sufficiency of plurality, creating a discriminatory and unjustifiable regulatory asymmetry against News;
- (iii) this case must be distinguished from the ordinary example of a merger where there is a competition issue for two reasons: (i) News already has a 39.14 per cent shareholding in Sky; and (ii) there would be no competition issue raised by the Transaction so that protections ordinarily needed to preserve the commercial freedom of a fully independent competing business need not apply; and
- (iv) any further acquisition of NewCo shares by News would lead to a "relevant merger situation" with consequent statutory regulatory approvals under the EA 02.

In relation to each of these points in turn:

- (i) in a very literal sense, UIL normally involve a change to the status quo, in so far as they normally contain a non-reacquisition obligation which was not present previously; in relation to the EA 02 situation, see (iv) below;
- (ii) the OFT's concern about reacquisition is based on the practical viability of the UIL over the medium and long term, not on the protection of plurality;
- (iii) neither of the factors that News uses to distinguish this case from the ordinary example of a merger where there is a competition issue are meaningful; the fact that News already has a shareholding in Sky is irrelevant: the non-reacquisition obligation would take account of that fact; the fact that there are no competition issues does not mean that the UIL do not need to be practically viable over the medium and long term in order to operate to protect plurality; and

(iv) the existence of jurisdiction under the EA 02 (in particular given the share of supply test) would frequently be the case in relation to competition UIL; this does not obviate the need for a non-reacquisition clause.

The OFT would also note that News' response ignores the practical justification for such a restriction. A key reason why such restrictions are inserted as 'standard' obligations in UILs is to prevent the improper use of public resources on a repeated public investigation. The OFT sees no reason why this reason is not applicable here. In other words, the obligation would be intended to prevent a further public investigation into the acquisition by News of the business that it has divested (in this case, spun-off). It is clear to the OFT that the absence of a non-reacquisition obligation is a practical issue that could undermine the operation of the UIL in the event of an attempt by News to re-acquire Sky News after the UIL have been accepted. The OFT notes in this respect that the Secretary of State has asked the OFT whether the UIL would be effective over the 'medium and long term'.

As News will be aware, such clauses are normally drafted as being 'subject to OFT prior written consent'. To the extent that News wished in the future to increase its shareholding in Newco, it would therefore be free to seek OFT approval to do so on the basis that there had been a change in circumstances meriting a waiver of the obligation.

Please confirm whether News' final position remains that it would not be willing to provide any form of non-reacquisition obligation in the UIL.

2. Non termination of the carriage and brand licensing agreement

Secondly, the OFT has concerns at the absence of any ongoing commitment to the Secretary of State in relation to the continued performance of News' obligations under the carriage agreement and brand licensing agreement foreshadowed respectively in paragraphs 4.3 and 4.5 of the UIL.

In your response to the OFT questions of 7 February (paragraph 2.16), you gave a number of reasons why you believed that such an obligation was unnecessary:

- (i) there is no reason to believe that NewCo would not be in a position to enforce its contractual rights;

- (ii) News is prepared to commit to a more specific dispute resolution mechanism if the OFT considers that an ad hoc mechanism is needed;
- (iii) these mechanisms will be more than sufficient to enable NewCo to protect its own interests; and
- (iv) News does not believe that it would be appropriate for the OFT to have an ongoing monitoring role in this context where there is every reason to believe that News' compliance with its contractual commitments will be effectively self-policing.

The OFT understands these arguments. The OFT considers that a dispute resolution mechanism would be important in the UIL in order to facilitate resolution of contractual disagreements. However, these arguments do not detract from the essential proposition that the ongoing practical and financial viability of Newco is dependent on the carriage and brand licensing agreements with News. The OFT therefore considers that it would be appropriate to ensure the performance of those agreements for the period contemplated in the UIL. Specifically:

- (i) in comparison to News, Newco would be a small business with limited resource to engage in an extended dispute with News; given the importance of the carriage and brand licensing agreement to the UIL, the OFT believes it is questionable whether it would be sufficient for the success of the UIL to rest solely on Newco's ability to enforce its contractual rights; and
- (ii) although the OFT understands the point about News' ongoing incentives as regards Sky News, it is clearly impossible to guarantee that such incentives would not change in the future; here again, it may be appropriate to 'insure' against a change in News' incentives going forward.

The OFT therefore believes that it may advise the Secretary of State that it is appropriate – in this particular case – to require News to undertake to him that it would not terminate the carriage agreement or the brand licensing agreement without prior OFT consent (to be given only in the event of a material breach that could not be cured).

The OFT notes that, in the context of a first phase remedy in lieu of a detailed investigation, it would need to be confident about the success of the UIL. The OFT would note also that, given News' submissions on its incentives as regards Sky News, we do not

understand why News would be unwilling to provide such an undertaking. For the same reason, the OFT would also envisage that any monitoring obligation on the OFT would be minimal.

Please confirm whether News' final position remains that it would not be willing to provide any form of non-termination undertaking in relation to the carriage agreement and brand licensing agreement in the UIL.

3. Absence of interim protection regarding Sky News

The OFT notes that the UIL do not contain any interim protection in relation to the Sky News business pending spin-off in the event that the offer is not recommended.

News argued in its response to the OFT questions of 1 February that no such protection was required because there was no risk of a loss of plurality in the short term and there was no risk of News inflicting long-term damage on the Sky News business given that they would not be competing post spin-off (paragraph 11.2).

The OFT's concern in this regard is not in relation to an interim impact on media plurality. The OFT's concern focuses on the fact that, notwithstanding News' contention that it would not be competing with Sky News post spin-off, this contention is wholly reliant on the assertion that News' incentives are to preserve Sky News and that it does not have any incentive to frustrate the intended outcome of the UIL.

The OFT considers that it may be appropriate for News to provide undertakings as to the preservation and continued operation of Sky News pending its spin-off in order to provide an assurance that the Sky News business to be spun-off will not be materially different to the Sky News business today. Such an assurance would be in similar terms to those typically provided in UIL.

The OFT would note also that, given News' submissions on its incentives as regards Sky News, the OFT does not understand why News would be unwilling to provide such an undertaking.

Please confirm whether News' final position remains that it would not be willing in the UIL to commit to any form of interim protection in relation to the Sky News business pending spin-off.

4. Finite duration of the carriage agreement and brand licensing agreement

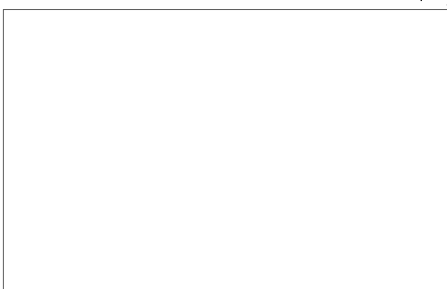
The OFT notes the finite duration of the carriage agreement and brand licensing agreement, on which Newco is dependent for its ongoing financial viability. The OFT has been asked to advise the Secretary of State on whether there are practical issues which could undermine the effective operation of the UIL, and whether the UIL would be effective in the medium and long term. Given the dependence of Newco on the carriage agreement for the majority of its revenue, the OFT has concerns that the UIL offered do not propose any mechanism for ensuring the viability of Newco beyond ten years.

News provided an explanation in response to the OFT's questions of 1 February as to why it believed that the UIL were clear-cut, notwithstanding the finite duration of the carriage agreement and brand licensing agreement (paragraph 14.1.1). However, News' response does not engage substantively with the question of how Newco would expect to derive its principal revenue stream once the carriage agreement (at ten years duration) has ended.

Please provide any further representations on the medium and long term viability of the UIL given the finite duration of the carriage agreement and brand licensing agreement or alternatively any further proposals to ensure the viability of Newco over the medium and long term.

I would be grateful for a response on these points by midday tomorrow. Equally, I would be happy to discuss with you, and News, by telephone today.

Yours sincerely



EX.A32

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:52
To: OLDFIELD PAUL
Subject: Fwd: Letter sent to Ofcom
Attachments: DOC110211.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 11 February 2011 13:27:18 GMT
To: "adamsmith" <[Redacted]>
Subject: FW: Letter sent to Ofcom

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EX.P33



**STRICTLY CONFIDENTIAL
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BY EMAIL ONLY

11 February 2011

Ofcom
2A Riverside House
Southwark Bridge Road
London SE1 9HA

Dear

News Corporation/BSkyB merger UILs

I refer to your letter to News Corporation (News) of 9 February 2011 and to our meeting yesterday evening with and you.

We appreciate that at the meeting it was recognised that News' proposed structural UIL "goes a long way forward" in addressing the concerns identified by the Ofcom Report and that you agreed that the UIL preserves Sky News as a "distinct media enterprise".

In its Report to the Secretary of State, Ofcom expressed the view that News' proposed acquisition of the remaining shares of Sky might have an impact on plurality because it would remove existing constraints which Ofcom considered were key to Sky's present day editorial independence from News: specifically, the existence of other shareholders and independent directors in Sky.

Accordingly, Ofcom's Report is based on the premise that the presence of independent shareholders and independent directors in Sky at the present time is sufficient to guarantee plurality and the preservation of Sky as an independent editorial voice in TV broadcast news.

News' proposed structural UIL would address Ofcom's concerns by creating a new and distinct media enterprise in the form of a publicly traded entity, whose corporate governance provisions would mirror those of Sky. Specifically, NewCo would continue to have shareholders and a majority of directors independent of News in the same way that Sky does today. The Transaction will therefore have no effect on the plurality of persons with control of media enterprises serving audiences in the UK.

News Corporation

In the letter of 9 February, you raised four main points, which you believe should be included in the UILs offered by News. These were re-iterated at the meeting of 10 February. While we continue to believe that the UIL is sufficient to address Ofcom's concerns, we are willing to submit a comprehensive proposal that should address the remaining issues raised by Ofcom which are relevant to plurality. We respond to each point in turn. As you know, we have been in touch with the OFT separately in relation to the clarifications that they have sought.

Unless expressly stated otherwise, defined terms in this letter have the same meaning as in News' response to the OFT's questions of 1 February (the **First OFT Response**) and in its response to the OFT's questions of 7 February (the **Second OFT Response**).

"1. The board of Newco to consist of a majority of independent directors. "Independent directors" being directors which have no other News Corporation or News Corporation associated interest"

News has already offered a commitment in this respect. Please refer to paragraph 3.1(ii) of the proposed UIL, together with the explanation of "independent" supplied to the OFT in response to question 2.6 of the OFT's questions of 7 February 2011.

News would be prepared to address Ofcom's request by specifically undertaking to the Secretary of State that a definition of an "independent director" would be enshrined in NewCo's constitutional documents, thereby eliminating its ability to not comply and disclose against the Code. The definition of "independent director" would exclude the circumstances and relationships set out in Provision B.1.1 of the UK Corporate Governance Code (the Code). Under that provision, a director is deemed not to be independent if the director:

- has been an employee of the company or group within the last five years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first election.

News Corporation

"2. We would expect the board of Newco, including the independent non executive directors, to have a combination of both senior editorial and business experience/expertise"

News considers that this should be a matter for NewCo to determine, although it would anticipate that the board of NewCo should have expertise in these areas. This concern is already addressed as a result of the commitment to adhere to obligations as regards compliance with the Code (Draft UIL, 3.1(iv)) which provides the following:

"The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively." (Provision B.1)

News would be prepared to address Ofcom's request by specifically undertaking to the Secretary of State that this requirement will be enshrined in NewCo's constitutional documents and that at least one independent member of the NewCo board would have editorial and/or journalistic experience.

"3. The Chairman of Newco be an independent non executive"

As indicated in the original UIL proposal to the Secretary of State and in subsequent correspondence with Ofcom (and the OFT), the proposed UIL replicates, in relation to NewCo, News' current position *vis a vis* Sky. On that basis, the proposed UILs maintain Sky's status quo in relation to the governance of NewCo.

As we noted in News' response to question 11 of Ofcom 7 February RFI, the decision as to who should be the chairman of the board of NewCo will rest with the board of NewCo, which should have the freedom to decide the best candidate in the interest of the business. News is prepared to commit that the independent directors will be the majority of the board of NewCo (see question 1 above). Therefore, News sees no need to offer an additional undertaking in relation to the chairman of NewCo.

Nor does News understand how such an undertaking could be necessary to address Ofcom's potential plurality concerns. There is nothing in Ofcom's Report to the Secretary of State suggesting that Sky's current degree of editorial independence was in any way linked to its non-executive chairman being independent. Indeed there could not be such a link because Sky's current chairman is not independent and, since its listing in 1994, Sky has never had a chairman who was not affiliated with one of its major shareholders.

Under provision A.3.1 the Code states *"The chairman is responsible for setting the board's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The chairman should also promote a culture of openness and debate by facilitating the effective contribution of nonexecutive directors in particular and ensuring constructive relations between executive and non-executive directors. The chairman is responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should ensure effective communication with shareholders."*

Ofcom recognised at the 10 February meeting that the requirement for an independent Chairman is a new point not covered by the Report. It is still not clear to News why this function is relevant to address a potential plurality concern in the context of the Secretary of State's consideration of the UIL.

News Corporation

Therefore, we continue to see no basis upon which the Secretary of State can reasonably expect that an undertaking in this respect is needed or justified in the present case.

"4. The creation of a sub-committee of the board of Newco to deal with editorial matters ("the Board Editorial Committee"):

- i) Members of the Board Editorial Committee to contain a majority of independent non executive board members, one of whom is the Chair of the Board Editorial Committee. We would expect the Chair to have senior editorial experience and expertise.*
- ii) We would expect the terms of reference for the Board Editorial Committee to include:*
 - the editorial independence and integrity of Sky News*
 - the hiring, firing or replacement of the Sky News Editor and all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal)*
 - any changes to the authority, reporting relationship and consultation rights of the Sky News Editor."*

News has explained to Ofcom that it does not consider that this should be necessary. Please refer to News' response to question 14 of Ofcom's questions of 3 February 2011.

Given that the majority of NewCo's board members will be independent in any event (as per response to point 1 above), News does not understand the purpose of a Board Editorial Committee which would also comprise a majority of independent board members (as envisaged by Ofcom in question 4(i)). This would not only be unnecessary but also redundant, particularly in the context of a company that is focussed specifically on news provision. The functions envisaged by question 4(ii) would also be carried out under the supervision of the NewCo's board.

Without prejudice to this view, News would be prepared to address Ofcom's request by specifically undertaking to the Secretary of State that:

- NewCo's constitutional documents will explicitly provide that Sky News TV service will abide by the principle of editorial independence and integrity in news reporting and that it will comply with the Broadcasting Code.
- The hiring and firing of the head of Sky News (i.e. the most senior editorial position of Sky News) would have to be approved by NewCo's board which comprises a majority of independent directors.
- NewCo will establish a Corporate Governance and Nominations Committee that:
 - would operate under terms of reference substantially similar to those of Sky's current Corporate Governance and Nominations Committee;
 - would comprise a majority of independent members (including the independent board member with editorial and/or journalistic experience);

 News Corporation

- would be chaired by an independent board member;
- would specifically be entrusted with oversight of compliance with **both** NewCo's corporate governance provisions (as provided for under the UIL) **and** NewCo's constitutional provisions relating to the principle of editorial independence and integrity in news reporting, and compliance with the Broadcasting Code.

We trust that, in light of these clarifications and further undertakings, which address points that (as agreed by Ofcom at the meeting on 10 February) go beyond its own Report and which go beyond the corporate governance provisions currently in place at Sky, Ofcom would be able to advise the Secretary of State that he should accept the proposed UILs.

Yours sincerely

[Redacted signature area]

[Redacted name area]

News Corporation

EX. P34

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:53
To: OLDFIELD PAUL
Subject: Fwd: UIL: OFT and OFCOM
Attachments: Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - cover letter to News covering questions 21 February 2011.pdf; ATT00001..htm; PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - questions for News 21 February 2011.pdf; ATT00002..htm; Ofcom_letter_to_News_Corporation_21_Feb_2011.pdf; ATT00003..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 22 February 2011 08:45:35 GMT
To: "adamsmith" <[Redacted]>
Subject: FW: UIL: OFT and OFCOM

This arrived late last night. We are looking into it.

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EX. P35

OFFICE OF FAIR TRADING

RESTRICTED - CONFIDENTIAL

[Redacted]

Allen & Overy LLP

Cc [Redacted] Ofcom

Cc [Redacted] NewsCorp

Your ref 0012561-0000367

Our ref

Date 21 February 2011

Direct line [Redacted]

Fax [Redacted]

Email [Redacted]

Dear [Redacted]

News / BskyB

As you will know, the Secretary of State has written to us by letter of 17 February requesting further advice from us on a set of undertakings in lieu (UILs) to enable him to decide whether or not he should be minded to accept them and launch a public consultation. The Secretary of State has asked us to provide this advice within a very short timeframe (by this Thursday).

We have seen a copy of the letter sent by James Murdoch to the Secretary of State in which he agrees, on behalf of News Corporation, to agree to the recommendations set out in our Report of 11 February 2011 and Ofcom's report. We also have a revised set of draft UILs which you submitted to the Secretary of State on 16 February. We have now considered the revised set of UILs to assess whether they will lead to solution which is practically and financially viable and whether there are any practical issues which could undermine the operation of the UILs and whether they would be effective over the medium to long term (please see paragraph 1.3 of our report for our original set of instructions).

We note that Ofcom has advised that the UILs would, subject to a number of issues relating principally to the governance of Newco, be effective in meeting the media plurality concerns addressed in their report of 31 December 2010. As you know, it is not our role to advise on effectiveness and we therefore restrict our questions and our further advice



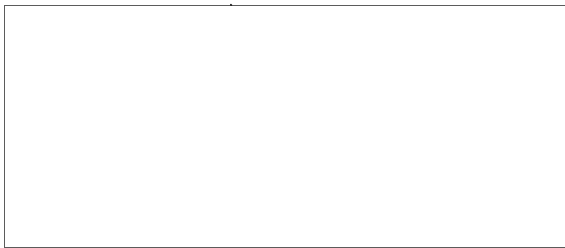
INVESTOR IN PEOPLE

to the Secretary of State to issues of practical and financial viability as noted in paragraph 1.3 of our report.

In that light, we have the following questions in relation to the revised draft UILs. Given the short timeframe in which we need to respond to the Secretary of State, I would be grateful if you could respond to our requests by 6 pm tomorrow (22 February 2011).

I would also note that we have limited our comments to those provisions which are most relevant to our assessment of the UILs at this stage. If there is a further round of negotiation or if a public consultation is launched, you will note that there are several risks identified in our report (even as they relate to the short to medium term) which may still need to be addressed through the specific details of the carriage agreement, brand licensing agreement or other aspects of the operational agreements.

Yours sincerely,



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PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

QUESTIONS RE REVISED UNDERTAKINGS IN LIEU PROPOSAL

21 FEBRUARY 2011

Introduction

The OFT sets out below questions it has in relation to the revised undertakings in lieu offered by News Corporation (News) on 16 February 2011 in relation to its proposed acquisition of the remaining shares in BSKyB Group plc (Sky) (the UIL).

These questions are designed to assist the OFT in preparing its advice to the Secretary of State under section 93 Enterprise Act 2002 as to whether the UIL would be practically and financially viable.

The OFT requests a response to these questions by 6 pm on 22 February 2011.

Corporate governance

1. Please explain why the word 'substantially' has been added in paragraph 3.1(i) of the revised UIL.

Transfer of assets

2. Please explain how in the revised UIL News proposes to incorporate its willingness to provide a detailed schedule of assets to be provided to Newco (as indicated in News' letter to the Secretary of State of 16 February 2011).

Non-solicitation of staff

3. The OFT is concerned about the length of the non-solicitation clause. Would News be prepared to extend the period in paragraph 4.2 of the revised UIL to 24 months?

Carriage agreement and brand licensing agreement

4. The current drafting of paragraphs 4.5 and 4.7 of the UIL might suggest that the Secretary of State's review of the carriage agreement and brand licensing agreement should be limited only to

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satisfaction of the criteria enumerated in paragraphs 4.5 and 4.7. Please confirm that News would be willing to amend the opening sentences of paragraph 4.5 and 4.7 of the revised UIL from 'News shall be deemed to have complied with the obligation in section [4.4/4.6] above so long as Sky has entered into a [Carriage Agreement/Brand Licensing Agreement] with Newco which ...' to 'Any [Carriage Agreement/Brand Licensing Agreement] approved by the Secretary of State for the purpose of the obligation in paragraph [4.4/4.6] above] shall ...'.

5. Please confirm that News would be prepared to amend paragraph 4.8 of the revised UIL to read 'News shall also ensure that neither the Carriage Agreement nor the Brand Licensing Agreement can be terminated by Sky until any dispute between News and Sky as to the validity of that proposed termination ...'.

Dispute resolution mechanism

6. The OFT notes that no details are provided of the basis of the dispute resolution mechanism contemplated in paragraph 4.5(v) of the revised UIL. The OFT queries whether it is appropriate to omit such detail from the terms of the UIL given its potential importance. Please provide details of how News would envisage the dispute resolution mechanism functioning in relation to:
 - (a) the principles / terms of the resolution procedure;
 - (b) the body / individual responsible for resolution;
 - (c) whether regard would be had to the purpose of the UIL and the Secretary of State's decision in resolving a dispute;
 - (d) how the costs of such a mechanism would be allocated; and
 - (e) what the appeal rights would be in relation to such a mechanism.

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Operational agreements

7. Do the categories of operational agreements listed at 5.1 of the draft UIL include all those required from Sky by Newco to operate its core business from the date of spin-off?
8. Please list in full the facilities and services covered by the operational agreements in 5.1 of the UIL (as discussed at the third bullet of paragraph 11.10 of the OFT report).
9. Please identify any of the operational agreements (or components of these agreements) where terms of provision by News/Sky is of key importance to Newco's business ('key agreements'), as discussed at paragraph 10.9 of the OFT's report to the Secretary of State. Please confirm whether News would be prepared to have such agreements subject to oversight and approval by the Secretary of State prior to acceptance of the undertakings in lieu (as for the carriage agreement and brand licensing agreement) (as indicated in News' letter to the Secretary of State of 16 February 2011).
10. Please confirm that the obligation on News/Sky to enter operational agreements under 5.1 of the UIL will apply at the point of spin-off (as discussed at the first bullet of paragraph 11.10 of the OFT report). Please confirm what is meant by 'if required by Newco' in paragraph 5.1 of the UIL (given that, immediately prior to the time of the spin-off, Newco will not be an independent entity and will therefore not be able to determine whether such agreements are 'required').
11. Is News prepared to address in the UIL inclusion of Newco termination rights in the operational agreements, and absence of termination rights for News/Sky (subject to events outside News'/Sky's control) (as discussed at the fourth bullet of paragraph 11.10 of the OFT report)? Is the first part of this what is meant by '(or such shorter time as required by Newco)' in paragraphs 5.1(i), and (ii) of the UIL? If so, the OFT considers this should be spelt out with greater clarity.

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12. Please confirm the intention of clause 5.2(a) of the UIL: would this term be included in the contract from the outset? Which of the contracts may it apply to?

Interim action

13. Please confirm whether News would be prepared to agree the following changes to paragraph 8.1 of the UIL:
- (a) 8.1(iii) to become 'the Sky News business is maintained and preserved and is run in the ordinary course'; and
 - (b) 8.1(iv) to become 'the nature, description, range and standard of news gathering ...'.

Removal or variation

14. Please explain why News believes this provision is required given that the Enterprise Act 2002 already provides a scheme for variation of UIL in the event of a change of circumstances.

Definition of material transaction

15. Please explain how the definition of 'Material Transaction' has been derived and why differential treatment has been given to transactions with values of £12.5 million.

OFT

21 February 2011

EX. A36

[Redacted]

From: Adam Smith <adamsmi[Redacted]>
Sent: 27 April 2012 09:53
To: OLDFIELD PAUL
Subject: Fwd: UIL: Ofcom and OFT responses
Attachments: CO-#13505572-v6-Response_to_OFT_questions_of_21_February_2011.pdf; ATT00001..htm; CO-#13506201-v1-Second_Revised_Draft UIL.pdf; ATT00002..htm; CO-#13505573-v4-Response_to_Ofcom_questions_of_21_February_2011.pdf; ATT00003..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 22 February 2011 23:25:46 GMT
To: "adamsmith" <[Redacted]>
Subject: UIL: Ofcom and OFT responses

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EX. A37

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PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

RESPONSE TO OFT QUESTIONS OF 21 FEBRUARY 2011 RE REVISED UIL PROPOSAL

News Corporation (News) sets out below its response to the questions contained in the OFT's letter of 21 February 2011.

Unless expressly stated otherwise, defined terms in this letter have the same meaning as in News' response to the OFT's questions of 1 February (the **First OFT Response**) and in its response to the OFT's questions of 7 February (the **Second OFT Response**).

Corporate governance

1. *Please explain why the word 'substantially' has been added in paragraph 3.1(i) of the revised UIL.*

The inclusion of the word "substantially" reflects the addition at section 3.1(i) of the revised draft UIL presented to the Secretary of State on 16 February 2011 (the **First Revised Draft UIL**) of a reference to the specific voting agreement currently applying to Sky.

Clearly the voting agreement applicable to Newco will not be exactly the same as the Sky voting agreement as different parties are involved and reference to prior legislation needs to be updated. It will, however, replicate the substance of that agreement.

Transfer of assets

2. *Please explain how in the revised UIL News proposes to incorporate its willingness to provide a detailed schedule of assets to be provided to Newco (as indicated in News' letter to the Secretary of State of 16 February 2011).*

News' proposal is that it provide the Secretary of State/the OFT with a schedule of assets while the public consultation on the UIL is ongoing. News is prepared to commit in the UIL to provide such a schedule to the Secretary of State prior to the Effective Date and this has been reflected in section 4.1 of the attached revised draft UIL (the **Second Revised Draft UIL**).

News does not believe that it is necessary or practical to incorporate such a detailed schedule of assets in the UIL itself and, as previously mentioned, much of the content of such a document would be confidential to Sky and could not be publicly disclosed for public consultation.

Non-solicitation of staff

3. *The OFT is concerned about the length of the non-solicitation clause. Would News be prepared to extend the period in paragraph 4.2 of the revised UIL to 24 months?*

News believes that the 12 month period set out at section 4.2 of the First Revised Draft UIL will provide more than adequate protection to Newco given that neither Sky nor News will be a direct competitor of Newco and given that Sky will continue to have a vested interest in the continued provision of quality output from Sky News (as per News' response at 8.2 of the First OFT Response).

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News also notes that its suggestion of a one year period represents the established practice in this respect, as set out in the CC's Merger Remedies Guidelines, which envisage such clauses to last for only "a limited period (eg one year)".¹

However News is prepared to extend the suggested period to 24 months in order to resolve this issue as reflected in section 4.2 of the Second Revised Draft UIL.

Carriage agreement and brand licensing agreement

4. *The current drafting of paragraphs 4.5 and 4.7 of the UIL might suggest that the Secretary of State's review of the carriage agreement and brand licensing agreement should be limited only to satisfaction of the criteria enumerated in paragraphs 4.5 and 4.7. Please confirm that News would be willing to amend the opening sentences of paragraph 4.5 and 4.7 of the revised UIL from 'News shall be deemed to have complied with the obligation in section [4.4/4.6] above so long as Sky has entered into a [Carriage Agreement/Brand Licensing Agreement] with Newco which ...' to 'Any [Carriage Agreement/Brand Licensing Agreement] approved by the Secretary of State for the purpose of the obligation in paragraph [4.4/4.6] above] shall ...'.*

News is willing to amend the language at sections 4.4 and 4.6 of the draft UIL as suggested by the OFT.

Please see sections 4.4 and 4.6 of the Second Revised Draft UIL (and the consequential minor amendments to the language at the relevant sub-sections).

5. *Please confirm that News would be prepared to amend paragraph 4.8 of the revised UIL to read 'News shall also ensure that neither the Carriage Agreement nor the Brand Licensing Agreement can be terminated by Sky until any dispute between News and Sky as to the validity of that proposed termination ...'.*

News is willing to amend the language at section 4.8 of the draft UIL as suggested by the OFT.

Please see section 4.8 of the Second Revised Draft UIL.

Dispute resolution mechanism

6. *The OFT notes that no details are provided of the basis of the dispute resolution mechanism contemplated in paragraph 4.5(v) of the revised UIL. The OFT queries whether it is appropriate to omit such detail from the terms of the UIL given its potential importance. Please provide details of how News would envisage the dispute resolution mechanism functioning in relation to:*

- (a) the principles / terms of the resolution procedure;*
- (b) the body / individual responsible for resolution;*
- (c) whether regard would be had to the purpose of the UIL and the Secretary of State's decision in resolving a dispute;*
- (d) how the costs of such a mechanism would be allocated; and*
- (e) what the appeal rights would be in relation to such a mechanism.*

News does not consider that it should be necessary to set out the precise terms of the dispute resolution mechanism in the UIL itself given that the precise terms of the Carriage Agreement

¹ CC8 – Merger Remedies: Competition Commission Guidelines, November 2008 at paragraph 3.18.

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(including the relevant dispute resolution mechanism) will in any event be subject to approval by the Secretary of State under section 4.4 of the Second Revised Draft UIL.

News would envisage that the Carriage Agreement will provide for mediation in the event of a relevant dispute, followed, if the dispute remains unresolved at the end of that mediation process, by arbitration proceedings under the London Court of International Arbitration.

On this basis, following the sub-questions above:

- (a) News would propose that the ordinary principles of arbitration - a well-established process of dispute resolution in commercial agreements - would apply.
- (b) London Court of International Arbitration.
- (c) News did not intend to include a specific reference to the purpose of the undertakings as any dispute referred to the Court of Arbitration would relate to a potential breach of the Carriage Agreement rather than News' compliance with the undertakings.
- (d) As set out in the UIL (now at section 4.8 of the Second Revised Draft UIL), News commits to bear all reasonable costs (including Newco's reasonable costs) of any dispute resolution process resulting from a proposed termination by Sky and this would be reflected in the relevant termination clause.
- (e) As would ordinarily be the case in an arbitration proceeding, News would also propose that the decision of the arbitrator should be determinative of the dispute between the parties (i.e. there should be no appeal).

Operational agreements

7. *Do the categories of operational agreements listed at 5.1 of the draft UIL include all those required from Sky by Newco to operate its core business from the date of spin-off?*

Yes, the agreements listed at section 5.1 of the draft UIL, together with the Carriage Agreement and the Brand Licence Agreement and the transfer of assets and personnel to Newco mean that Newco will be in a position to operate its core business from the date of the spin-off.

For clarity, News has also deleted the wording "including" from section 5.1 of the Second Revised Draft UIL.

Please note that we have changed the wording of section 5.1(iv) to clarify that broadcast and technical services can be provided under one or more agreements.

8. *Please list in full the facilities and services covered by the operational agreements in 5.1 of the UIL (as discussed at the third bullet of paragraph 11.10 of the OFT report).*

It is unclear to News what additional detail is required, particularly in light of the confirmation provided in response to question 7 above.

9. *Please identify any of the operational agreements (or components of these agreements) where terms of provision by News/Sky is of key importance to Newco's business ('key agreements'), as discussed at paragraph 10.9 of the OFT's report to the Secretary of State. Please confirm whether News would be prepared to have such agreements subject to oversight and approval by the Secretary of State prior to acceptance of the undertakings in lieu (as for the carriage agreement*

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and brand licensing agreement) (as indicated in News' letter to the Secretary of State of 16 February 2011).

All of the operational agreements relate to assets or services which Newco could, if it wished, source on the open market.

However Newco is likely to wish to continue to use its existing premises, at least in the medium term, and therefore on this basis the lease referred to at paragraph 5.1 (ii) of the Second Revised Draft UIL could be viewed as a key agreement. News has therefore added, at paragraph 5.1 (ii) of the Second Revised Draft UIL that the Secretary of State should have a power of approval over that agreement.

All of the other services which News proposes to offer are readily available on the open market and could easily be sourced by Newco from third parties in the short to medium term. See also the response to question 11 below as regards Newco's ability to terminate agreements with Sky if it wished to switch to a third party provider.

10. *Please confirm that the obligation on News/Sky to enter operational agreements under 5.1 of the UIL will apply at the point of spin-off (as discussed at the first bullet of paragraph 11.10 of the OFT report). Please confirm what is meant by 'if required by Newco' in paragraph 5.1 of the UIL (given that, immediately prior to the time of the spin-off, Newco will not be an independent entity and will therefore not be able to determine whether such agreements are 'required').*

It is News' intention that the agreements will be in place at spin-off. Section 5.1 of the Second Revised Draft UIL has been amended to reflect this.

For clarity (and further to the OFT's additional question 11 below) News has amended section 5.1 of the Second Revised Draft UIL to delete the wording referred to by the OFT in its second sentence.

11. *Is News prepared to address in the UIL inclusion of Newco termination rights in the operational agreements, and absence of termination rights for News/Sky (subject to events outside News'/Sky's control) (as discussed at the fourth bullet of paragraph 11.10 of the OFT report)? Is the first part of this what is meant by '(or such shorter time as required by Newco)' in paragraphs 5.1(i), and (ii) of the UIL? If so, the OFT considers this should be spelt out with greater clarity.*

As indicated in response to question 10, for clarity, News has amended section 5.1 of the Second Revised Draft UIL to delete the wording referred to by the OFT.

- News is prepared to offer Newco agreements for the stated time period and to allow Newco to terminate the relevant agreements early, reasonable notice periods (which will differ by agreement) and break fees to cover Sky's unavoidable costs of early exit where appropriate.

12. *Please confirm the intention of clause 5.2(a) of the UIL: would this term be included in the contract from the outset? Which of the contracts may it apply to?*

As explained by News at 5.3 of the Second Revised Draft UIL (5.2 of the First Revised Draft UIL), in order to provide greater certainty for Newco, it is intended that costs under each of the agreements listed at 5.1(iii) to 5.1(v) will be calculated in the first year as the cost to Sky of providing those services and thereafter will increase by CPI.

Due to a typographical error, it was inadvertently suggested in the First Revised Draft UIL that the agreement listed at 5.1(ii) also be priced by reference to cost. This has now been corrected as this is not News' intention (as it does not consider that such an approach makes sense in reference to this agreement because there is no relevant internal cost). This will be priced on market terms as is

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consistent with the business plan. News notes, in any event, that given News' response to question 9, the lease agreement will in any event be subject to the approval of the Secretary of State.

Section 5.2(a) is a nuance to the automatically increasing cost structure (linked to CPI) so that certain costs will reflect Newco's actual demand for the service where demand can vary rather than being a single fixed overall price. In relation to broadcast operations and creative services for example, Newco may choose to source some or all of its needs elsewhere and it is sensible for costs to reflect demand. The same applies for aspects of the other agreements where demand is variable for example where Newco may instead choose to hire its own staff or alternatively to increase the amount of support it requires from News (such as IT support).

Interim action

13. *Please confirm whether News would be prepared to agree the following changes to paragraph 8.1 of the UIL:*

(a) *8.1(iii) to become 'the Sky News business is maintained and preserved and is run in the ordinary course'; and*

(b) *8.1(iv) to become 'the nature, description, range and standard of news gathering ...'.*

News is prepared to agree these changes. Please see section 8.1 of the Second Revised Draft UIL.

Removal or variation

14. *Please explain why News believes this provision is required given that the Enterprise Act 2002 already provides a scheme for variation of UIL in the event of a change of circumstances.*

News believes that the inclusion of this provision provides greater clarity and is unclear why the OFT would object to the inclusion of such a provision.

Definition of material transaction

15. *Please explain how the definition of 'Material Transaction' has been derived and why differential treatment has been given to transactions with values of £12.5 million.*

The definition of material transaction is based on that currently adopted by Sky which has a similar two-tier structure but with higher monetary limits applying.

In Sky's existing corporate governance structure, related party transactions involving the payment or receipt of £10 million or more require audit committee approval and related party transactions involving the payment or receipt of £25 million or more require additional board approvals.

News accepts however that the definition which has been provided of Material Transactions is confusing (and redundant given the wording of section 3.1(iv) of the First (and Second) Revised Draft UIL) and it has provided a revised definition in the Second Revised Draft UIL.

Other

As mentioned in response to question 2.7 of the Second OFT Response News intends to include Sky's independent directors when considering candidates for the board of Newco. We have therefore clarified the definition of Independent Directors to ensure that Sky's independent directors are not excluded.

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Allen & Overy LLP on behalf of News Corporation

22 February 2011

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News Corporation

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

RESPONSE TO OFCOM QUESTIONS OF 21 FEBRUARY 2011 RE REVISED UIL PROPOSAL

News Corporation (News) sets out below its response to the questions contained in Ofcom's letter of 21 February 2011.

Unless expressly stated otherwise, defined terms in this letter have the same meaning as in News' response to the OFT's questions of 1 February (the **First OFT Response**) and in its response to the OFT's questions of 7 February (the **Second OFT Response**).

1 As explained in our letter to the Secretary of State of 11 February, we believe that a transparent mechanism should be in place to ensure editorial integrity and independence of Sky News is at the heart of the Newco Board's work. Our proposal was for the establishment of an editorial committee of the Board to fulfil this function, but we noted that this same function could be achieved in a number of ways. The revised UILs (under clause 3.1.viii) provide instead for the establishment of a corporate governance and nominations committee. Can you elaborate on how this committee would fulfil the same function as the editorial committee we outlined? In particular, can you provide specific details on the following points:

1.1 We envisaged that the terms of reference of the proposed editorial committee would include

- a. hiring, firing or replacement of the Sky News Editor (including any material changes in terms and conditions which could give rise to constructive dismissal); and
- b. any changes to the authority, reporting relationship and consultation rights of the Sky News Editor.

We note you propose that the appointment or removal of the head of Sky News must be approved by the Board of Newco. However, the revised UILs do not specify any particular arrangements in relation to changes in his/her role. Can you confirm whether you propose that changes in the his/her role would be approved by the Board of Newco, the corporate governance and nominations committee or some other governing body.

News is willing to provide that any material changes in terms and conditions which could give rise to constructive dismissal, and any material changes to the authority or reporting relationship of the head of Sky News (i.e. the Sky News Editor) must be approved by the board of Newco.

News does not understand the meaning and relevance of the reference to consultation rights.

Please see section 3.1(vi) of the attached revised draft UIL (the **Second Revised Draft UIL**).

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- 1.2 Our proposal for an editorial committee of the Newco Board envisaged this committee would take responsibility for the hiring, firing and replacement of all key editorial appointments (including any material changes in terms and conditions which could give rise to constructive dismissal). The draft UILs define Key Sky News Editorial Staff as the head of Sky News, the executive editor of Sky News and the head of newsgathering of Sky News. Can you clarify which governing body would be responsible for appointing these roles?**

News' intention is for the head of Sky News to have responsibility for the appointment of the executive editor of Sky News and the head of newsgathering at Sky News, as is currently the case.

Please find attached News' response to the questions raised, together with a revised draft of the UIL showing proposed changes marked against the version submitted on 16 February 2011.

Should you have any questions, we look forward to discussing these with you at your earliest convenience.

Given that the appointment of the head of Sky News is to be approved by the board of Newco, the majority of which will be independent and which will be chaired by an independent Chairman, News considers that this is entirely appropriate.

- 1.3 In our proposal for an editorial committee, we indicated our expectation that the Chair of this committee would be an independent director with senior editorial experience and expertise. How do the proposed UILs provide the same degree of protection for plurality?**

In response to Ofcom's request, News has agreed to establish a Corporate Governance and Nominations Committee which will oversee corporate governance provisions, principles of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code. As set out in section 3.1(viii) of the UIL, the Corporate Governance and Nominations Committee will have a majority of independent directors, will be chaired by an independent director and will include at least one independent director with editorial and/or journalistic expertise. The Corporate Governance and Nominations Committee which will consist of a majority of independent directors will have the power to determine which of those independent directors is appointed chairman.

News has also committed that the board of Newco will comprise a majority of independent directors and that one of those independent directors shall be chairman of the board of Newco (see further News' response to question 2 below).

Ofcom acknowledged at paragraph 22 of its Report to the Secretary of State of 11 February that there were a number of ways in which editorial issues could put at the heart of the board's function and that plurality could be protected.

News considers that it has responded to all of Ofcom's key concerns and believes that these commitments provide far more than adequate protection for plurality. News also believes that the most appropriate body to determine which of the independent directors would be most suitable to chair the Corporate Governance and Nominations Committee is that committee itself.

- 2. Can you explain how clause 3.2 of the draft UILs, which contains News Corporation's commitment to vote against any proposed change to Newco's articles of association which**

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would remove the corporate governance provisions provided for in sections 3.1 (ii) to 3.1 (viii) would provide security that the articles of association will not be amended, given that News Corporation appears to propose that the commitment should fall away if either:

- a single shareholder group owns more than 50% of the voting shares in Newco; or
- News Corporation has the right to vote 25% or less of the shares in Newco.

With regard to the ceiling threshold, News believes that if a single shareholder group owns more than 50% of the voting shares in Newco, it is appropriate for this voting commitment to fall away to enable such shareholder to exercise their full control rights. Maintaining such a restriction in circumstances where a single shareholder was to acquire more than 50% of the voting shares in Newco would negatively impact the attractiveness of Newco to potential future third party investors as a majority shareholder would only be able to change the Articles of Association if they hold more than 75% of the voting shares. It is not clear why this should be a concern from a plurality standpoint.

News notes that this was explained in its Second OFT Response (in response to question 2.4) and neither the OFT nor Ofcom has subsequently raised this as a concern.

News is subject to a commitment not to acquire additional shares in Newco (at 6.1 of the UIL) and to be bound by a voting limitation of 37.19% (i.e. the level of its current voting rights in Sky) (at 3.1 of the UIL). Any concern which might arise in relation to future acquisition of control by a third party would be entirely unrelated to the transaction now in contemplation.

With regard to the floor threshold, if News' shareholding falls below 25% News could not, in any event, ensure that the Articles of Association were not amended by other shareholders. Furthermore, in this situation it is difficult to see why the proposed protections would be required. Without prejudice to this view, News is prepared to lower this bottom threshold to 15% should the Secretary of State deem that to be necessary. Please see section 3.2 of the Second Revised Draft UIL.

3. **Do you anticipate that the text of Newco's articles of association and the terms of reference for the corporate governance and nominations committee concerning editorial independence and integrity would require prior approval by the Secretary of State?**

All relevant aspects of the corporate governance protections which are to be included in the articles of association of Newco are already set out in the draft UIL. Key aspects of the terms of reference of the corporate governance and nominations committee have also been clarified.

Furthermore the detail of the terms of reference of the corporate governance and nominations committee will be determined by the board of Newco, which will comprise a majority of independent directors.

In light of this, News does not see any reason why the text of Newco's articles of association or the terms of reference of the corporate governance and nominations committee should require prior approval by the Secretary of State.

Finally News notes that a requirement for such a prior approval has not been previously suggested by the OFT or Ofcom (or by the Secretary of State).

4. **Within our letter to the Secretary of State, we outlined the importance of embedding provisions relating to governance in Newco's constitutional documents. Would News**

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Corporation consider entrenching the provisions of Newco's articles of association relating to editorial independence and integrity to the effect that these provisions may only be amended or repealed if conditions more restrictive than those applicable in the case of a special resolution are met?

News considers that the need for a special resolution to remove a requirement which is in the articles of association of a company provides more than adequate protection against the removal of these provisions (specifically, the requirement is for 75% of votes cast to be in favour of amendment in order for the amendment to be carried).

News would refer Ofcom to its response to question 2 above in which News indicates its willingness to undertake to continue to vote against any proposed change to Newco's articles of association while it has the right to vote more than 15% of the shares in Newco.

Allen & Overy LLP on behalf of News Corporation

22 February 2011

EX. P41

[redacted]

From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:54
To: OLDFIELD PAUL
Subject: Fwd: Follow-up from this afternoon's call

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 23 February 2011 21:59:18 GMT
To: "adamsmith" <[redacted]>
Subject: FW: Follow-up from this afternoon's call

From: [redacted]
Date: 23 February 2011 09:19:41 PM GMT
To: "[redacted]@newsint.co.uk" <[redacted]@newsint.co.uk>
Cc: "[redacted]" <[redacted]>
Subject: Follow-up from this afternoon's call

Dear [redacted]

Thank you for your time today and hopefully we are progressing towards agreement.

As we discussed earlier today, there are still some differences between us. I understand that the OFT is coming back to you on the issues discussed on our later call. This email follows on from our earlier discussion in respect of the establishment of an editorial committee of the Newco Board.

We proposed that in order to meet our concerns on plurality there should be a transparent mechanism in place to ensure that the editorial integrity and independence of Sky News is at the heart of Newco's Board's interests. We proposed that an editorial committee of the Board should be established with a majority of independent non executive directors, one of whom is the Chairman of the Board Editorial Committee. We expected the Chairman to have senior editorial experience and expertise. We also indicated what we

would expect to be included in the terms of reference for the Board Editorial Committee.

Your counter proposal was for a Governance and Nominations Committee to be established that would:

- (a) comprise a majority of members who are Independent Directors (including an Independent Director with editorial and/or journalistic experience);
- (b) be chaired by an Independent Director;
- (c) be entrusted with oversight of Newco's compliance with both the corporate governance provisions and the provisions relating to the principle of editorial independence and integrity in news reporting and compliance with the Ofcom Broadcasting Code

You previously indicated that the Governance and Nominations Committee would operate under substantially similar terms to those of Sky's current Corporate Governance and Nominations Committee, but we note in your latest UILs you propose that the Newco Board should determine these.

As outlined earlier today, as your proposal is for a general purpose governance committee, and not an editorial committee, we do require further reassurance from you before we can be confident that it would achieve the effect of the editorial committee which we had proposed. By way of example of our concerns, there is a real possibility that the editorial responsibilities of the committee would be diluted by its other functions to such an extent that it would not be effective. As a further example, we understand that a general purpose governance committee would not normally be expected to meet as frequently as the type of editorial committee we had envisaged. For this reason, we outline below what types of measures would give us confidence that your proposed Governance and Nominations Committee would achieve substantially what we envisaged being addressed by an editorial committee.

We would expect the UILs to state that the Secretary of State should approve the terms of reference for the committee. We would also expect Clause 3.1(viii) of the UILs to indicate the key principles of the terms of reference. We would expect the terms of reference to include, for example:

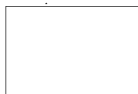
- the editorial function reflected in the name of the committee
- at least one member with senior editorial/journalistic experience
- a majority of independent non-executive directors
- a clear reference to the principles of editorial independence and integrity (which are also contained in the company's constitutional documents)

- a chairman who is the independent director with editorial/journalistic experience
- a clear responsibility to report regularly to the Board on editorial matters
- an explicit process for the Head of Sky News to report on editorial independence and integrity, as a route to reporting to the Board
- a role in advising the Board on all editorial issues, including advice on decisions relating to the hiring, firing, authority and reporting relationship of the Head of Sky News
- frequency of meetings (e.g. at least once per quarter)
- appropriate resource and powers to investigate all matters relevant to editorial independence and integrity within its remit
- a statement in Newco's annual report on its activities

We note that you have already confirmed some of these would be provided by the Governance and Nominations Committee and that others are included in the current terms of reference for Sky's Governance and Nominations Committee. We would like to see all of the above reflected in the terms of reference for Newco's Governance and Nomination's Committee. Could you please consider whether you are prepared to agree and include in the next consolidated amended UILs? Where this is not possible, could you please provide an explanation of the substantive concern that prevents you from doing so?

I'd be very happy to talk to you about this further tomorrow morning.

Best wishes



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EX.P42



From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:54
To: OLDFIELD PAUL
Subject: Fwd: OFT

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 23 February 2011 23:16:30 GMT
To: "adamsmit" <[redacted]> <[redacted]>
Subject: OFT

FYI - per below, it looks like we have agreement with OFT on all of OFT's material issues. We will provide a revised UIL tomorrow am reflecting these issues to OFT.

This does not include Ofcom's corp gov issues...

From: [redacted] <[redacted]@oft.gsi.gov.uk>
Sent: Wednesday, February 23, 2011 10:50 PM
To: [redacted]
Cc: [redacted]
Subject: RESTRICTED: Newscorp/BSkyB

Dear [redacted]

I refer to our call earlier this evening in which we promised to respond to you on certain points in relation to the Second Revised Draft UIL (attached to your email of 22 February 2011) to which paragraph references in this email relate. We have considered the discussion and the points made on the call carefully and set out below our further requests in relation to the Second Revised Draft UIL.

Paragraph 3 of the UIL - corporate governance provisions - amendments to the Articles of Association

We note your comments in relation to the corporate governance provisions at paragraph 3.2 and 3.1 (iii) and (viii) of the UIL. In particular, your view that these provisions provide a potential purchaser who acquires a shareholding above 50% but below 75% in Newco with an opportunity to remove the restrictions in the Articles of Association.

For the reasons below, we kindly request that News agree to the following amendments to the UIL:

- (1) removal of the reference to a 15 per cent 'floor' in paragraph 3.2; and

(2) amend the 50 per cent 'ceiling' (paragraphs 3.1(iii) and (viii) and 3.2) to refer only to a situation in which News has over 50 per cent of the voting rights.

Overall, we consider that these amendments would address our concerns over their impact on the practical effectiveness of the UIL in terms of their operation. To assist you in considering these requests, we set out our reasons in more detail below.

Amendments to the 50 per cent ceiling

We consider that inclusion of this provision could, in practice, serve to undermine the operation and practical viability of the UIL in achieving their objectives. First, although we note your view that Newco's financial viability may be enhanced with the inclusion of such a provision in the UIL, as discussed on the call, we consider that the provisions in the proposed brand licensing agreement relating to a change of control reduce the likelihood of a third party acquiring control of Newco (absent renegotiation of those terms with News/Sky). In such circumstances, we see limited benefit in terms of the financial viability of Newco from the inclusion of such a provision in the UIL. Rather, we consider that our paramount consideration should be ensuring the practical viability of the UIL in achieving their objectives –one of which is to ensure that the circumstances in which the corporate governance of Newco can be changed are, of necessity, limited in scope.

We take a cautious approach in relation to design of the UIL and it is important to ensure that they are effective in meeting the concerns they have been designed to address. In the light of this, whilst we have considered the reasons you have given for the inclusion of this provision, we remain concerned to ensure the continued effectiveness of the provisions protecting the independence of Newco (from an editorial and governance perspective) as enshrined in the Articles of Association in the event of an acquisition by a third party of 50 per cent or more of the voting rights - the extent to which such protections would continue to be necessary would ultimately depend upon the factual circumstances surrounding such an acquisition, including the identity of the acquirer. As such, at this stage, our preference would be to an amendment which provided that the corporate restrictions apply (and the voting restriction in paragraph 3.2 applies) unless News owns more than 50 per cent of Newco's voting rights (which would be following approval from the Secretary of State pursuant to paragraph 6.1).

Removal of the 15 per cent floor

We are concerned, taking into account the need to reduce the risks to the practical viability of the UIL in achieving their objectives, to avoid a scenario in which - as a result of a temporary reduction in News' shareholding - the Articles of Association are during that time amended, with News not having to vote against such an amendment as a result of the level of its shareholding, whilst at the same time there is some ambiguity about whether (when News reacquires the shares it had temporarily disposed of) there is then a change in the level of News' control over Sky News such that a relevant merger situation or special merger situation had been created. We consider that such an amendment is necessary to reduce the risk of a creation of a potential gap in the ongoing effectiveness and operation of the UIL, we therefore request that the 'floor' level should be set at zero.

Paragraph 5 of the UIL - operational agreements - upfront approval

We would like to thank you for your time in providing us with a further explanation of the operational agreements set out in paragraph 5 of the UIL. As agreed, we have considered this issue further and agree that the advertising sales agreement in paragraph 5.1 of the UIL need not be approved by the Secretary of State on an upfront basis, given the existence of third party providers and the likely ease with which Newco could source services from such a provider. We would insist upon, however, as you agreed on the call, to the satellite capacity, playout and uplink and DTT transmission arrangements being reviewed upfront.

Paragraph 10 of the UIL - removal or variation

We note your points in relation to inclusion of a removal of variation clause.

We would not normally expect UIL to include provisions which merely repeat rights that already exist under statute. We consider that such provisions are unnecessary and may lead to confusion as between the UIL obligation and the statutory provisions. In addition, to the extent that we were to agree to the inclusion of such provisions in a UIL, they should follow the letter and spirit of the legislation. In this regard, we note that notwithstanding the wording of paragraph 3(9) of Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, it is plain from section 92 of the Act that the expectation is that UIL will be considered for variation or release when there has been a change of circumstances. It is quite plain that if there has not been a change of circumstances, that begs the question why variation or release should be considered. In summary, we consider that paragraph 10 of the UIL is may create the misleading impression that the Secretary of State should consider a variation or release request when there has not been any change of circumstance, which clearly does not follow the intended operation of the statute or practice, and we therefore request its removal (or that it is amended accordingly).

I would be grateful if you could send through tomorrow morning as early as possible a revised draft of the UIL, reflecting your position on the above points and having regard to the issues you agreed to take away in relation to paragraph 5.1(iv) (providing for upfront review of the satellite capacity, playout and uplink and DTT transmission arrangements) and (v) (clarifying what is meant by broadcast operations and creative services).

Kind regards

[Redacted signature box]

[Redacted name box]

[Redacted name box] Office of Fair Trading | Fleetbank House | 2-6 Salisbury

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EX: A43

[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:54
To: OLDFIELD PAUL
Subject: Fwd: BskyB - David Elstein memo
Attachments: The Ofcom report on the NewsCorpKGrevised.docx; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" [Redacted]
Date: 5 March 2011 18:55:01 GMT
To: Adam Smith [Redacted]
Subject: BskyB - David Elstein memo

See the list of recipients...!!

The conclusion is interesting.

Fred

From: <Elsteindavid [Redacted]>
Date: 5 March 2011 14:06:16 GMT
To: [Redacted]

[Redacted]

Subject: BSKyB

Dear friends and colleagues,

Since giving various media interviews on Thursday, I have been repeatedly asked on what basis I criticised the Ofcom report on the NewsCorp/BSkyB merger. For those of you who do not regularly read opendemocracy.net or lse.ac.uk/mediapolicyproject, I attach the note I prepared for the LSE seminar on Wednesday. If you find any errors or weakness in argument, please do not hesitate to alert me.

Kind regards,

David Elstein

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The Newspaper Marketing Agency: Opening Up Newspapers:

www.nmauk.co.uk

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The Ofcom report on the NewsCorp/BSkyB transaction

Ofcom's report, on whether the News Corp offer to buy the 60.9% of BSkyB it does not already own should be referred to the Competition Commission, said at the outset that the threshold was low: if the transaction involved a reduction in media plurality that might be contrary to the public interest, the Commission should be called in.

The test was whether there would be a sufficient supply of people with control of media enterprises. Unfortunately, the Enterprise Act 2002 which created the special powers of intervention for the Secretary of State in media mergers defined neither "sufficient" nor "control"; and even the definition of "media enterprises" – as newspaper publishers or broadcasters – has its tricky points.

An immediate problem for Ofcom was deciding whether there was currently a "sufficient" supply of people with control of media enterprises. On the face of it, Ofcom's failure to intervene in the earlier merger of Northern and Shell and Channel 5 strongly suggests that a reduction of one in "supply" is not in itself grounds for intervention; and that if the reduction as a result of that deal was not material, the status quo was presumably satisfactory. Why, then, would News Corp increasing its ownership of BSkyB to 100% from the 39.1% which already allowed it operational control make enough difference to cross the "low threshold" required for intervention?

The three criteria

Ofcom said (in paragraphs 1.21 and 3.17 of its report) that its conclusions would depend upon three criteria: reach; consumption of news; and the importance attached by consumers to different sources of news.

Unfortunately, Ofcom's attempts to apply these criteria are seriously flawed, thanks to a combination of errors of fact and of judgment.

From the outset, Ofcom said it wanted to assess cross-media provision of news and current affairs: but in only one of the four media examined is the category of current affairs actually measured – TV – and Ofcom chose to ignore that metric. It so happens that including current affairs viewing would have reduced the reported consumption of Sky News output, and enlarged that of the BBC, but we are not given a reason for the omission.

The only genre for which data from BARB (the industry research unit) was used by Ofcom was that dealing with international and national news: viewership of news bulletins, news programmes and 24-hour news channels.

Reach

The Ofcom exercise tried to align “reach” across various media, set out in Figure 1 on page 8 of its report (also Figure 15 on page 33). However, it managed to confuse itself thoroughly: first with TV.

The definition of reach of each channel’s or broadcaster’s news output depends upon three variables: the qualifying length of continuous viewing time (number of minutes), the period within which qualification counts (a week, a month, etc) and the number of different such viewings in the period (one, two, three, etc).

Ofcom chose to focus more on suppliers of news than on broadcasters. In legal terms, as Ofcom recognizes in paragraph 2.20, suppliers may well fall outside the 2002 Act, if they are not also broadcasters (ITN, for example, is not a broadcaster) and therefore do not qualify as media enterprises. Ofcom conceded that if Sky News were only a supplier (to Channel 5 and to commercial radio through its contract with Independent Radio News), and did not operate a broadcast service, there would be no basis for a public interest intervention, as only one of the merger parties would qualify as a “media enterprise”. Nonetheless, given that there was a broadcast operation called Sky News, Ofcom felt justified in including its third party supply as being under its “control”. I will return to this point later.

Ofcom describes Sky News as one of “three main (sic) providers of TV news”: a description somewhat undercut by the qualification that their respective shares of provision are 70% (BBC), 22% (ITN) and 8% (Sky News). Indeed, if broadcast channel had been the definition, Sky News would be found in a remote seventh position. Yet the combination of “one of three main providers” of TV news with News Corp’s leading position in newspaper provision is Ofcom’s reason for referring the transaction to the CC.

The report’s analysis of TV news reach, using one viewing period of three consecutive minutes in a week as the criterion, puts the BBC well ahead, at

33.5 million adults. ITN's reach (across ITV and Channel 4) is 21.9 million, and that of Sky News (in its own right and as a supplier to Channel 5) is 11.7 million.

Actually, the reach of the Sky News channel by this measure is just 4.8 million (less than 10% of adults). In Figure 8 on page 31, all the channels broadcasting news are identified individually, showing Sky News reach trailing that of news on BBC One, ITV1, BBC News Channel, Channel 5, Channel 4 and BBC Two. Sky News reach is less than one-sixth of that for news on BBC One. Even news content on BBC Two has a 30% larger reach than the Sky News channel.

The significance of BBC news being available from three BBC channels would be more apparent if the third element of measurement – “at least one” qualifying viewing session – were increased to two, three, or four, with multiple viewing options allowing “BBC TV” to draw much further clear.

Likewise, increasing the threshold from three consecutive minutes to five consecutive minutes would reduce Channel 5's reach by 60% (and with it the reach of “Sky News” as a supplier), as compared with a reduction of around 10% for other channels. Ofcom chose not to cite these – or any other – alternative ways of measuring reach.

Yet five minutes of consecutive listening is precisely the measure used by Ofcom to define radio reach. RAJAR, the radio equivalent of BARB, has no sub-genre entitled news, let alone news and current affairs, so Ofcom simply regarded any one instance of five consecutive minutes of listening to radio in a week to be equivalent to reach for radio news: a substitution for which it is impossible to find a justification.

News Corp says that Ofcom compounds this error with two further mistaken assumptions: that commercial radio transmits three minutes of news every hour, and that Sky News supplies it all. News Corp's response to the Ofcom report pointed out that, in peak time (when most listening takes place), most major commercial radio groups supplement Sky News content (which only covers national and international news) with other news content (primarily local news); and news bulletins typically run two minutes, not three.

It is puzzling how Ofcom (which licenses and regulates all broadcast commercial radio in the UK) would not know this if News Corp is right. What is

even harder to understand is how it can convert reach for any commercial radio listening into reach for news listening (which constitutes 3.3% of output), let alone listening to Sky News, if Sky News does not supply all of commercial radio's news content.

Eventually, in paragraph 4.36, Ofcom acknowledges that the figure for Sky News radio reach is "*potential*" reach; moreover, "it is likely that estimating reach on the basis of all radio listening overstates the level of reach achieved in respect of national news listening". It probably overstates it by a factor of at least 2, and maybe much more.

To add to the confusion, Ofcom places newspaper reach in the same graphic (Figure 1 on page 8, reproduced as Figure 15 on page 37). The numbers it shows, supplied by Kantar, base the definition of reach on readership, as researched by the National Readership Survey. However, the published NRS figures are for individual newspapers, not for newspaper groups, and Ofcom does not reveal how the group figures were derived.

For instance, the Daily Mail has an average readership of 4.7 million according to NRS, while the Mail on Sunday has a readership of 4.9 million. According to Ofcom, the Mail's group readership is 7.3 million, implying that at least half of the Sunday readers do not read the weekday edition, and vice versa. Likewise, the Daily Telegraph has a readership of 1.7 million, and the Sunday Telegraph 1.5 million, but group readership, according to Ofcom, is 2.4 million: again implying that about half of the weekday readers do not read the Sunday edition, and vice versa.

News Corp's News International is more complicated, as it owns four newspapers. The Sun and the News of the World have readerships of 7.7 million and 7.6 million respectively, with The Sunday Times on 3 million and The Times on 1.6 million. But Ofcom reports group readership at 14.5 million, or 29.4% of all adults, which can only be true if at least half of The Sun's readers do not read the News of the World, and vice versa. Given that half of all adults – according to NRS – do not read a newspaper at all, the Ofcom calculation implies that 60% of all people who read a newspaper read a News Corp title.

The 1 million readership attributed to the Lebedev Foundation is even more puzzling, as The Independent has a readership of 550,000, and the Independent on Sunday a readership of 590,000: it would appear that almost nobody reads both papers.

Ofcom excluded the Evening Standard from its Lebedev numbers, so that cannot be the answer. In the absence of any other explanation, it is hard to understand these and many other Kantar figures, unless – perhaps – the published NRS reach statistics have been inflated by extending the period (24 hours after publication, according to NRS) qualifying as “readership”.

The likelihood, of course, is that such an extension would only apply to non-news elements in the newspapers: for as Ofcom notes in paragraph 3.5, “newspapers are not solely devoted to the reporting of news”. What else is there? According to Ofcom, there is “content based on in-depth discussions and opinionated commentary”.

In reality, there is much more: the puzzles, fashion, cookery, travel, investment advice, TV listings, reviews, agony aunts, features, gardening, property pages, readers’ letters, and so on that constitute the bundled product we call “newspapers”.

Last week, The Sunday Times (according to NRS, the newspaper on which readers spent by far the most time) contained the equivalent of 504 A4-size pages. 30 were devoted to national and international news. A further 52 pages came in the shape of sport and business sections, which NRS tells us are read by less than 60% of “readers” of The Sunday Times. Even allowing these sections full “news” value (and note that Ofcom excludes “sports news programmes” from its definition of news for TV reach), and discounting advertising pages by 90%, actual news content accounted for less than 23% of all pages.

In recent weeks, the “news” proportion of The Sunday Telegraph has been as low as 15% and never above 30%. The same applies to the Saturday editions of both the Daily Telegraph and The Times (which are read for longer than the Monday to Friday editions): this week, “news” comprised 15% of content, or less than 90 pages out of nearly 600. Clearly, the reach of newspaper groups reported in the Ofcom table – even if it were fully explained – cannot be

reasonably presented as equivalent to the reach of their news pages. Research from North America has shown that as many as a third of newspaper readers never look at the news pages.

Ken Goldstein, president of Communications Management Inc of Winnipeg, argues that the same criticism can be applied to the data for online reach and consumption, taken from Nielsen by Ofcom. The prominence in the top 50 websites of news providers does not equate to site visits being news consumption. The Daily Mail and the BBC, which are easily the leading two sites included in the sample, both offer a large proportion of feature material (though the BBC is in the process of reducing the entertainment element in its website). As it happens, the role of the internet in the Ofcom analysis is too small to make it worthwhile to attempt a systemic adjustment: but the point made is almost certainly correct.

The simple fact is that “newspaper” reach for certain, and online reach in all probability, is not the equivalent of “TV news” reach: presenting it as such is just as erroneous as the comparison between “Sky News radio” reach and “TV news” reach. It follows that the 51% reach for Sky News and News Corp combined, calculated by Ofcom, is unlikely to be correct. Figure 1 is not what a regulator which styles itself “evidence-based” should be including in a report.

Consumption

Fortunately, actual news consumption is an easier currency to measure across media. BARB provides details of the minutes of TV news consumption per head per day; it is possible roughly to estimate the proportion of daily radio listening measured by RAJAR that is attributable to news; NRS measures both readership and minutes spent on newspapers; and Nielsen has estimates of online consumption.

However, Ofcom’s attempt (Figure 26 of page 59) to assemble the four elements in a single diagram – the most crucial in the whole report – falls into a number of traps. Ofcom does not provide the raw figures it used: but the percentages it has calculated give us a clue as to its methodology – which turns out to be not even the biggest problem presented by Figure 26.

On TV news consumption, as with reach, Ofcom chooses to attribute the Sky News production, News on Five, to Sky News, rather than to Channel 5, which is responsible for it in legal, contractual and regulatory terms – something Ofcom is fully aware of, as the licensor of Channel 5. If there were any problem with Channel 5's news output, Ofcom would be straight on to Channel 5, and would not even pick up the phone to Sky News.

The legal issue is: who has control? Having commissioned News on Five (originally from ITN) when I launched the channel, I had no doubt that my Head of News was always in editorial control, and accountable to me (through the Director of Programmes) as Chief Executive. In due course, the ITN employee who was the editor of News on Five moved to Five as an employee, and his successor accounted to him on a daily basis. Inevitably, newsgathering was undertaken by the supplier, but the news agenda, together with the content and running order of the news bulletins, was a joint decision.

It was absolutely not my experience that – in Ofcom's words – “there was little scope for editorial adjustment by the retailer”. The implication that, currently, the Sky News editor responsible for delivering News on Five checks with News Corp what to include in each bulletin, while the broadcaster stands helplessly by, is wrong. Given Ofcom's concession that the Competition Commission, in assessing the concept of wholesale news supply, concluded that there was “some degree of shared editorial influence”, it is hard to understand Ofcom's decision to attribute the output of Five News 100% to the Sky News column.

There is a further legal puzzle. The 2002 Enterprise Act is clear as to what constitutes a media enterprise: either a broadcaster or a newspaper publisher. The Ofcom report makes clear that if Sky News were not itself a media enterprise – in other words, a broadcaster in its own right – then its wholesale supply of news would not be relevant to the public interest inquiry.

It follows that if Sky News were to hand back its Ofcom broadcast licence, and operate in the UK solely as an online service, it could retain its non-UK broadcast services, and its wholesale supply contracts, without there being any basis for a public interest intervention by the Secretary of State. Yet because Sky News *is* a broadcast service, Ofcom feels able to attribute 100% of Channel 5's news output (along with commercial radio news, irrespective of the use of

other sources and the active compilation of bulletins by radio stations themselves) to Sky News.

An illustration of the difficulty presented by the Ofcom approach is that if ITN – which is a wholesale supplier that does not qualify as a broadcaster – were to be taken over by the Daily Mail, currently a 20% shareholder, and then won back the supply contracts to Channel 5 and commercial radio currently held by Sky News, the merged enterprise would – according to Ofcom’s methodology – suddenly jump from a 9% control of consumed news to 22%. Yet such a transaction would fall entirely outside the framework of the legislation, suggesting that either the Act is badly drafted, or that Ofcom’s methodology is faulty, or that there would be nothing to worry about (or possibly all three).

If we move to the newspaper side of the consumption diagram, we find that Ofcom has – as in the reach section – counted the full weight of minutes reading newspapers as if these were spent consuming news, on the basis that “one minute of TV national news consumption is equivalent to one minute of reading a newspaper” (note 124): an unsustainable position, in the light of actual newspaper content.

Could Ofcom – without saying so – be working on the assumption that newspapers are read with real concentration, whereas many people do other things whilst watching TV? Unfortunately, Ofcom itself had disposed of this argument in a massive research exercise last year, which included the finding that 83% of all TV viewing is “solus” (that is, not accompanied by any other media activity), whereas only 71% of reading print is “solus”.

The question is: what level of discount should be applied to the newspaper consumption figures to make them comparable to the TV news consumption minutes? It seems that a figure of 50% would be conservative: a minimum reflection of the very different experiences being measured as between “viewing TV news” and “reading newspapers”, and a discount level used by the German regulator, KEK in a similar situation recently.

It should be noted that Ofcom’s focus on “national” newspapers (which happens to catch all News Corp titles) excludes great swathes of newspaper publication covering national and international news, but not nationally distributed. That the Yorkshire Post, The Scotsman and the Evening Standard

also cover issues at a more local level does not invalidate their national and international content. Metro's readership is not far below that of the Daily Mirror/Record, and the Evening Standard's is not far short of that for The Times. 3.5 million people read a regional evening paper every weekday; 7.5 million a regional morning paper; 10 million a paid-for local weekly; 17 million a free local weekly: their combined readership is as large as that for the so-called national titles, but is excluded from Ofcom's analysis.

Audience reliance on news sources

The significance of these omissions is underlined when we move on to the third element in the Ofcom guidance: audience reliance on different news media. Here the report provides startling – and seemingly decisive – evidence.

In 2009, as in previous years, Ofcom asked a very large sample of regular news consumers which source they relied upon most. 73% plumped for TV; 8% for newspapers (including, to some extent, the categories of newspaper just described that Ofcom excluded); 7% for radio; and 7% for online. These proportions have changed little over the years. Likewise (see paragraph 4.32), 29% reported that their only source of news was TV, compared with 6% for newspapers, 3% for radio and 5% online. Some of this differential may be on account of perceptions of bias: 56% think newspapers are biased, but only 22% say that of TV.

Ofcom also cites another piece of recent research, on cross-media behaviour, which asked similar questions, but in a different order and with different emphases. The results were 63:14:10:10 – slightly less stark than the 73:8:7:7, but surely of high significance. These findings strongly suggest up-weighting the reported minutes watching TV news, or re-allocating all consumption according to these "reliance" ratios (it would then no longer be necessary to discount minutes reading non-news in newspapers, as the actual level of news in newspapers would have been factored in).

Mr Goldstein of CMI takes the view that, if Ofcom is conducting an inquiry based on the potential detrimental effects of a merger's undue influence on consumers of news, and the views of those consumers in terms of reliance on sources are established and robust, it must make sense to take those views

fully into account – rather than discard them whilst claiming to act on behalf of these very consumers. He has compiled the following table:

Media	Audience shares within the medium based on Figure 26, page 59 of Ofcom report	Media “weights” based on Figure 6 on page 29 of Ofcom report:		Media “weights” based on footnote 54 on page 28 of Ofcom report:	
		% saying medium is “main source of news”	Audience shares weighted by “source of news” %	% saying medium is “main source of news”	Audience shares weighted by “source of news” %
NEWSPAPERS		8%		14%	
News Corp.	34.2%		2.74%		4.79%
DMGT	22.8%		1.82%		3.19%
Trinity Mirror	11.9%		0.95%		1.67%
Telegraph	10.4%		0.83%		1.46%
Northern and Shell	10.2%		0.82%		1.43%
Guardian	6.5%		0.52%		0.91%
Lebedev	2.5%		0.20%		0.35%
Pearson	1.5%		0.12%		0.21%
RADIO		7%		10%	
BBC	73.2%		5.12%		7.32%
Sky (as news supplier)	26.8%		1.88%		2.68%
ONLINE		7%		10%	
BBC	37.5%		2.62%		3.75%
News Corp.	12.5%		0.88%		1.25%
DMGT	25.0%		1.75%		2.50%
Trinity Mirror	0.0%		0.00%		0.00%
Northern & Shell	0.0%		0.00%		0.00%
Telegraph	12.5%		0.88%		1.25%
Guardian	12.5%		0.88%		1.25%
Lebedev	0.0%		0.00%		0.00%
Pearson	0.0%		0.00%		0.00%
Sky	0.0%		0.00%		0.00%
TELEVISION		73%		63%	
BBC	73.5%		53.66%		46.30%
ITN	17.4%		12.70%		10.96%
Sky	9.1%		6.64%		5.73%
(of which Five 22.6%)	(2.1%)		(1.50%)		(1.29%)
ALL OTHER		5%		3%	
TOTALS		100%	100.00%	100%	100.00%
BBC			61.40%		57.37%
ITN			12.70%		10.96%
News Corp			3.62%		6.04%
Sky			8.52%		8.41%
Sky + News Corp.			12.14%		14.45%
Sky/NC minus wholesale			8.76%		10.48%

As a cross-check, I re-worked Ofcom Figure 26 on page 59, adjusting in three ways: down-weighting newspapers by 50%; separating wholesale news supply; and up-weighting TV by 50%:

Ofcom 1 (before changes)

News consumption: percentage of minutes per head per day

Company	Papers	Radio	TV	Online	Total
Sky		6.7	2.4		9.1
Channel 5			0.7		0.7
News Corp	13.8			0.1	13.9
<i>[News Corp/Sky</i>	<i>13.8</i>	<i>6.7</i>	<i>3.1</i>	<i>0.1</i>	<i>23.7]</i>
BBC		18.3	24.9	0.3	43.5
ITV			4.8		4.8
Channel 4			1.1		1.1
DMGT	9.2			0.2	9.4
T Mirror	4.8				4.8
Telegraph	4.2			0.1	4.3
N and Shell	4.1				4.1
Guardian	2.6			0.1	2.7
Indy	1.0				1.0
Pearson	0.6				0.6
Total	40.3	25.0	33.9	0.8	100%

Ofcom 2 (after changes)

Company	Papers	Radio	TV	Online	Total
Sky			4.51		4.51
News Corp	5.45			0.07	5.52
<i>[News Corp/Sky</i>	<i>5.45</i>		<i>4.51</i>	<i>0.07</i>	<i>10.03]</i>
BBC		14.46	46.77	0.25	61.48
ITV			9.02		9.02
Channel 4			2.08		2.08
IRN		5.29			5.29
DMGT	3.63			0.17	3.8
T Mirror	1.89				1.89
Telegraph	1.66			0.07	1.73
N and Shell	1.62				1.62
Channel 5			1.32		1.32
Guardian	1.03			0.07	1.1
Indy	0.4				0.4
Pearson	0.24				0.24
Total	15.92	19.75	63.7	0.63	100%

As can be seen, both in the Goldstein table and my "Ofcom 2", the share of news consumption attributable to News Corp is substantially lower than in Ofcom 1, and the combined share of News Corp and Sky, excluding wholesale supply, is around 10% - as compared with the 24% in the Ofcom report.

There is a further problem. News Corp already owns 39.1% of BSkyB (and therefore of Sky News). Ofcom says it has “taken into account” that fact, but nonetheless fails to attribute any part of the Sky News audience to News Corp pre-transaction (which would reduce yet further the supposed impact of the merger). Ofcom’s justification is that owning 100% of BSkyB would allow News Corp to run the business entirely to its own commercial agenda. This legal argument (in marked contrast to Ofcom’s preference for “reality” as opposed to legality where wholesale news supply is concerned) misses the key point: News Corp has now – and has always possessed – operational control of BSkyB, including every aspect of Sky News.

When Ofcom asserts (as it does in paragraph 5.7) that 100% control of BSkyB would give News Corp greater power to dismiss the editor of Sky News, it is wrong. Every editor of Sky News is appointed by the chief executive of BSkyB. Every chief executive of BSkyB has been nominated by News Corp, and rubber-stamped by the BSkyB board. News Corp could remove the current editor of Sky News today, and secure the appointment of his successor, even without the proposed transaction.

Some opponents of the merger have argued that only the presence of the independent directors of BSkyB has prevented News Corp having its evil way with Sky News. They cite Rupert Murdoch musing that he wished Sky News were more like Fox News. In fact, there is nothing preventing Murdoch from transforming Sky News, other than sound commercial sense. A version of Fox News might or might not work in the UK – the US version, available on the Sky platform, has virtually no viewers – but Sky News is very successful journalistically (winning the Royal Television Society award for best news channel again this February) and arguably Murdoch’s most admired UK journalistic product.

As for the independent directors, there is no evidence that they have ever raised at board level any issue to do with Sky News. Indeed, in their submission to Ofcom in support of the merger, they effectively offered to close Sky News if that were the only barrier to clearance.

Paradoxically, it is News Corp – which launched Sky News and funded it for two years before Sky was merged with British Satellite Broadcasting in 1990 – which has shown the most interest in keeping alive the loss-making service.

There is a further problem with treating the 39.1% as if it had no significance. It would follow that, if News Corp sold down its stake in News International (which publishes all its UK newspapers), reducing to 39.1% but retaining editorial control (as with BSkyB), and then used the proceeds to buy 39.1% – plus editorial control – of the Telegraph Group, the Daily Mail group, Trinity Mirror and Northern and Shell, it would have secured editorial control of 89% of UK national newspaper consumption. However, according to Ofcom, there would be five separate owners of that 89%, and none of them would be News Corp. There would be no reduction in media plurality, and no grounds for any intervention under the 2002 Act. Indeed, the current merger proposal would also not be subject to a public interest intervention.

Summary

I would expect the key table in the report (Figure 26 on page 59, which is equivalent to Ofcom 1 above) to come under severe pressure if it were subjected to detailed scrutiny at any independent review. Contrary to the report's claim that its conclusions represent "a reasonable belief, on the basis of the evidence available", it is clear that Ofcom ignored a great deal of evidence: not only that which was readily available, but also that which Ofcom itself provided.

It failed to present any alternative ways of measuring TV news reach, including one variation which reduces Channel 5 reach by 60%. It offered a radio news reach figure for Sky News which cannot be correct. Instead of presenting the published figures for individual newspaper reach, it offering a bulked up estimate for "group reach", unsupported by any explanation and in seeming conflict with the individual reach figures.

On consumption, it treated newspaper readership as if it were news readership: an approach which substantially over-states the significance of newspapers. Despite saying that current affairs as well as news consumption would be measured, no attempt was made to include the easily measurable TV current affairs genre.

On audience reliance on sources, it presented strong evidence of the paramount significance of TV, and then chose to ignore it.

It also chose to attribute 100% of its estimate of commercial radio news reach and consumption to Sky News, despite News Corp's claim that most major station groups treat Sky News content as an ingredient within, rather than the whole of, the peak-time bulletins they compile. The News Corp claim also challenged Ofcom's estimate of the volume of commercial radio news output, whether or not it was all attributable to Sky News.

On wholesale news supply, Ofcom ignored the Competition Commission judgment that it involved shared editorial responsibility, and instead attributed all of Channel 5's news output to Sky News.

It wrongly stated that the transaction would allow News Corp to dismiss the editor of Sky News (a power it has always possessed). Finally, in consistently discounting the significance of News Corp's current stake in BSkyB, it exaggerated the true effects of the transaction on media plurality. An extension of that logic would see Ofcom allowing even a massive shift in control of UK newspapers without recognizing any case for intervention.

The biggest danger for Ofcom is not that it may have made a series of errors and questionable judgments. It is that all of these errors and judgments pointed in one direction: to enlarge the significance of the proposed merger, and reduce the reported level of BBC dominance. The chances of this having happened by accident are low. If any independent review of the Ofcom report found support for a charge of bias, it would surely spell the beginning of the end for Ofcom, whose future status is by no means guaranteed under media legislation planned for 2015.

Cross-media ownership rules

As part of its report, Ofcom suggested that any new legislation should create additional regulatory powers to intervene in the media market, even in the absence of a transaction, if there were concerns about plurality. Whatever the faults of the current legislation, the weakness of this report will give politicians pause before they assign any new authority to Ofcom – or its successor.

My original concern in this whole affair was that a misguided regulatory intervention into the News Corp/BSkyB transaction might have the effect of discrediting our regulatory processes, rather than dislodging the merger. That concern remains.

It is sometimes claimed that our regulatory structure is too weak to counteract the influence of News Corp. Yet regulators forced Rupert Murdoch's exit from London Weekend Television, rejected his consortium's application for the British satellite project, rejected his consortium's bid for Channel 5, excluded BSkyB from what became ITV Digital, forced BSkyB to divest most of its shares in ITV, and have imposed restrictions on BSkyB in relation to platform management, electronic programme guides, conditional access charges and wholesale pricing of sports channels. The main cross-media ownership rule – the 20/20/20 clause – is aimed at News Corp and BSkyB.

Yet Ofcom's new intervention proposal reflects a degree of unease with our cross-media ownership rules, the current version of which have been in place in 2003. We seem primarily concerned with national newspapers: yet Ofcom accepts that diversity of ownership is not equivalent to diversity of opinion. Moreover, the long-term decline in circulation seems likely to continue, such that a 20% threshold in 2003 represents a much higher circulation than it does now. Is it circulation or share which concerns us? Is circulation anyway the right test? The Daily Mail/ITN example I offered would not be possible if readership rather than circulation was the test: no newspaper with over 20% of national newspaper circulation can control the ITV news provider. The Mail falls below that threshold in circulation, but not in readership.

Finally, what – if anything – should we do about the BBC? The BBC's share of TV news consumption has grown from 60% to 70% since 2002. The BBC now controls 71% of the news sources on which consumers place 87% of their reliance: TV, radio and online. Many, including Ofcom, are relaxed about this situation, in that the BBC seeks to influence neither votes nor views. But if we are not concerned about that 71%, why worry about possible combinations of small fractions of that share in the commercial sector? And if we are concerned about the 71%, what should be done?

David Elstein

27.2.11

EX. P45



From: Adam Smith [redacted]
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: Sky News [2011-023]

Begin forwarded message:

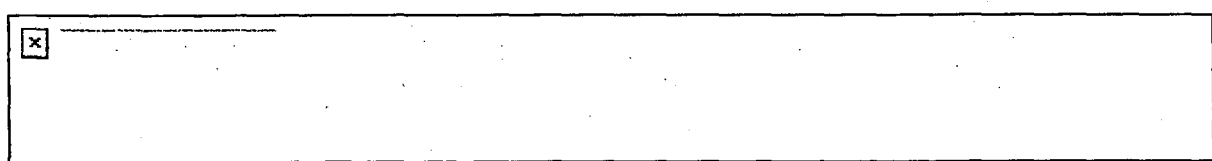
From: Adam Smith <[redacted]>
Date: 8 March 2011 15:14:37 GMT
To: adam.smith [redacted]
Subject: Fwd: FW: Sky News [2011-023]

----- Forwarded message -----

From: Michel, Frederic [redacted]
Date: Tue, Mar 8, 2011 at 2:37 PM
Subject: FW: Sky News [2011-023]
To: "adamsmith" [redacted]; [redacted]

Thought you would like to see this

From: Enders Analysis [redacted] **On Behalf Of** Enders Analysis
Sent: 08 March 2011 14:06



Sky News

- The concept of demerging Sky News is evidently a plausible one and we consider it very unlikely that critics of the deal will have much success undermining its appropriateness as a protection of

plurality

- **However, it is harder to judge whether the proposed implementation secures the channel's independence as fully and clearly as it might**
- **We outline a series of issues that the information supplied for the public consultation does not appear to deal with. We note, in particular, that the proposed undertakings seem not to block Rupert Murdoch, or members of his family, from buying the 60.9% of the shares in Sky News not to be held by News Corp**

[Click here to download the pdf](#)

Jeremy Hunt's announcement on 4 March regarding the separation of Sky News to address plurality issues follows long and detailed negotiations between News Corp, the OFT and Ofcom. The OFT is understood to have seen carefully crafted business plans and been given multiple commitments from News Corp that will ensure the future prosperity of Sky News. However, the undertakings put into public consultation are extremely light on detail, making it difficult for an outsider to assess the degree to which Sky News will be viable, let alone independent, after the transaction completes.

We have now entered a process of public consultation, which completes at midday on 21 March, and we consider it very unlikely that critics of the deal will have much success in undermining any conclusions relating to plurality. If the transaction does not go ahead it is much more likely to be a consequence of disagreement between/with shareholders than between the politicians, regulators and News Corp. Nevertheless, the independence of Sky News, as described in the undertakings, still looks to us somewhat 'soft'. In this note we articulate some of the issues relating to Sky News' independence that result from the paucity of detail that is publicly available. In other words, while these undertakings are not 'behavioural', with all the obvious weaknesses that this would entail, neither do they represent a truly 'structural' solution that moves a viable and well-resourced Sky News into complete independence.

Overall, the concept of demerging Sky News is evidently a plausible one, but it is harder to judge whether the proposed implementation secures the channel's independence as fully and clearly as it might, for the following reasons:

There is little financial data provided in the undertakings. Two numbers refer to the incidental question of which transactions with News Corp need to be approved by the Sky News board. However, interested parties are not informed of:

- The value of the carriage fee and how it inflates or deflates over time
- The cost to Sky News of continuing to rent space and assets from BSkyB
- The price Sky News will have to pay for use of the Sky brand

As a result, we cannot know whether BSkyB is demerging a business that can make a profit or one which will be plunged into loss within weeks. Since Sky News will have no balance sheet to speak of – its major assets all being owned by BSkyB – it might reasonably be argued that the channel will be dependent on News Corp's goodwill to survive from week to week. The employees will be reliant on services from BSkyB ranging from access to the

canteen to transponder capacity but the price is unspecified. News Corp says that the OFT has approved the numbers but since no outsiders with knowledge of how satellite channels work will ever see the figures, it is impossible to form an independent view on the viability of the channel and therefore its value. As a result of the model accepted by the OFT, Ofcom and the DCMS, while Sky News may have no significant liabilities, it may have no value either. There may be a rapid desertion of outside shareholders in the listed entity.

The majority of the protections contained in the undertakings operate through the articles of association of the new company. These protect, for example, the editorial independence of Sky News. News Corp is blocked from amending the articles, this is very clear. However, the other shareholders can change them whenever they want, and most of the important protections will fall away.

- The majority of BSkyB shareholders may have no interest whatsoever in owning a small stake in a tiny satellite TV station, with a market capitalisation probably in the low tens of millions and perhaps much less.
- The shares can be picked up (cheaply, no doubt) by anybody wanting a guaranteed presence on the Sky EPG and use of the Sky brand name. He or she could then tear up the articles of association overnight, removing most of the plurality protections such as the independent directors and chair.
- Or, perhaps more likely, the shares might be bought by a company or person directly or indirectly affiliated with the Murdoch family. He or she could also remove many of the important protections in the undertakings and let News Corp run the channel exactly as it wished. These are not unreasonable concerns; there are tens of thousands of people who would be able to acquire the shares in an undercapitalised Sky News.
- We believe that the present wording of the undertakings allows any member of the Murdoch family, including Rupert Murdoch himself, to buy the 60.9% of the shares in Sky News not held by News Corp. Sky News will be a public company traded on a stock exchange. Only very carefully drafted undertakings could protect against the circumvention of their purpose in this way.
- This is not to say that News Corp is planning any such move, and we are in no way implying intention in this outline. However, a risk attached to the way the undertakings are drafted is that it makes such events possible.

There is no commitment on the part of News Corp to make the demerged company viable.

- News Corp might reasonably argue that it is obviously in its interest to keep Sky News healthy because it owns a 39% stake in the new company, but there is no guarantee of that.
- The current wording of the undertakings appears to allow News Corp to withdraw from acting as the advertising sales outlet for Sky News. News Corp assures us that the intention of the undertakings is to oblige BSkyB to provide ad sales services to Sky News, but the wording doesn't seem to be fully there in the undertakings. Although others would offer to take over the advertising role, there is no guarantee that Sky News would achieve the same prices or ad volumes as achieved by the current Sky sales house, which could create revenue uncertainty.

There is no protection against 'bundling' of news products contained in these undertakings. News Corp may have offered guarantees against 'most favoured nation' treatment of News International newspapers but such promises appear to be absent in the undertakings themselves.

News Corp can terminate the carriage of Sky News if the channel is in 'material breach' of its contractual terms and dispute resolution fails. 'Material breach' isn't defined, nor are the key contractual terms included in the undertakings, nor is the dispute resolution process specified. Could Sky News be removed from the EPG? Once again, the parties assure us that News Corp would only remove the channel after a serious problem but the public is given no indication of what such a problem might be.

The continued strength of the financial umbilical cord between Sky News and News Corp can be shown by the lack of scrutiny over material transactions between the two companies. BSkyB protects its independence from News International in the UK by forcing all related party transactions over £10m (a tiny fraction of turnover) through a governance committee. For the demerged Sky News the figure is £5m, probably almost 10% of turnover. Only transactions over £12.5m with News Corp businesses will need to go to the board of directors, perhaps equivalent to a season's entire turnover.

Among other problems, the undertakings provide some employment protection for the 'head of Sky News' but for no other employees (unlike, for example, the nominal protections given at the time of the Wall Street Journal acquisition). The undertakings also avoid specifying how independent directors are appointed and rotated and they do not specify how these directors can actually remedy any interference from News Corp in editorial matters.

Regards,



Enders Analysis Ltd, 46A Great Marlborough Street, London, W1F 7JW

Administration Tel: Fax: +

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Company Registration Number SC170417: Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ

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EX. P46

[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:55
To: OLDFIELD PAUL
Subject: Fwd: Sky News [2011-023]
Attachments: capitalundertakings.pdf; ATT00001..htm; DunfermlineUIL.pdf; ATT00002..htm; Global.pdf; ATT00003..htm; insysundertakings.pdf; ATT00004..htm

Begin forwarded message:

From: "Michel, Frederic" [Redacted]
Date: 8 March 2011 15:27:18 GMT
To: "adamsmith" [Redacted]
Subject: FW: Sky News [2011-023]

Adam,

My initial reaction is that they still don't seem to understand how the corporate governance provisions (and more generally the UILs) work and therefore the note has a number of inaccuracies, for example:

- a third party can't change the articles without 75% and we agreed to vote against any changes in the articles that would remove the corp gov protections (for as long as we don't own a majority of the voting shares of Sky News, which in itself would be subject to another regulatory review);
- the carriage agreement will be subject to approval by Jeremy (which means also OFT/OFCOM) so all the key terms will have to be blessed by them;
- the financial viability has been assessed by the OFT so it is not up to the third parties to opine on it (and the details of the business plan are confidential business secrets);
- material Transactions (£5m or more) between Sky News and News/Sky need to get the approval of the Audit Committee, which consists exclusively of independent directors; if they involve more than £12.5m, they also need to get approval by the Board in addition to the Audit Committee;
- bundling is a competition issue and has not been raised by OFCOM in the review of the UILs from a plurality perspective.

On the length and detail of the UILs, I attach the examples of UILs given in other cases that show that ours are within standard range.

I hope this helps. I am working on a more detailed rebuttal.

Let's discuss

Warm regards

Fred

From: Enders Analysis

On Behalf Of Enders Analysis



Sky News

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- We outline a series of issues that the information supplied for the public consultation does not appear to deal with. We note, in particular, that the proposed undertakings seem not to block Rupert Murdoch, or members of his family, from buying the 60.9% of the shares in Sky News not to be held by News Corp

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Regards,

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EX. A47

ANTICIPATED ACQUISITION BY CAPITAL RADIO PLC OF GWR GROUP PLC

UNDERTAKINGS GIVEN BY CAPITAL RADIO PLC TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) Capital proposes to acquire GWR by way of a scheme of arrangement under section 425 of the Companies Act 1985;
- (b) It appears to the OFT that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in the UK;
- (c) The OFT has a duty to refer an anticipated merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of GWR by Capital to the CC;
- (f) The OFT further considers that the undertakings given below by Capital are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which may be expected to result from it, as specified in the Decision;

NOW THEREFORE Capital hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Capital, they are accepted by the OFT.

Divestment of the Century 106 Business

- 2.1 Capital shall, using its best endeavours and acting in good faith, effect to the satisfaction of the OFT the divestment of the Century 106 Business as a going concern by the end of the Divestment Period to a purchaser

approved by the OFT in accordance with the provisions of these undertakings.

- 2.2 Capital shall be deemed to have complied with the obligation at paragraph 2.1 if, by the end of the Divestment Period, it has entered into a legally binding sale and purchase agreement with a purchaser or purchasers approved in advance by the OFT in writing pursuant to these undertakings provided that, if later than the end of the Divestment Period, the final closing in respect of the divestment of the Century 106 Business takes place within a period not exceeding 2 months (subject to obtaining all the necessary approvals and consents from third parties) after the approval of the relevant purchaser or purchasers by the OFT.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Capital shall take the following measures to the extent they may be necessary to effect the sale of the Century 106 Business in accordance with those provisions:
- (a) the grant of an option to transfer the rights and contracts associated with the existing carriage agreement for the digital broadcast of the Century 106 analogue service;
 - (b) the grant of an option to the 106 Century FM brand name and/or programming relating to the Century 106 Business;
 - (c) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents but excluding the transfer or vesting of the rights and contracts associated with the existing carriage agreement for the digital broadcast of the Century 106 analogue service, the 106 Century FM brand name and programming relating to the Century 106 Business referred to in paragraphs 2.3 (a) and (b) above otherwise than by way of the grant of options as set out in those paragraphs);
 - (d) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (e) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
 - (f) the formation or winding up of a company.
- 2.4 In the event that Capital fails to comply with the obligation set out in paragraph 2.1, the OFT may, whether or not initiating the Trustee Functions set out below, require Capital to divest the Century 106 Business as a going concern at no minimum price to a purchaser approved by the OFT.
- 2.5 Capital shall notify the OFT of the identity of each proposed purchaser that makes an offer for the Century 106 Business together with the value and terms of such offers as soon as reasonably practicable following the

receipt of such offers and in any event within at least 10 Working Days of receipt of such offers.

Purchaser Approval

- 3.1 For the purposes of approving a proposed purchaser for the Century 106 Business sold in accordance with these undertakings, Capital and/or any proposed purchaser will need to satisfy the OFT that:
- (a) the proposed purchaser is independent of and unconnected to Capital and the Group of Interconnected Bodies Corporate to which Capital belongs and any Associated Person or Affiliat  of Capital or such Group of Interconnected Bodies Corporate;
 - (b) the proposed purchaser has the financial resources, expertise and incentive to maintain and develop the Century 106 Business as a viable and active business in competition with Capital and other competitors; and
 - (c) the proposed purchaser must reasonably be expected to obtain all necessary approvals and consents from any regulatory authority.
- 3.2 The OFT may require Capital to provide it with such information and documentation as it may reasonably require to demonstrate to the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Appointment of a Trustee

- 4.1 The provisions of paragraphs 4.2 to 4.7 below shall apply only as long as Capital has not satisfied, or where the OFT has reasonable grounds for believing that Capital will not satisfy, all or any part of the obligation to divest the Century 106 Business in accordance with paragraphs 2.1 and 2.2.
- 4.2 Within 15 Working Days of the OFT notifying Capital that it must do so, Capital shall propose to the OFT:
- (a) the names of at least two individuals to exercise the Trustee Functions; and
 - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 The individuals nominated by Capital pursuant to paragraph 4.2 shall meet the following requirements:
- (a) they shall each be EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society, law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;

- (b) they shall each be independent of Capital and of the Group of Interconnected Bodies Corporate to which Capital belongs and of any Associated Person or Affiliate of Capital or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of the Century 106 Business to be sold pursuant to paragraph 2.1 above, and, in the opinion of Capital, appropriate to be appointed as Trustee; and
- (c) they shall neither be nor become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the persons nominated by Capital pursuant to paragraph 4.2 above and their proposed mandates, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Capital shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT pursuant to this paragraph.

4.5 In the event that:

- (a) Capital fails to nominate any person or persons in accordance with the provisions of paragraph 4.2 above; or
- (b) none of the persons nominated by Capital pursuant to paragraph 4.2 is approved by the OFT; or
- (c) Capital is unable for any reason to conclude within the time limit stipulated in paragraph 4.4 the appointment of any such person following approval by the OFT;

Capital shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Capital shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or 4.5 shall be irrevocable unless (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises; (b) the Trustee ceases to perform its functions; or (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated under paragraph 4.6 above, Capital shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is approved by the OFT. Capital shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the OFT. Where

required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

The Mandate

5. The terms of the mandate proposed by Capital pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
 - (a) an exclusive, irrevocable mandate to sell any of the Century 106 Business as required by paragraph 6.1 below to a purchaser or purchasers approved in advance in writing by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
 - (b) a mandate to take any other steps necessary for, or incidental to, its mandate under sub-paragraph (a) above;
 - (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps reasonably necessary or appropriate to effect the sale of the Century 106 Business;
 - (d) a mandate to comply with any orders and directions given by the OFT; and
 - (e) a mandate to appoint at Capital's expense such advisers as the Trustee considers necessary or appropriate in connection with the performance of the Trustee Functions.

Functions of Trustee

- 6.1 The Trustee shall seek to procure within 3 months of the end of the Divestment Period, or within such other later period as may be specified by the OFT, the completion of the sale of the Century 106 Business at no minimum price, to a purchaser or purchasers approved by the OFT in accordance with paragraph 6.3.
- 6.2 Without prejudice to the generality of paragraph 6.1, the Trustee shall take any of the measures set out in paragraph 2.3 in relation to the Century 106 Business to the extent to which they may be necessary to effect the divestment of the Century 106 Business in accordance with that provision.
- 6.3 The Trustee shall not sell or permit the divestment of the Century 106 Business to a proposed purchaser unless it has obtained the OFT's prior approval in writing in respect of the identity of the purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable and in any event at least 20 Working Days

in advance of the proposed completion of the proposed sale and purchase agreement in question.

- 6.4 The provisions of paragraph 2.4 shall apply to any such sale by the Trustee as if these undertakings were given by the Trustee rather than Capital.
- 6.5 Pending the divestment of the Century 106 Business pursuant to paragraph 6.1, the Trustee shall monitor Capital's compliance with its obligations under paragraphs 7.1 and 7.2 of these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 6.6 The Trustee may give written directions to Capital to take such steps within its competence as may be specified or described in the directions for the purpose of securing Capital's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Capital to:-
- (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 6.7 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Capital is failing to comply with any of its obligations under these undertakings.
- 6.8 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Capital nor shall the Trustee Functions be extended or varied in any way by Capital save with the prior express written consent of the OFT.

Functions of Capital following appointment of Trustee

- 7.1 Capital shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 Capital shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.6, and (b) providing the Trustee with all such assistance and information, as it may reasonably require in carrying out the Trustee Functions.

Remuneration of Trustee

8. Capital shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5.

Interim Action

9. Pending the divestment of the Century 106 Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Capital shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the acquisition, the Century 106 Business shall be maintained as a going concern;
 - (b) except with the prior written consent of the OFT no step shall be taken which might lead to the integration of the Century 106 Business with any other business carried on, by or under the Control of Capital or of any member of the Group of Interconnected Bodies Corporate to which Capital belongs;
 - (c) except with the prior written consent of the OFT the Century 106 Business is maintained and preserved, including facilities and goodwill;
 - (d) the nature, description, range and standard of goods and services currently supplied by the Century 106 Business are maintained and preserved;
 - (e) except in accordance with paragraph 2.1, paragraph 2.2 or paragraph 6.1 above, no assets of the Century 106 Business shall be disposed of, and no Interest in such assets shall be created or disposed of, other than in the ordinary course of business.

Continued Separation

10. Except with the prior written consent of the OFT, following the divestment of the Century 106 Business pursuant to paragraph 2.1, paragraph 2.2 or paragraph 6.1, Capital or any member of the Group of Interconnected Bodies Corporate to which Capital belongs:
- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the Century 106 Business;
 - (ii) any Interest in any company carrying on or having Control of the Century 106 Business; or

- (iii) other than in the ordinary course of business, any of the assets of the Century 106 Business;
- (b) shall procure that no employee or director of Capital or of any member of the Group of Interconnected Bodies Corporate to which Capital belongs holds or is nominated to any directorship or managerial position in the Century 106 Business or any directorship or managerial position in any company or other undertaking carrying on or having Control of the Century 106 Business without the OFT's written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of the Century 106 Business or of any company or other undertaking carrying on or having Control of the Century 106 Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Capital or of any member of the Group of Interconnected Bodies Corporate to which Capital belongs directly or indirectly acquiring the Century 106 Business or doing any of the things listed in sub-paragraphs (a), (b) and (c) above.

Compliance

- 11.1 Capital shall comply with such written directions as the OFT may from time to time give:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 11.2 Capital shall cooperate fully with the OFT when the OFT is:
 - (a) monitoring compliance with the provisions of these undertakings; and
 - (b) investigating potential breaches of the provisions of these undertakings.
- 11.3 Capital shall procure that any member of the same Group of Interconnected Bodies Corporate as Capital complies with these undertakings as if it had given them.
- 11.4 Where any Affiliate of Capital is not a member of the same Group of Interconnected Bodies Corporate as Capital, Capital shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

12. Capital shall furnish promptly to the OFT such information as the OFT considers necessary to enable it to monitor these undertakings.

Extension of time limits

13. The OFT may, where appropriate, in response to a written request from Capital showing good cause, or otherwise at its own discretion, grant an extension of any period specified or referred to in these undertakings.

Interpretation

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

- 14.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

- 14.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

- 14.4 For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Capital within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"business" has the meaning given by section 129(1) and (3) of the Act;

"Capital" means Capital Radio plc;

"CC" means the Competition Commission;

"the Century 106 Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the business comprising a local sound broadcasting service for the East Midlands carried on under licence number L200-1 by Border Radio Holdings Limited and currently with the call sign "106 Century FM", including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision dated 22 December 2004 in connection with the anticipated acquisition by Capital of GWR;

"Divestment Period" means the period of time determined by the OFT and notified in writing to Capital by the OFT;

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

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

"GWR" means GWR Group plc;

"OFT" means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"Trustee" means the person appointed pursuant to paragraph 4.4, 4.5 or 4.7 to carry out the Trustee Functions;

"Trustee Functions" means the functions set out in paragraphs 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, and 6.7;

"UK" means the United Kingdom of Great Britain and Northern Ireland;

"Working Days" mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England; and

unless the context requires otherwise, the singular shall include the plural and vice versa.

EX. A48

COMPLETED ACQUISITION BY THE DUNFERMLINE PRESS LIMITED OF BERKSHIRE REGIONAL NEWSPAPERS FROM TRINITY MIRROR PLC

PROPOSED UNDERTAKINGS TO BE GIVEN BY DUNFERMLINE PRESS LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 29 July 2007, DPL acquired BRN from Trinity Mirror plc;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of BRN to the CC;
- (f) The OFT further considers that the undertakings given below by DPL are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision; and
- (g) DPL offered initial undertakings pursuant to section 71 of the Enterprise Act 2002, which the OFT accepted on 28 November 2007, in respect of the Acquisition. These initial undertakings cease to be in force on the acceptance of the undertakings in lieu given below by DPL.

NOW THEREFORE DPL hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by DPL, they are accepted by the OFT.

Divestment of the Divestment Business

- 2.1 DPL shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement to divest to the satisfaction of the OFT the Divestment Business to the proposed purchaser, Baylis, on terms approved by the OFT in advance of acceptance of these undertakings.
- 2.2 Without prejudice to the generality of paragraph 2.1 above, DPL shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the Divestment Business if desired by the proposed purchaser of the Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, the Parties shall take the following measures to the extent they may be necessary in the opinion of the OFT, to effect the sale of the Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
 - (d) the formation or winding up of a company.

Approval of purchaser and terms of divestment

- 3.1 For the purposes of the OFT approving Baylis as a proposed purchaser for the Divestment Business in accordance with these undertakings, DPL shall, save as required or permitted by the OFT, satisfy the OFT that:
- (a) the acquisition by the proposed purchaser of the Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;

- (b) the proposed purchaser is independent of and unconnected to DPL and the Group of Interconnected Bodies Corporate to which DPL belongs and any Associated Person or Affiliate of DPL or such Group of Interconnected Bodies;
- (c) the proposed purchaser has the financial resources, expertise (including the managerial, operational and technical capability) and incentive to maintain and operate the Divestment Business as part of a viable and active business in competition with DPL and other competitors in the provision of local newspapers in Slough and Windsor;
- (d) the proposed purchaser must reasonably be expected by the OFT to obtain all necessary approvals and consents from any regulatory authority plus all relevant consents; and
- (e) the acquisition by the proposed purchaser of the Divestment Business is not expected to result in a substantial lessening of competition within any market or markets in the UK.

3.2 The OFT may require DPL and/or a proposed purchaser to provide it with such information and documentation as it may reasonably require to satisfy the OFT that the proposed purchaser will fulfil the requirements set out in paragraph 3.1 above.

Interim action

- 4.1 Pending completion of the divestment of the Divestment Business, DPL shall ensure that:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, the Divestment Business is maintained as a going concern and sufficient resources are made available for the development of the Divestment Business on the basis of its pre-merger plans;
 - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Divestment Business or the management responsibilities within the Divestment Business;
 - (c) except with the prior written consent of the OFT, the Divestment Business is maintained and preserved, including facilities and goodwill;

- (d) the nature, description, range and standard of goods and services currently supplied by the Divestment Business are maintained and preserved;
- (e) the separate trading name and/or the separate sales or brand identity of the Divestment Business is maintained;
- (f) except in accordance with paragraph 2.1, no assets of the Divestment Business are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
- (g) there is no integration, or further integration, of the information technology used by DPL with that used by the Divestment Business and the software and hardware platforms of the Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;
- (h) all reasonable steps are taken to encourage all Key Staff to remain with the Divestment Business; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to the Divestment Business shall pass, directly or indirectly from the Divestment Business (or any employees, directors, agents or Affiliates of the Divestment Business) to DPL (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
 - (i) the transfer of any accounting information necessary to allow DPL's Chief Executive, Deputy Chief Executive and Group Secretary and the DPL Board to monitor and review the financial performance of the Divestment Business provided that such accounting information is not passed on to any other person within DPL;
 - (ii) the transfer of any information required in connection with DPL's dealings with the OFT; or
 - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the businesses and including for the avoidance of doubt the compilation of consolidated accounts in line with DPL's existing accounting practices;
 - (iv) any steps necessary in order for DPL to comply with these undertakings;

provided that, upon divestment of the Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by DPL in relation to that Divestment Business (or vice versa) shall be returned to the relevant business and any copies destroyed.

Continued separation

5.1 Except with the prior written consent of the OFT, following the divestment of the Divestment Business, DPL or any member of the Group of Interconnected Bodies Corporate to which DPL belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of DPL or of any members of the Group of Interconnected Bodies Corporate to which DPL belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of the Divestment Business;
- (b) shall procure that no employee or director of DPL or of any member of the Group of Interconnected Bodies Corporate to which DPL belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having Control of the Divestment Business without the OFT's prior written consent;
- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the Divestment Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of DPL or of any member of the Group of Interconnected Bodies Corporate to which DPL belongs directly or indirectly acquiring the Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

Compliance

- 6.1 DPL shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; and/or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 6.2 DPL shall procure that any member of the same Group of Interconnected Bodies Corporate as DPL complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as DPL shall be attributed to DPL for the purposes of these undertakings.
- 6.3 Where any Affiliate of DPL is not a member of the same Group of Interconnected Bodies Corporate as DPL, DPL shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 7.1 DPL shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

Interpretation

- 8.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 8.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 8.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

8.4 For the purposes of these undertakings:

"Acquisition" means the acquisition on 29 July 2007 by DPL of BRN from Trinity Mirror plc;

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with DPL within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"Baylis" means Baylis & Co (The Maidenhead Advertiser) Limited;

"BRN" means Berkshire Regional Newspapers, formerly a business unit of Trinity Mirror PLC and now incorporated into Berkshire Media Group Limited comprising the assets acquired by DPL from Trinity Mirror plc by agreement completed on 29 July 2007.

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision under section 22 of the Act dated 4 February 2008 in connection with the Acquisition;

"the Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, as operated at the date of entry into a legally binding agreement for the sale of these titles by DPL, including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express and which are capable of being transferred;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express and which are capable of being transferred;
- (c) all or substantially all contracts, vehicle leases, commitments and customer orders of or associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express which are capable of being transferred;
- (d) all customer, credit and other records of each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express (in hard copy only);
- (e) all trading names associated with each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, but not including the Maidenhead Express title; and
- (f) the personnel employed by DPL in relation to each of the Slough & South Bucks Express and the Windsor, Ascot & Eton Express, other than the member of staff within BRN with responsibility for overseeing the installation of the production IT platform across the whole of the BRN business.

"DPL" means The Dunfermline Press Limited;

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

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

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the Divestment Business;

"OFT" means the Office of Fair Trading;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated; and

"UK" means the United Kingdom of Great Britain and Northern Ireland.

FOR AND ON BEHALF OF DPL

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date
(Director)		Director/Company Secretary	

EX.P49

COMPLETED ACQUISITION BY GLOBAL RADIO UK LTD OF GCAP MEDIA PLC

UNDERTAKINGS TO BE GIVEN BY GLOBAL RADIO UK LTD TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 6 June 2008 Global acquired GCAP;
- (b) It appears to the OFT that, as a consequence of that transaction, a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the creation of that merger situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate, in particular having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the acquisition of GCAP to the CC; and
- (f) The OFT further considers that the undertakings given below by Global are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision.

NOW THEREFORE Global hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1.1 These undertakings shall take effect from the date that, having been signed by Global, they are accepted by the OFT.

Divestment of the East Midlands Divestment Business and the West Midlands Divestment Business

- 2.1 Global shall, prior to acceptance of these undertakings by the OFT, enter into a legally binding agreement (or agreements), conditional on OFT approval, to divest to the satisfaction of the OFT the East Midlands Divestment Business and the West Midlands Divestment Business each as a going concern to the proposed purchaser, LDC, on terms approved by the OFT in advance of acceptance of these undertakings. The completion of the divestment of each of the East Midlands Divestment Business and the West Midlands Divestment Business as contemplated by such agreements shall take place within a period not exceeding two months from the date the undertakings take effect (as set out in paragraph 1.1 above).
- 2.2 Without prejudice to the generality of paragraph 2.1 above, Global shall use all reasonable endeavours to ensure the transfer of the Key Staff with the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business if so desired by LDC as the proposed purchaser of the East Midlands Divestment Business and the West Midlands Divestment Business.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Global shall take one or more of the following measures to the extent they may be necessary in the opinion of the OFT to effect the sale of the East Midlands Divestment Business and the West Midlands Divestment Business in accordance with the provisions of these undertakings:
- (a) the transfer of Global's shareholding in the East Midlands Divestment Business and the West Midlands Divestment Business;
 - (b) the transfer of the rights and contracts associated with the existing carriage agreements for the DAB broadcast of the East Midlands Divestment Business analogue services in the East Midlands and the West Midlands Divestment Business analogue services in the West Midlands, save where such transfer can only be effected by means of the consent of a third party in which case Global shall take steps to procure the consent of that third party or secure alternative arrangements for DAB broadcasting of those services where such consent cannot be secured;
 - (c) the transfer of the West Midlands Divestment Business brand names relating to the FM analogue broadcast licences of the West Midlands Divestment Business and the licensing of the Heart brand relating to the FM analogue broadcast licence of the East Midlands Divestment Business as contemplated by paragraph 4.3 below;

- (d) the transfer or vesting of any additional property, assets, rights, personnel, liabilities or obligations, including without prejudice any contracts, licences, authorisations, permits or consents;
- (e) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
- (f) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and
- (g) the formation or winding up of a company.

2.4 Global shall ensure that the sale and purchase agreement entered into for the purposes of paragraph 2.1 above includes a warranty that the purchaser has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the East Midlands Divestment Business and the West Midlands Divestment Business as part of a viable and active business in competition with Global and other competitors in the supply of regional advertising campaigns in each of the East Midlands and West Midlands.

2.5 In the event that Global fails to divest the East Midlands Divestment Business and West Midlands Divestment Business in accordance with paragraph 2.1 above, the OFT may require Global to divest the East Midlands Divestment Business and the West Midlands Divestment Business as a going concern to a purchaser or purchasers approved by the OFT.

Approval of purchaser and terms of divestment

3.1 For the purposes of the OFT approving LDC as a proposed purchaser for the East Midlands Divestment Business and the West Midlands Divestment Business in accordance with these undertakings, Global shall, save as required or permitted by the OFT, satisfy the OFT that:

- (a) the acquisition by LDC of the East Midlands Divestment Business and the West Midlands Divestment Business remedies, mitigates or prevents the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, in particular, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it;
- (b) LDC is independent of and unconnected to Global and the Group of Interconnected Bodies Corporate to which Global belongs and any Associated Person or Affiliate of Global or such Group of Interconnected Bodies;

- (c) LDC has the financial resources, expertise (including the managerial, operational and technical capability), incentive and intention to maintain and operate the East Midlands Divestment Business and the West Midlands Divestment Business as part of a viable and active business in competition with Global and other competitors in the provision of regional radio advertising campaigns to reach listeners in the East and West Midlands;
- (d) LDC has obtained all necessary approvals and consents; and
- (e) the acquisition by LDC of the East Midlands Divestment Business and the West Midlands Divestment Business does not create a realistic prospect of a substantial lessening of competition within any market or markets in the UK.

3.2 The OFT may require Global to provide it with such information and documentation as it may reasonably require to satisfy the OFT that LDC will fulfil the requirements set out in paragraph 3.1 above.

Advertising Sales Agreement and licence of Heart brand

- 4.1 Global shall enter into a Advertising Sales Agreement with LDC which provides for Global to sell advertising campaigns for the East Midlands Divestment Business and West Midlands Divestment Business on behalf of LDC for use as part of National Campaigns.
- 4.2 Global shall be deemed to have complied with the obligation at paragraph 4.1 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, Global has entered into a legally binding agreement (or agreements) to divest the East Midlands Divestment Business and the West Midlands Divestment Business (in accordance with its obligation under paragraph 2.1 above), which agreement (or agreements) provides that on completion of such agreement (or agreements) LDC shall deliver or make available to Global a duly executed version of an agreed form Advertising Sales Agreement, provided that the terms of the Advertising Sales Agreement:
 - (a) do not individually and/or collectively reduce or undermine LDC's ability to compete actively with Global as regards the sale of Regional Campaigns that do not form part of a National Campaign, including, for example, by the imposition of a minimum inventory requirement for National Campaigns beyond that which would be considered reasonable and proportionate in relation to such an Advertising Sales Agreement in these circumstances;
 - (b) do not individually and/or collectively reduce or undermine LDC's incentive to compete actively with Global in the sale of Regional Campaigns that do not form part of a National Campaign; and

- (c) contain no direct or indirect restriction on LDC's ability to sell Regional Campaigns, including Regional Campaigns forming part of a National Campaign, regardless of the identity of any customer purchasing such Regional Campaign, provided that the customer in question has indicated their preference to purchase a Regional Campaign directly from LDC.

4.3 Global shall enter into a Brand Licence with LDC in order to allow LDC to use the Heart brand in relation to the East Midlands Divestment Business.

4.4 Global shall be deemed to have complied with the obligation at paragraph 4.3 if the OFT is satisfied that, prior to the acceptance of these undertakings by the OFT, Global has entered into a legally binding agreement (or agreements) to divest the East Midlands Divestment Business and the West Midlands Divestment Business (in accordance with its obligations under paragraph 2.1 above), which agreement (or agreements) provides that on completion of such agreement (or agreements) LDC shall deliver or make available to Global a duly executed version of an agreed form Brand Licence, provided that the terms of the Brand Licence:

- (a) do not provide Global with the ability to determine or influence LDC's choice of local programming staff or local presenters for the East Midlands Divestment Business or the West Midlands Divestment Business;
- (b) do not individually and/or collectively reduce or undermine LDC's ability to compete actively with Global as regards the sale of Regional Campaigns that do not form part of National Campaigns, including, for example, by:
 - (i) the imposition of minimum quality standards beyond those that would be considered reasonable and proportionate in relation to such a Brand Licence; and/or
 - (ii) the imposition of a minimum quantity of national network programming that is materially detrimental to the commercial operation of the Station;
- (c) do not individually and/or collectively reduce or undermine LDC's incentive to compete actively with Global in the sale of Regional Campaigns that do not form part of a National Campaign; and
- (d) contain no direct or indirect restriction on LDC's ability to sell Regional Campaigns, including Regional Campaigns forming part of a National Campaign, regardless of the identity of any customer purchasing such Regional Campaign, provided that the customer in

question has indicated their preference to purchase a Regional Campaign directly from LDC.

Interim action

- 5.1 Prior to the completion of the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Global shall ensure that from the date these undertakings take effect and except with the prior written consent of the OFT:
- (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, each of the East Midlands Divestment Business and the West Midlands Divestment Business is maintained as a going concern and sufficient resources are made available for the development of each of the East Midlands Divestment Business and the West Midlands Divestment Business on the basis of their respective pre-merger plans;
 - (b) no substantive changes are made to the organisational structure of the East Midlands Divestment Business and the West Midlands Divestment Business or the management responsibilities within the East Midlands Divestment Business and the West Midlands Divestment Business, other than in the ordinary course of business;
 - (c) the East Midlands Divestment Business and the West Midlands Divestment Business are maintained and preserved, including facilities and goodwill;
 - (d) the nature, description, range and standard of goods and services currently supplied by the East Midlands Divestment Business and the West Midlands Divestment Business are maintained and preserved;
 - (e) the separate trading name and/or the separate sales or brand identity of each of the East Midlands Divestment Business and the West Midlands Divestment Business is maintained;
 - (f) except in relation to the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business to LDC, no assets of the East Midlands Divestment Business and the West Midlands Divestment Business are disposed of, and no interest in such assets is created or disposed of, other than in the ordinary course of business;
 - (g) there is no further integration of the information technology used by Global with that used by either of the East Midlands Divestment

Business and the West Midlands Divestment Business and the software and hardware platforms of the East Midlands Divestment Business and the West Midlands Divestment Business shall remain essentially unchanged, except for routine changes and maintenance;

- (h) all reasonable steps are taken to encourage all Key Staff to remain with the East Midlands Divestment Business and the West Midlands Divestment Business, save where LDC has stated in writing to Global that it does not wish that an individual member of the Key Staff be transferred to it with the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business; and
- (i) to the extent it has not already occurred and except as detailed below, no Confidential Information relating to any of the East Midlands Divestment Business and the West Midlands Divestment Business shall pass, directly or indirectly from the East Midlands Divestment Business or the West Midlands Divestment Business (or any employees, directors, agents or Affiliates of the East Midlands Divestment Business and the West Midlands Divestment Business) to Global (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business or in any of the following circumstances:
 - (i) the transfer of any accounting information necessary to allow Global's Chief Executive, Chief Financial Officer and Group Secretary and the Global Board to monitor and review the financial performance of the East Midlands Divestment Business and the West Midlands Divestment Business provided that such accounting information is not passed on to any other person within Global;
 - (ii) the transfer of any information required in connection with Global's dealings with the OFT;
 - (iii) the transfer of any information necessary for compliance with any statutory or accounting obligations to the extent that such compliance cannot be achieved separately by each of the East Midlands Divestment Business and the West Midlands Divestment Business businesses;
 - (iv) any steps necessary in order for Global to comply with these undertakings;

provided that, upon divestment of any of the East Midlands Divestment Business and the West Midlands Divestment Business, any records or copies (electronic or otherwise) of Confidential Information held by Global in relation to East Midlands Divestment

Business or the West Midlands Divestment Business shall be returned to the relevant business and any copies destroyed.

Continued separation

- 6.1 Except with the prior written consent of the OFT, following the divestment of the East Midlands Divestment Business and the West Midlands Divestment Business, Global or any member of the Group of Interconnected Bodies Corporate to which Global belongs:
- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in the East Midlands Divestment Business or the West Midlands Divestment Business;
 - (ii) any Interest in any company carrying on or having Control of the East Midlands Divestment Business or the West Midlands Divestment Business (other than any investments made in the ordinary course of the operation of any of the employee benefit and pension schemes of Global or of any members of the Group of Interconnected Bodies Corporate to which Global belongs of not more than three per cent in aggregate of the issued equity share capital in any such company, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such company); or
 - (iii) other than in the ordinary course of business, any of the assets of the East Midlands Divestment Business or the West Midlands Divestment Business;
 - (b) shall procure that no employee or director of Global or of any member of the Group of Interconnected Bodies Corporate to which Global belongs holds or is nominated to any directorship or managerial position in any company or other undertaking utilising or having Control of the East Midlands Divestment Business or the West Midlands Divestment Business without the OFT's prior written consent;
 - (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of any company or other undertaking carrying on or having Control of the East Midlands Divestment Business and the West Midlands Divestment Business; and
 - (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of

Global or of any member of the Group of Interconnected Bodies Corporate to which Global belongs directly or indirectly acquiring the East Midlands Divestment Business and the West Midlands Divestment Business or doing any of the things listed in subparagraphs (a), (b) and (c) above.

Compliance

- 7.1 Global shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 7.2 Global shall procure that any member of the same Group of Interconnected Bodies Corporate as Global complies with these undertakings as if it had given them and actions and omissions of the members of the same Group of Interconnected Bodies Corporate as Global shall be attributed to Global for the purposes of these undertakings.
- 7.3 Where any Affiliate of Global is not a member of the same Group of Interconnected Bodies Corporate as Global, Global shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 8.1 Global shall furnish promptly to the OFT such information as the OFT considers necessary in relation to or in connection with the implementation and/or enforcement of and/or the compliance with these undertakings, including for the avoidance of doubt, any confidential information.

Interpretation

- 9.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 9.2 References in these undertakings to any English law term for any legal status, interest, concept or thing shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.

9.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.

9.4 For the purposes of these undertakings:

"Acquisition" means the completed acquisition on 6 June 2008 by Global of GCAP;

"Advertising Sales Agreement" has the meaning set out in Clause 4.1 above;

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Global within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"Brand Licence" has the meaning set out in Clause 4.3 above;

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Confidential Information" means any business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"the Decision" means the OFT's decision under section 22 of the Act dated 8 August 2008 in connection with the Acquisition;

"East Midlands Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the following companies:

Name	Company Number
Global Radio East Midlands Limited	03050677
Border Radio Holdings Limited	03376590

which comprise a local sound broadcasting service for the East Midlands carried on under the following licence number and with the following call sign

Licence number	Carried on by	Call sign
AL200-1	Global Radio East Midlands Limited	"Heart"

excluding the Heart brand, but including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

"GCAP" means GCap Media plc;

"Global" means Global Radio UK Limited;

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

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to

exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the East Midlands Divestment Business and/or the West Midlands Divestment Business;

"LDC" means LDC Media;

"National Campaign" mean an advertising campaign that is either UK-wide in scope or is at least wider in geographic coverage than the East Midlands and West Midlands;

"OFT" means the Office of Fair Trading;

"Regional Campaign" means an advertising campaign which will be broadcast in the East Midlands and/or West Midlands;

"Subsidiary" shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

"UK" means the United Kingdom of Great Britain and Northern Ireland; and

"West Midlands Divestment Business" means the whole or substantially the whole of the rights, assets, interests and obligations of or associated with the following companies:

Name	Company Number
Midlands Radio Limited	02365381
BRMB Limited	00275304
Birmingham Broadcasting Limited	00685666
Capital Gold Birmingham Limited	04643580
Capital Radio Fun Limited	01384547
Capital Radio North East Limited	01455872
Mercia Sound Limited	01386660
Beacon Broadcasting Limited	00674678
Radio Wyvern Limited	01568552

which comprise a local sound broadcasting service for the West Midlands carried on under the following licence numbers and with the following call signs

Licence number	Carried on by	Call sign
AL077-2	Birmingham Broadcasting Limited	"BRMB"
AL119-2	Beacon Broadcasting Limited	"Beacon FM"
AL022-2	GWR Group Limited	"Mercia FM"
AL061-3	Radio Wyvern Limited	"Wyvern FM"
AL076-2	Capital Gold Birmingham Limited	"Gold Birmingham"
AL118-2	GCap Media AM Limited	"Gold Wolverhampton"
AL021-2	GCap Media AM Limited	"Gold Coventry"

including without prejudice to the foregoing:

- (a) all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of that business;
- (b) all or substantially all licences, permits, consents and authorisations issued by any governmental or regulatory organisation for the benefit or purpose of that business;
- (c) all or substantially all contracts, leases, commitments and customer orders of or associated with that business;
- (d) all customer, credit and other records of that business; and
- (e) the personnel of that business.

FOR AND ON BEHALF OF GLOBAL RADIO UK LIMITED

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date
Director		Director/Company Secretary	

EX. A50

Enterprise Act 2002 Undertakings

ACQUISITION OF INSYS GROUP LIMITED BY LOCKHEED MARTIN UK HOLDINGS LIMITED

UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY

LOCKHEED MARTIN UK HOLDINGS LIMITED, INCORPORATED IN ENGLAND AND WALES WHOSE REGISTERED OFFICE IS AT 59 LAFONE STREET, LONDON SE1 2LX (No. 3184898) ("LMUK"); AND

LOCKHEED MARTIN CORPORATION, A COMPANY INCORPORATED UNDER THE LAWS OF THE STATE OF MARYLAND, USA, WHOSE HEADQUARTERS ARE SITUATED AT 6801 ROCKLEDGE DRIVE, BETHESDA, MARYLAND, USA ("LOCKHEED MARTIN CORPORATION")

WHEREAS:

- (A) On 16 August 2005 LMUK announced its proposal to acquire by way of share purchase Insys Group Limited, incorporated in England and Wales, whose registered office is at Reddings Wood, Ampthill, Bedford, Bedfordshire MK45 2HD (No. 4141148) ("Insys") (the "Transaction");
- (B) On 17 August 2005 the Secretary of State issued a special intervention notice to the OFT pursuant to section 59(2) of the Act;
- (C) On 19 September 2005 the OFT reported to the Secretary of State in accordance with section 61(2) of the Act, which was within the period specified by the Secretary of State, summarising representations received by it relating to the national security public interest consideration specified in the special intervention notice;
- (D) The Secretary of State has the power to refer the Transaction to the Competition Commission under section 62(3) of the Act or may, instead of making such a reference, accept undertakings in lieu under paragraph 3(2) of Schedule 7 of the Act;
- (E) The Secretary of State considers the undertakings given below by LMUK and Lockheed Martin Corporation are appropriate to remedy, mitigate or prevent any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of the special merger situation and the Secretary of State shall in consequence not make a reference to the Competition Commission.

LMUK and Lockheed Martin Corporation therefore give to the Secretary of State the following undertakings for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest within the meaning of section 58(1) of the Act, which may be expected to result from the creation of this special merger situation.

INTERPRETATION

In these undertakings:-

- 1.1 where reference is made to any company then in the event of any merger, joint venture or acquisition or internal re-organisation or sale either private or to the public, such reference shall be interpreted as applying to the equivalent or successor organisation in the new structure;
- 1.2 except where the context does not allow, the singular shall include the plural and the plural shall include the singular;
- 1.3 reference to a clause shall be a reference to a clause within these undertakings;
- 1.4 "Act" means the Enterprise Act 2002;
- 1.5 "Classified" means protectively marked in accordance with the system of protective marking defined in the Government Manual of Protective Security;
- 1.6 "Effective Date" means the date on which these undertakings are accepted by the Secretary of State, except where the Transaction is not completed, in which case these undertakings shall not take effect until the date of such completion;
- 1.7 "Insys" means Insys Group Limited, a company incorporated in England and Wales whose registered office is at Reddings Wood, Ampthill, Bedford, Bedfordshire MK45 2HD (No. 4141148);
- 1.8 "LMUK" means Lockheed Martin UK Holdings Limited, a company incorporated in England and Wales whose registered office is at 59 Lafone Street, London SE1 2LX (No. 3184898) and for the avoidance of doubt shall not include Lockheed Martin Corporation;
- 1.9 "Lockheed Martin Corporation" means Lockheed Martin Corporation, a company incorporated under the laws of the State of Maryland, USA and whose headquarters are situated at 6801 Rockledge Drive, Bethesda, Maryland, USA;
- 1.10 "Military Programmes" means any defence-related programmes in relation to which any of the UK Companies enters into or has entered into contracts with the Ministry of Defence;
- 1.11 "Ministry of Defence" means the United Kingdom Secretary of State for Defence;
- 1.12 "OFT" means the Office of Fair Trading;
- 1.13 "Prime Contractor" means a UK Company which is a supplier to the Ministry of Defence under Military Programmes, under a contract between the UK Company in question and the Ministry of Defence;
- 1.14 "Secretary of State" means the Secretary of State for Trade and Industry;
- 1.15 "Security Undertakings" means the undertakings made in clause 2;
- 1.16 "Subcontractor" means a UK Company which is a contractor with a third party in connection with Military Programmes;
- 1.17 "Subsidiary" has the meaning ascribed to it in sections 736 and 736A of the Companies Act 1985 as amended;
- 1.18 "UK Companies" means Insys and those Subsidiaries of Insys that are incorporated in

England and Wales at the Effective Date and any successor UK company resulting from any internal reorganisation of LMUK in accordance with the terms of the Security Undertakings;

- 1.19 "UK Military Capability" means the capability immediately prior to the Effective Date within the UK Companies to carry out Military Programmes and to perform any contracts or subcontracts (including those entered into on and after the Effective Date) relating to Military Programmes;
- 1.20 "UK National Security Regulations" means the regulations in relation to Classified material set out in the Government Manual of Protective Security as amended or supplemented from time to time;
- 1.21 "UK Protected Material" means information, software, hardware and equipment classified "Confidential" or above or to which access is otherwise similarly restricted in the interests of UK national security; and
- 1.22 "US ITAR" means United States International Traffic in Arms Regulations.

2. SECURITY UNDERTAKINGS

LMUK undertakes that:

Maintenance of strategic capabilities

- 2.1 It will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, except in so far as the Ministry of Defence has separately agreed otherwise in writing, a sufficient number of the directors of such a UK Company shall be UK security cleared British Citizens to enable security sensitive issues to be resolved at board level should the need arise.
- 2.2 It will procure that for so long as any of the UK Companies is a Prime Contractor or a Subcontractor on Military Programmes, those Military Programmes shall continue to be directly controlled, except insofar as the Ministry of Defence has separately agreed otherwise in writing, by a company or companies incorporated within the UK.
- 2.3 It will provide to the Ministry of Defence a copy of the Memorandum and Articles of Association of each of the UK Companies within one month of the completion of the Transaction.
- 2.4 It will inform the Ministry of Defence in writing and thereafter consult with the Ministry of Defence at least 3 months prior to (i) removal of any significant part of the UK Military Capability to any location outside of the United Kingdom; or (ii) disposal of any significant part of the UK Military Capability to any entity not directly or indirectly controlled by LMUK; or (iii) the voluntary winding-up or dissolution of LMUK; or (iv) reducing in any significant way the UK Military Capability with respect to funded Military Programmes.

Protection and Exploitation of Technology and Information

- 2.5 Except in so far as the Ministry of Defence has separately agreed otherwise in writing, all matters relating to Military Programmes and security within the UK Companies shall be maintained in line with UK National Security Regulations, including the security of work areas subject to special physical ring-fencing and in particular:
 - (i) the operational management of the Military Programmes by the UK Companies shall be by personnel with the appropriate UK security clearances, with security procedures meeting UK National Security Regulations and any other such

requirements as deemed necessary from time to time by the Ministry of Defence;

- (ii) only personnel with appropriate security clearance shall have access to UK Protected Material;
- (iii) no transfer or disclosure by whatever means of UK Protected Material, and no other Classified information which is owned by a third party or country, shall be made outside of LMUK, or to locations outside the United Kingdom without the prior written approval of the Ministry of Defence;
- (iv) the originals of all information and material generated by the UK Companies pertaining to Military Programmes shall remain in the United Kingdom; and
- (v) prior to incorporating any information, material or technology which is subject to US ITAR into any Military Programme for which any of the UK Companies is under contract with the Ministry of Defence on the Effective Date, LMUK shall obtain written approval from the Ministry of Defence.

2.6 It will ensure that the UK Companies are aware of, and bound by, obligations between the Ministry of Defence and any of the UK Companies regarding confidentiality of information, and rights in and limitations on use of intellectual property. It will also ensure that the UK Companies shall continue to respect any commercial exploitation levy obligations between the Ministry of Defence and any of the UK Companies in effect at the Effective Date.

Compliance

2.7 It will provide the Ministry of Defence with such information as it may from time to time reasonably require to ascertain that LMUK is fulfilling the Security Undertakings. If LMUK is unable to comply with any of the Security Undertakings, or becomes aware of any non-compliance, it will provide full reasons for the inability to comply or the non-compliance within one month of becoming aware thereof.

2.8 As well as appointing a security officer responsible for facilitating and overseeing the compliance with UK National Security Regulations and the Security Undertakings at the premises of the UK Companies (as required by UK National Security Regulations), LMUK will, as soon as reasonably practicable after the Effective Date and following consultation with the Ministry of Defence, appoint a compliance officer who shall be responsible for providing to the Ministry of Defence:

- (i) an annual report within three months of the end of the financial year of Insys, as well as any other such information as the Ministry of Defence may from time to time require, to verify compliance with the Security Undertakings, including any measures taken or proposed by the UK Companies so as to ensure compliance with the Security Undertakings and to prevent any breach of them; and
- (ii) full particulars of any failure to comply with the Security Undertakings immediately upon such failure becoming apparent.

2.9 For the purpose of checking compliance with the Security Undertakings, representatives of the Ministry of Defence shall be entitled to enter and inspect any premises used by the UK Companies which are in any way connected with Military Programmes and inspect any document or thing in any such premises which is concerned with such Military Programmes. Such representatives shall be entitled to all such information as they may reasonably require.

Provision of Information

- 2.10 It will co-operate with the OFT and provide it with such information as it may reasonably require for the purpose of any of its functions under section 92 of the Act in relation to these Security Undertakings.

Directions from the OFT

- 2.11 LMUK and the UK Companies will comply with such written directions as the OFT may from time to time give to take such steps within their competence as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Security Undertakings. LMUK and the UK Companies will do or refrain from doing anything so specified or described in such written directions which they might be required by these Security Undertakings to refrain from doing or to do. LMUK will procure that the UK Companies comply with these Security Undertakings as if the UK Companies themselves had given them.

3 UNDERTAKING BY LOCKHEED MARTIN CORPORATION

- 3.1 Lockheed Martin Corporation undertakes that it will take or refrain from taking such action as is reasonably necessary, in order to enable LMUK to comply with the Security Undertakings.

4 GOVERNING LAW

- 4.1 These Undertakings shall be governed by and construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to resolve, and the laws of England shall govern, any actions, proceedings, controversy or claim of whatever nature arising out of or relating to these Undertakings or breach thereof, except that other jurisdictions may apply solely for the purpose of giving effect to this Clause and for the enforcement of any judgement, order or award given under English jurisdiction.

Signed

For and on behalf of Lockheed Martin UK Holdings Limited

Signed

For and on behalf of Lockheed Martin Corporation

EX. P51

[Redacted]
From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: letter to MPs and peers

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 14 March 2011 19:51:04 GMT
To: Adam Smith <[Redacted]>
Subject: FW: letter to MPs and peers

Guardian.co.uk: News Corp/BSkyB merger: letter to MPs and peers

Alliance against News Corp's Sky deal ask members of parliament and House of Lords to lobby Jeremy hunt

Monday 14 March 2011 13.57 GMT

I am writing on behalf of the alliance of media organisations – BT, Guardian Media Group, Associated Newspapers Ltd, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group – that has opposed the above merger.

Members of both Houses will be aware of OFCOM's initial advice to the Culture Secretary that the merger would give rise to serious media plurality concerns and should be referred to the Competition Commission; and the fact that the Culture Secretary was initially minded to accept this advice.

As we now know, the Culture Secretary went on to revise this position. He announced on Thursday 3 March that he was minded to accept undertakings from News Corporation and clear the way for the takeover, subject to a consultation period ending Monday 21 March.

This letter sets out why the alliance believes the proposed undertakings will be ineffective and will not achieve their stated aim of protecting plurality in news media. I set out below the main arguments that lead us to believe the undertakings should not be accepted and support our view that that this matter should still be referred to the Competition Commission. I hope that you find the arguments persuasive, and may find time to write to the Secretary of State.

Our reasons for opposing clearance of the proposed remedy without a full Competition Commission investigation can be summarised as follows:

1 Newco, the new publicly listed spin off company which will run Sky News, will be in a state of economic dependency vis-à-vis News Corporation. Newco and Sky News will rely on News Corporation for 85% of its revenues and for its access to the market via the all-powerful digital satellite BSkyB platform. Newco will be tied into the royalty-bearing brand licensing agreement with News Corporation for the Sky News and other associated brands. This will provide a ready means for News Corporation to turn the financial screw on Newco if it so wishes to exert influence.

2 The safeguards for editorial independence are weak and of the sort that News Corporation has previously being adept at undermining. The main board of Newco will still have News Corporation 'placemen' on it, able to exert significant influence over Sky News. Only one of the independent directors of Newco will be required to have editorial or senior journalistic experience. The definition of independence in the undertakings is weak. The remedy relies on an unspecified 'principle of editorial independence'. The safeguards for editorial staff are too legalistic and written in employment law terms. They require editorial staff to put themselves into dispute with their employer in defence of editorial independence, which is likely to be regarded by staff as an extreme and risky step. The proposal for a Sub Committee of the main board of Newco to oversee this is a remedy precisely of the sort that has previously been undermined by News Corporation. On this issue we agree with the views of James Murdoch, current chairman of BSkyB:

"[W]e must have genuine independence in the news media. Genuine independence is a rare thing. No amount of governance in the form of committees, regulators, trusts or advisory boards is truly sufficient as a guarantor of independence... On the contrary, independence is characterised by the absence of supervision and dependency." [1]

3 Neither OFCOM nor the OFT regard this remedy as a sustainable solution. The OFT, in its advice to the Culture Secretary, warns that the proposed remedy is "unlikely to be effective" beyond the short to medium term (ie beyond ten years or potentially even less). OFCOM, in its advice to the Culture Secretary, specifically states that the remedy is "not a permanent solution". OFCOM also recognises that the market will change a lot in the next ten years and agrees that ten

years is, in that context, therefore "long term". But this does not amount to advice as to the appropriate duration of the remedy.

4 The proposed consultation is insufficient. The OFT advises that the Culture Secretary should 'test further the viability and robustness' of the commitments from News Corporation during the consultation process. The undertakings will in fact be composed of a series of detailed draft contracts between News Corporation and Newco. We do not regard it as practically possible to prepare, review and anticipate the complex effects of such contracts in a two week consultation period. In any event, some of the key elements of the arrangements have not been made public.

5 The remedy puts too much power in the hands of the Culture Secretary, rather than independent regulators. There are at least seven different ways in which the Culture Secretary can be required to approve or agree to behaviours governed by the undertakings, which make them incredibly susceptible to more or less implicit political interference in future. In any event, all the undertakings to protect independence would be extinguished should News Corporation acquire over 50% of Newco. This would require the consent of and consultation by the Culture Secretary. However, it is well known that Sky News is loss-making. Were it to fall into economic distress, a bid by News Corporation to increase its stake in Newco to 'save Sky News and protect plurality' can readily be envisaged.

6 The law to protect plurality has failed and needs urgent strengthening. In its advice to the Culture Secretary, OFCOM says that the current laws protecting plurality do not work well. OFCOM urges a wider review with a view to creating a system that does not require a transaction to take place for issues of plurality to be examined by the regulator. We agree with this. The need for such a review is intensified by the increase in market power that will be exerted by the merged News Corporation/BSkyB entity. It will be in a position to restrict or distort competition through cross-promotion, bundling, banning rivals' advertisements and distorting the advertising market with cross-platform deals. These are issues of massive importance to the industry, especially at a time of real commercial pressure, but which the Secretary of State was able to ignore completely in his consideration of this takeover. We need a regulatory regime able to factor in these issues and their likely effect on pluralism.

In summary:

We regard the proposed undertakings as being fraught with uncertainty and unlikely to safeguard plurality. We do not believe that, given these concerns, and those of many others in civil society, the Culture Secretary should accept these undertakings, but should forward the matter to the Competition Commission for a full investigation.

EX. P52

[redacted]

From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: CONFIDENTIAL _ RUBUTTAL SLAUGHTER AND MAY DOCUMENT
Attachments: CO-#13715780-v3-Outline_rebuttal_to_Slaughter_&_May_document.DOC; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 24 March 2011 08:48:49 GMT
To: "adamsmith" <[redacted]>
Subject: CONFIDENTIAL _ RUBUTTAL SLAUGHTER AND MAY DOCUMENT

Here it is. Hope it's helpful for this afternoon's meeting. Tried to be as comprehensive as possible.
Fred

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www.nmauk.co.uk

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NEWS/SKY

SLAUGHTER & MAY SUBMISSION TO DCMS DATED 11 MARCH

Draft (1): 23 March 2010

Submission of 11 March 2011 – Rebuttal

	Slaughter & May Argument	Rebuttal
<i>Arguments that the Sec of State has not applied correct standard to assess UIL proposal</i>		
<p>1.</p>	<p><i>Secretary of State has departed from usually applicable merger control standards</i></p> <p>[2.1] The Secretary of State's proposed remedy (and the process through which it has been formulated) represent an unprecedented departure from normal standards as applied under the UK's merger control regime.</p> <p>[4.3] Importantly, to fulfil the OFT's standard for a "clear-cut" remedy, there "must not material doubts about the overall effectiveness of the remedy in solving the problem". (Footnote 4: Paragraph 5.8, OFT Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (December 2010)).</p> <p>[2.2] Detailed consideration by the CC could only legitimately be dispensed with if any undertaking in lieu ("UIL") of reference addressed the concerns in a clear-cut manner that removes all material doubts.</p>	<p>The Secretary of State has not departed from statutory standards or practice. On the contrary he has run a very scrupulous process to seek advice which informed his view.</p> <p>The Secretary of State remains the ultimate decision maker in a media plurality/public interest review. He has chosen to seek the advice of both OFT and Ofcom (without being required to do so by statute) and his decision in principle has been informed by the advice received.</p> <p>The Secretary of State has considered the UIL offered and has reached the entirely reasonable conclusion that they remedy, mitigate or prevent the identified concerns, as required in the statutory test. In reaching this conclusion, he has considered and followed advice received from the OFT and Ofcom.</p> <p>Ofcom, the body which had been responsible for reporting on potential media plurality concerns states, in its advice to the Secretary of State of 1 March 2011, that "<i>we consider that the revised proposed undertakings</i></p>

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		<p>would address the plurality concerns identified in our report of 31 December 2011".</p>
	<p>Secretary of State has departed from OFT advice</p> <p>[2.2] Furthermore, the Secretary of State has departed from the advice of the Office of Fair Trading (the "OFT") in accepting a proposal which offers no effective or lasting solution to the plurality concerns raised by the merger.</p>	<p>The Secretary of State has not departed from advice.</p> <p>The OFT advised the Secretary of State on 1 March 2011 that: "<i>the Revised UIL are likely to be practically and financially viable in the short and medium term</i>".</p> <p>Ofcom, the body which had been responsible for reporting on potential media plurality concerns states, in its advice to the Secretary of State of 1 March 2011, that "<i>we consider that the revised proposed undertakings would address the plurality concerns identified in our report of 31 December 2011</i>".</p>
<p>Arguments that Newco will be dependent on News for revenue</p>		
<p>2.</p>	<p>Newco will be dependent on News for revenues and that dependence will increase over time</p> <p>[6.1] Ofcom stated that about 85% of Sky News' revenues will come from News Corporation. Ofcom itself notes that this will make Sky News "<i>commercially dependent on its relationship with the merged News Corporation/Sky entity</i>". Furthermore, rather than Sky News becoming increasingly independent, it is expected that its dependence on News Corporation revenues will actually increase over time. It is clear that Sky News cannot be considered financially or commercially independent of News Corporation where the latter is by far its largest customer and its main source of revenue.</p>	<p>News does not dispute that the majority of Newco's revenues will come from Sky. That does not mean that Newco would not be a financially viable player. On the contrary, unlike most of its rivals, it would have a long term guaranteed income, which will give it financial stability.</p> <p>Nor can it be said that the fact that a large amount of revenues is derived from one third party means that the editorial independence of Newco would be compromised.</p> <p>Under an arrangement which mirrors the same ownership level that News Corp has in B SkyB, Sky News will continue to be an independent voice as the CC found to be the case for Sky News when it was integrated in B SkyB (despite the same shareholding link with News and without the same additional safeguards in relation to corporate governance and editorial independence).</p>

PRIVILEGED AND CONFIDENTIAL

<p>3.</p>	<p><i>Secretary of State is departing from OFT's well established policy of avoiding "dependence"</i></p> <p>[6.2] Indeed it is as well-established as a matter of UK merger control policy that a divestment remedy is unlikely to be effective where the divestment business has an ongoing supply relationship with the merged entity. The OFT's guidance states that it is rare for it to accept even interim purchase/supply arrangements between the merging parties and the divestment business given the requirement for a clear-cut remedy in lieu of a CC reference. It is therefore highly irregular for the Secretary of State to propose accepting a UIL where the ongoing commercial viability of the divestment business is based almost entirely on a contract with the merged entity and where this state of affairs will persist for the foreseeable life of the divestment business.</p> <p>[6.3] Underlying the OFT's standard policy is the valid assumption that in a close commercial relationship (especially one which creates dependence) there will be a multitude of means through which the merged entity could influence the divestment business and therefore nullify the purported rationale for divestment. Given the range of means that a major customer could use to influence a dependent supplier the OFT generally considers that it is simply not possible to ensure the independence of the divestment business in these circumstances.</p>	<p>It cannot be assumed that in exercising his judgment in relation to media plurality concerns, the Secretary of State is obliged to take exactly the same approach as the OFT when it is considering competition concerns. (Indeed, the OFT acknowledges this clearly at para 1.7 of its Report of 11 February 2011.)</p> <p>The rationale behind the OFT's policy of avoiding ongoing commercial relationships is not primarily due to concerns over editorial "influence" as such but concerns over a dampening of <u>competition</u>.</p> <p>The OFT was satisfied as to practical and financial viability of Newco and Ofcom was satisfied as to the level of safeguards on plurality as a result of the UIL offered.</p>
<p>4.</p>	<p><i>News Corps will be able to "cause difficulties" for Newco</i></p> <p>[6.4] it is entirely fanciful to consider that Sky News would be able to disregard the views of News Corporation given the range of means by which News Corporation could, as its major customer, cause difficulties for Sky News. For example: the carriage agreement will</p>	<p>Editorial stance is the issue to be addressed by the UIL and it is fanciful to suggest that News Corp would use arms' length long-term commercial relationship with Newco to shape its editorial position.</p> <p>The carriage agreement is fixed for a long term so it can hardly be used to control day-to-day editorial policy.</p>

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	<p>inevitably contain a range of obligations which Sky News must perform to be entitled to payment. While editorial stance is not to be one of the relevant conditions, News Corporation could easily pursue complaints on other grounds in an attempt to discourage editorial policy of which it disapproved.</p>	<p>Ofcom was satisfied that the UIL address concerns around editorial independence and addressed its media plurality concerns.</p>
<p>5.</p>	<p><i>The absence of clarity in the UIL adds to concerns</i></p> <p>[6.5] These issues are further compounded by the absence of any real clarity over defined terms used in the UIL. For example, BSKyB is entitled to terminate the carriage agreement upon a "material breach" by Sky News of its obligations under the agreement – the UIL does not elaborate, however, on the interpretation of this phrase.</p>	<p>These are standard contractual provisions which are uncontroversial and will submitted to the Secretary of State for approval.</p> <p>It is entirely standard practice that UIL agreed and issued for public consultation will not contain all details of agreements to be entered into by the companies concerned which are highly confidential.</p> <p>The Secretary of State can seek the OFT/Ofcom's view to review its terms.</p>
<p>6.</p>	<p><i>Ongoing interest of News Corp in the success of Sky News is irrelevant to application of OFT's "normal standards" for divestments</i></p> <p>[6.6] It is important to note that were the OFT's normal standards to be applied, the merged entity's incentive in respect of the divestment business would be irrelevant – as remedies are supposed to create independent divestment businesses (viable regardless of the incentives of the merged entity). The fact that News Corporation had to resort to its own incentives to argue that Sky News will be viable is in fact confirmation that Sky News will not be independent.</p>	<p>On the contrary, it is highly relevant and ignoring it would have led to a non-sensical decision.</p> <p>In fact it is the OFT which identifies News' commercial incentive to continue paying for the Sky News channel as a relevant factor in para 1.14 of its report of 11 February 2011 (the paragraph after the one cited by Slaughter & May in the footnote to this comment).</p>
<p>7.</p>	<p><i>It is false to assume that influence over editorial content would involve commercial sacrifice</i></p> <p>[6.8] Specifically, it is false to assume that an interest influencing the</p>	<p>Slaughter & May's argument does not make sense.</p> <p>News' incentives are considered by the OFT in the context of arguments about the ongoing viability of Newco not of its editorial independence.</p>

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	<p>editorial content of Sky News would involve any commercial sacrifice on the part of News Corporation. First, given the unequal bargaining position of the two companies, even a threat by News Corporation to use its financial and commercial leverage could change Sky News policy without necessarily endangering the success or ongoing operation of Sky News. Secondly, it may simply be the case that the benefits of influencing editorial policy (e.g. increased exposure for News Corporation newspapers) outweigh any costs involved in disciplining Sky News. It is therefore wrong to assume that an interest in the success of Sky News acts as a safeguard against editorial influence.</p>	
<p><i>Arguments that Newco will be dependent on News for distribution</i></p>		
<p>8.</p>	<p><i>Newco's dependence on Sky for distribution will threaten plurality</i></p> <p>[6.10] Sky News will lack operational independence. Crucially, Sky News will rely heavily on the B SkyB network for almost all of its TV distribution activities (and therefore access to audience) – this proposal represents a significant departure from arrangements typically applied in divestment scenarios under UK merger control policy. The UIL gives no detail on what (if any) obligations will be imposed upon News Corporation to distribute Sky News on its network (see further below). Moreover, whatever distribution obligations might be imposed upon News Corporation, it would not be possible to devise obligations which deal with every possible parameter upon which the scope or quality of distribution could be degraded.</p> <p>[6.11] Sky News' dependence on News Corporation for distribution is critically important to news plurality for two reasons. First, the ability to degrade or reduce distribution of Sky News gives News Corporation the ability to reduce directly Sky News' capacity to reach the audience and therefore contribute to news plurality. Secondly, the threat of degrading or reducing the distribution of Sky News gives</p>	<p>We do not see how the dependence from Sky for distribution can be a plurality risk.</p> <p>Given the level of investment in Sky News, Sky will continue to have all the incentives to continue distributing Sky news as it did before the transaction.</p> <p>It is fanciful to think that News Corp would invest in Sky News and then limit or degrade its distribution.</p> <p>News will provide Sky News with an EPG slot no worse than its current EPG slot and this is enshrined in paragraph 4.5 (iv) of the UIL.</p>

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	News Corporation leverage which could be used to influence Sky News' editorial policy.	
<i>Arguments that Newco will be dependent on News for Contract Renewal</i>		
9.	<p><i>Non-renewal of Carriage Agreement would have severe consequences for Newco</i></p> <p>[6.14] It is obvious that non-renewal of the carriage agreement would have severe (and likely terminal) consequences for Sky News, since around 85% of Sky News' revenue will derive from News Corporation. The heavy reliance on the carriage agreement was described in stark terms by the OFT.</p>	<p>News Corp would have all the incentives to renew its Carriage Agreement on termination and one would expect that it will continue investing in Sky News as it has done over the last 20 years.</p> <p>In this context one should also note that the Brand Licence agreement has a duration which potentially exceeds that of the Carriage Agreement and one would expect news to want to continue providing a service under the Sky News brand to its customers.</p>
10.	<p><i>The prospect of contract renewal will influence decision making by Directors</i></p> <p>[6.15] The absolute imperative to win contract renewal will profoundly influence decision-making at all levels within Sky News. For example:</p> <p>(i) Directors of Sky News (including the independent directors) will have a legal obligation (as well as a commercial incentive) to act in the best interests of the company. Maintaining the approval of News Corporation must therefore be the directors' first priority, since renewal of the carriage agreement will be essential to the continued viability of the company,. The scope for these directors to be influenced by News Corporation is clear. However, the proposed UIL makes these same directors responsible for ensuring the editorial independence of Sky News.</p>	<p>This assertion completely disregards the reality of editorial decision making on a day-to-day basis.</p> <p>It is fanciful to suggest that editorial decisions will be taken into account in assessing a possible renewal of an agreement in 10 years time.</p> <p>In fact Ofcom was satisfied that the UIL addressed its plurality concerns.</p>
11.	<p><i>The prospect of contract renewal will influence decision making by employees</i></p>	See above.

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	<p>[6.15] (ii) The senior editorial staff of Sky News will be accountable to the directors with the incentives outlined above. Thus staff will be aware that choosing to adopt an editorial policy disapproved by News Corporation would run counter to the clear incentives of those responsible for hiring, firing and promotions within Sky News. Moreover, even if editorial staff could be expected to ignore the wishes of their bosses, they will also have a direct personal interest in contract renewal - since non-renewal will place the financial viability of Sky News (and therefore their jobs) in grave danger.</p>	
<p>12.</p>	<p><i>Newco would inevitably conform to "News Corp" views</i></p> <p>[6.16] In light of the above incentives, it is clearly unrealistic to expect that Sky News will be able to offer an independent news voice. For example:</p> <p>(i) Were another News of the World phone-hacking scandal to arise before or during the re-negotiations of the carriage agreement, is it realistic to expect that Sky News would rigorously investigate and report on any such illegal activities within News Corporation?</p> <p>(ii) Were there to be a general election campaign before or during the renegotiation of the carriage agreement and all of the News Corporation newspapers supported one party, is it realistic to expect that Sky News would rigorously investigate and report on a major scandal affecting that party?</p> <p>[6.17] In each case, Sky News could only be expected to provide an independent news voice if its directors and editorial staff are expected to act with complete disregard for their own job security and success of the company.</p>	<p>If News Corp or any of its directors sought to influence Newco's editorial position in the way envisaged by the coalition, there would be a number of internal and external protections from the corporate and editorial governance committee to the adherence to principles of editorial independence and it will be subject to the Broadcasting Code, which will continue to provide a safeguard.</p>

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<p>13.</p>	<p><i>The Secretary of State has ignored advice from OFT and Ofcom as to uncertainty</i></p> <p>[6.18] Both the OFT and Ofcom have recognised that contract renewal is likely to have an impact on Sky News during the 10-year term. The OFT stated that "uncertainty about the prospects for renewal of the carriage agreement on equivalent terms may begin to affect Newco some years before its term date" and Ofcom stated that the effectiveness of the UILs "may start to diminish in the run up to the end of 10 year period". The Secretary of State appears to ignore this advice and to assume instead that the UIL will be effective for 10 years.</p>	<p>This is not correct. The Secretary of State has to take his own decision as he is entitled and expected to do under the statute having sought, in his discretion, advice from the OFT and Ofcom who had given positive advice on the issues on which they were consulted.</p>
<p><i>Governance provisions are not effective given lack of financial, commercial and operational independence</i></p>		
<p>14.</p>	<p><i>Governance provisions are irrelevant given the lack of commercial independence</i></p> <p>[7.1] As outlined in Section 4 above, editorial independence is impossible if Sky News does not also enjoy financial, commercial and operational independence. For the reasons outlined in Sections 5 and 6 above, it is clear that given Sky News' lack of financial, commercial or operational independence, it is entirely unrealistic to expect that it would have sufficient editorial independence to constitute a distinct news voice. This analysis is not altered by the governance provisions contained in the UIL.</p> <p>[7.4] First, as regards the independent directors, the structural dependence of Sky News upon News Corporation means that, even if a director has no other relationship with News Corporation, he will have a clear incentive to maintain the approval of News Corporation. Any independent director will have a commercial incentive (and legal obligation) to promote the success of Sky News. Since Sky News will be dependent upon News Corporation any director will therefore have</p>	<p>The OFT was satisfied as to the financial and practical viability of Newco.</p> <p>Corporate governance provision are designed to bolster the editorial "independence of Newco" beyond the level currently enjoyed by Sky News within BSkyB (which has been recognised by the CC to be sufficient to ensure plurality).</p> <p>Ofcom accordingly advised the Secretary of State that the UIL would address its media plurality concerns.</p>

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	<p>an incentive to maintain the approval of News Corporation. Accordingly, the independent directors who are supposed to police the editorial independence of Sky News will have to do so in circumstances where taking a stand against News Corporation would be contrary to their other incentives and duties.</p>	
<p>15.</p>	<p><i>Editorial independence provisions are weak</i></p> <p>[7.5] Second, the safeguards for editorial independence as contained in the UIL are weak and of the nature that News Corporation has previously being able to circumvent (see further below). In particular:</p> <p>(i) Only one of the independent directors will be required to have editorial or senior journalistic experience; and</p> <p>(ii) The effectiveness of the UIL relies on an unspecified "principle of editorial independence and integrity in news reporting". As noted above, senior editorial staff of Sky News will be accountable to Sky News' directors who also have incentives to maintain the approval of News Corporation. Thus staff will be aware that choosing to adopt an editorial policy disapproved by News Corporation would likely be considered an extreme and risky step. Moreover, in practice, true editorial independence is exerted on a day-to-day basis and operationally rather than in extremis. The proposal to establish a committee to oversee the safeguard of such editorial independence would therefore likely fail to provide an adequate means to police whether such independence is in fact being maintained on a day-to-day basis.</p>	<p>On the contrary they go beyond the current level of protection on those issues and Ofcom was satisfied that the UIL addressed its plurality concerns.</p>
<p>16.</p>	<p><i>Behavioural obligations are ineffective</i></p> <p>[7.6] Third, even aside from the lack of genuine independent oversight, experience demonstrates that behavioural obligations are entirely ineffective in ensuring editorial independence. In particular, since editorial independence is difficult to define it is very difficult to</p>	<p>These are unsupported allegations.</p> <p>The UIL provide a structural solution which is complemented by <i>further</i> protection relating to editorial independence. It is a "<i>belt and braces</i>" approach.</p>

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	<p>identify and prove clear breaches of the principle. Precedents suggest that News Corporation has previously taken advantage of this fact to circumvent editorial independence undertakings.</p> <p>[Also 7.8, 7.9]</p>	<p>There is no regulatory policy of rejecting behavioural undertakings altogether, even in the context of a competition law assessment, particularly when they complement a structural solution. The suitability of such undertakings must be assessed on a case by case basis.</p> <p>Ofcom, and the Secretary of State, have taken the reasonable and cautious view that, coupled with the spin-off of Sky News, the protections are sufficient.</p>
<p>17.</p>	<p><i>No explicit right of redress</i></p> <p>[7.7] Fourth, were News Corporation to attempt to influence (directly or indirectly) the editorial independence of Sky News, for example by objecting to the reporting of and/or investigation into another News of the World phone-hacking scandal, there is no explicit right of redress provided for in the UIL in order to address such concerns. The relevant obligations in the UIL merely require the editorial committee to "consider representations made by the head of Sky News...and report any such representations to the board of Newco".</p>	<p>Slaughter & May appears to be assuming that the corporate governance and independence committee comprising a majority of independent directors will not be able to fulfil its role. There is no basis for this assertion which lacks any credibility.</p>
<p><i>Arguments that News shareholding should be reduced in light of concerns identified</i></p>		
<p>18.</p>	<p>[8.4] In light of the above, therefore, instead of maintaining the status quo with regard to News Corporation's shareholding in Sky News (by reference to the present ownership structure of BSkyB), any remedy envisaged by the UIL should in fact reduce News Corporation's shareholding in Sky News post-Takeover in order to ensure the remedy is adequate and takes account of this increased influence that News Corporation will enjoy over Sky News through, inter alia, the Carriage Agreement.</p>	<p>The UIL maintain the status quo in relation to Sky News. Asking for a reduction of News Corp's shareholding in Sky News would have been punitive and therefore disproportionate.</p> <p>There is no basis for this assertion and it was not considered appropriate by either the OFT or Ofcom that a reduction in shareholding be required.</p>

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<i>Arguments that there is "no lasting remedy"</i>		
<p>19.</p>	<p><i>OFT raised concerns that the viability of Newco would be in severe jeopardy if the carriage agreement is not renewed after 10 years which were not answered by Ofcom</i></p> <p>[9.2] The OFT states that this threat to the survival of Sky News threatens the efficacy of the UIL: "the finite duration of the carriage agreement, in particular, entails a material risk to the long term viability of Newco and hence the UIL"</p> <p>[9.3] Ofcom agreed to characterise the carriage agreement as "long term". The Secretary of State's press release dated 3 March 2011 implies that this amounted to advice from Ofcom on the appropriate time-frame for assessment. In reality it seems to be nothing of the sort. Whilst offering the semantic categorisation of 10 years as "long-term", Ofcom says absolutely nothing as to whether 10 years is an appropriate frame of reference nor does it endorse the Secretary of State's view that there is no need for a remedy in the later period. On the contrary, Ofcom pointedly agreed with the OFT's analysis of limitations created by the finite duration of the carriage agreement and stated that "the proposed UILs are not a permanent solution". The Secretary of State should not seek to disguise the fact that: (i) he is proceeding with a UIL which the OFT has advised would be ineffective within 10 years; and (ii) Ofcom has not endorsed his view that a 10 year contract is an appropriate lasting remedy.</p>	<p>Ofcom's view as to the relevance of the 10 year duration clearly does imply that Ofcom considers 10 years to be an appropriate frame of reference for media plurality in this case.</p> <p>Ofcom advised the Secretary of State that "<i>we consider that the revised proposed undertakings would address the plurality concerns identified in our report of 31 December 2011</i>".</p> <p>Therefore the Secretary of State's decision in principle to accept UIL is entirely reasonable.</p>
<p>20.</p>	<p><i>Ofcom's characterisation of 10 years as "long term" is semantic and addresses evolution of demand but not supply</i></p> <p>[9.6] As a matter of fact, the prediction that consumers' use of news and current affairs will evolve speaks only of demand for news. It</p>	<p>See response to Q 19 above.</p>

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	<p>does not even address the supply side much less suggest any basis for believing that there will be significant new entry into the supply of news content over the next few years. Since plurality is driven by the number of suppliers, the evolution of demand is not directly relevant. Given the high fixed costs of entry and financial challenges facing the news sector, the prospects for significant new entry are uncertain. As such, the prediction fails to address Ofcom's concerns.</p>	
<p>21.</p>	<p><i>Uncertainty should be borne by the parties, there should not be an uncertain risk to the public interest</i></p> <p>[9.8] However, aside the factual point, Ofcom's statement raises a critical point of principle. Ofcom notes that the situation with regard to plurality may be different in ten years. Therefore, Ofcom is not saying that that market will have evolved to a degree that the UIL is no longer necessary but only that it sees some uncertainty. In other words, Ofcom is not sure whether or not it will be necessary to have an independent Sky News in 10 years. The critical point of principle is that the risks in this uncertainty should be borne by the parties giving rise the plurality concerns (i.e. the merging parties) and not the public who will would be affected by a reduction in plurality.</p>	<p>See response to Q 19 above.</p>
<p>22.</p>	<p><i>The Secretary of State has departed from normal merger control standards in a way which is irrational</i></p> <p>[9.9] The standard approach in merger control is for a remedy to be put in place in perpetuity (or at least for a very long term, e.g. 25 years) so as to guarantee that the concerns raised by the merger are remedied on a lasting basis. If market conditions change such that the remedy is no longer required, then the merged entity has the option to apply to the OFT for the obligations to be released or modified.</p> <p>[9.10] Again, the Secretary of State has departed from normal standards as applied under the UK's merger control regime and allowed News Corporation to transfer to the general public the risk</p>	<p>See response to Q 19 above.</p> <p>In any event, it is by no means always the case that merger remedies are "very long term" as suggested by Slaughter & May. In fact Sky Italia remedies are a case on point as they were imposed by the EU for less 10 years.</p>

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	<p>that a temporary remedy may result in insufficient plurality in the future. In effect, while recognising that the merger raises plurality concerns, the Secretary of State proposes to attempt to remedy those concerns for only a few years. His only answer for the longer term is to hope something might happen which causes the concerns to disappear.</p> <p>[9.11] It is not clear why the Secretary of State considers (contrary to standard UK merger control policy) that the general public rather than News Corporation should bear the risk of uncertainty over the future outlook. This approach is not only at odds with standard UK merger control policy, but is also irrational and shows insufficient regard for the seriousness of the issues at stake.</p>	
<p>Arguments as to insufficient consultation</p>		
<p>23.</p>	<p><i>Process of negotiation of UIL has been irregular</i></p> <p>[10.1] As noted above, several aspects of the review process have been highly irregular. Rather than follow Ofcom's advice and send the Takeover for review by the CC the Secretary of State added an additional stage of the review process. During this stage the Secretary of State opted to afford News Corporation privileged access and negotiated a deal in private without input from third parties.</p>	<p>This assertion is incorrect and wrong in law. The UIL process is provided for by the Enterprise Act 2002.</p> <p>The statutory regime provides for the possibility of UIL to be offered subsequent to Ofcom's advice to the Secretary of State.</p> <p>By definition the Secretary of State can only decide to accept undertakings under the applicable statutory provisions (Schedule 2, para 3 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003) where he otherwise intends to make a reference to the CC.</p> <p>There is nothing at all controversial about the procedure followed by the Secretary of State.</p>
<p>24.</p>	<p><i>Public consultation is taking place with insufficient information</i></p> <p>[10.2] It appears that this defect is to be repeated: the current public consultation is taking place without information on many of the key elements of the proposed arrangements. For example, the key terms</p>	<p>These are commercial secrets that are never disclosed to third parties in the context of UIL consultations.</p> <p>The OFT has already indicated that it is satisfied as to viability of Newco and has opined on this point.</p>

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	<p>of carriage agreement are essential to the assessment of the UIL, including details of the financial commitments agreed between the parties. The OFT states: "<i>It is clear that a Sky carriage agreement in place on sufficiently long and financially viable terms is fundamental to Newco's ability to cover its costs from the outset, and hence to its viability.</i>" Yet, despite the key importance of the terms of this contract, it seems that third parties will be given no opportunity to comment. The genuine viability of Sky News as an independent business remains unproven to the general public.</p>	
<p>25.</p>	<p><i>There are key unknown elements of Newco/News arrangements</i></p> <p>[10.3] Some of the key unknown elements of the contract are as follows:</p> <p>(i) Distribution – as outlined above, it is not clear what (if any) obligations will be placed upon News Corporation to distribute (as opposed to simply purchase) Sky News. Since Sky News' ability to contribute to news plurality depends on its widespread distribution, this omission is clearly unacceptable.</p> <p>(ii) Ability to Invest – Ofcom has noted that the consumption of news is likely to evolve over the next few years. As a result, it is possible that Sky News will need to make significant investment in order to continue to make viable contribution to news plurality. Without more information the Concerned Parties cannot comment in an informed manner on how the UIL will affect Sky News' ability to invest. For example, while the OFT report suggests that the payments will allow Sky News to cover its costs, it is not clear whether payments match the historic subsidies previously granted to Sky News by BSkyB. If not, the proposals will result in Sky News being less able to invest than pre-Takeover. This is particularly important given the concerns raised by the OFT that Sky News may face difficulties in raising</p>	<p>It is entirely standard practice that undertakings agreed and issued for public consultation will not contain all details of agreements to be entered into by the companies concerned.</p> <p>In fact the standard practice is that the OFT would typically decide on whether UIL are appropriate in principle and it would only subsequently consult on the detailed provisions. The Secretary of State has run a very transparent process and has front-loaded his decision.</p> <p>The Secretary of State has a right to approve the Carriage Agreement and the News Corp expects that he will ask the OFT/Ofcom will review its terms before he does so.</p>

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	<p>finance for investment: "the smaller size of Newco, compared with being a part of Sky, could create challenges if significant funds are required to finance investment in new technology."</p> <p>(iii) Public Listing – In its report to the Secretary of State, the OFT indicates that, given the limited time available to provide its views, it is unable to advise on the prospects of success of the shares of Newco being admitted for public trading. Although, the OFT's report (in its redacted form) goes on to suggest that a legal opinion submitted by News Corporation addresses any potential concerns over the feasibility of a public listing, no visibility has been provided as part of the public consultation process as to the grounds on which News Corporation's opinion is based. Consequently, it is impossible for the Concerned Parties to examine the legitimacy of any such grounds.</p>	
<p>26.</p>	<p><i>The UIL are deficient in scope of ownership restrictions</i></p> <p>[10.4] (i) The limited restrictions on ownership of the remaining share of Sky News not already owned by News Corporation fail to address concerns over parties that are somehow allied with News Corporation acquiring these shares. For example, the UIL does not appear to prevent the acquisition of shares in Sky News by Rupert Murdoch (or other members of his family) acting in a personal capacity.</p>	<p>According to section 6.1 of the UIL, News Corp and companies belonging to its group cannot hold more than 39.14% in Newco.</p> <p>Acquisitions by concert parties of News would trigger a full bid requirement under the Takeover Code, which in itself would lead to a further regulatory review.</p> <p>-----</p> <p>[The below analysis is a bit complex and we would not share this analysis externally but would say:</p> <p>UIL cannot bind third parties but they contain a standard clause on compliance 7.3 which catches "Affiliates".</p> <p>Affiliates is a defined term which applies to 2 persons under common control under s.26 of the Act.</p> <p>Arguably that brings into play s.127 of the Act which deals with Associated persons. Associated persons include relatives.]</p>

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<p>27.</p>	<p><i>The UIL deficient in enforcement</i></p> <p>[10.4] (ii) The obligations imposed on News Corporation will largely be enforced through the Articles of Association of Sky News. It would remain possible, therefore, for a number of these protections to be circumvented through a simple amendment of the these Articles</p>	<p>Changes in the Articles of Associations require a 75% majority and News Corp is committed not to vote against changes.</p>

EX. P54

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:56
To: OLDFIELD PAUL
Subject: Fwd: RESTRICTED: Newscorp / BSkyB - OFT/OFCOM Questions re draft carriage agreemtn and brand licensing agreement
Attachments: News - Sky - OFT OFCOM Questions of 29 March 2011 on draft contracts of 21 March 2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 30 March 2011 09:59:05 GMT+01:00
To: Adam Smith <adamsmit@[Redacted]>
Subject: Fwd: RESTRICTED: Newscorp / BSkyB - OFT/OFCOM Questions re draft carriage agreemtn and brand licensing agreement

Please find attached an initial and non-exhaustive list of questions (prepared jointly by OFT and Ofcom) in relation to the draft carriage agreement and brand licensing agreement submitted by News Corporation to [Redacted] of the Department for Culture, Media and Sport on 21 March 2011.

These questions are designed to assist the OFT and Ofcom in preparing their advice to the Secretary of State under sections 93 and 93A Enterprise Act 2002 respectively.

We request a response to these questions if possible by 5pm on 31 March 2011, or in any event by 5pm on 1 April 2011. It may be useful to have a conference call later this week / early next week once we have had an opportunity to review your response to these questions.

Kind regards

[Redacted]

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EX-P 55

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

**OFT / OFCOM JOINT QUESTIONS TO NEWS
RE DRAFT CARRIAGE AGREEMENT AND BRAND LICENSING AGREEMENT
OF 21 MARCH 2011**

29 MARCH 2011

1. Introduction

- 1.1. The OFT and Ofcom set out below an initial and non-exhaustive list of questions they have in relation to the draft carriage agreement and brand licensing agreement submitted by News Corporation (News) to of the Department for Culture, Media and Sport on 21 March 2011.
- 1.2. These questions are designed to assist the OFT and Ofcom in preparing their advice to the Secretary of State under sections 93 and 93A Enterprise Act 2002 respectively.
- 1.3. References to the undertakings in lieu (UIL) are to the draft UIL of 1 March 2011 on which the Secretary of State publicly consulted.
- 1.4. OFT and Ofcom request a response to these questions if possible by 5pm on 31 March 2011, or in any event by 5pm on 1 April 2011.

2. Carriage agreement

2.1. General – key points relating to the carriage agreement

2.2. General – extent to which the obligations reflect current Sky News practice

Redacted (9 pages)

EX.P. 56

[Redacted]

From: Adam Smith [Redacted]
Sent: 27 April 2012 09:57
To: OLDFIELD PAUL
Subject: Fwd: News' response to OFT/Ofcom questions of 29 March 2011 (0012561-0000367)
Attachments: CO-#13754766-v9-News_response_to_OFT_Ofcom_questions_of_29_March_2011.pdf; ATT00001..htm; CO-#13775220-v1-Annex_2_of_Response_to_OFT_Ofcom_29_March_questions.XLS; ATT00002..htm

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 4 April 2011 12:45:50 GMT+01:00
To: "adamsmith[Redacted]" <adamsmith[Redacted]>
Subject: FW: News' response to OFT/Ofcom questions of 29 March 2011 (0012561-0000367)

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EX.P.57

**PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9 PER CENT OF
BRITISH SKY BROADCASTING GROUP PLC****Response to OFT/Ofcom questions of 29 March 2011****1. Introduction**

- 1.1 This submission is made on behalf of News Corporation (News) in response to the OFT/Ofcom questions of 29 March 2011.
- 1.2 As a preliminary point News wishes to stress that as the OFT and Ofcom are aware, under the Carriage Agreement, News (through Sky, if it acquires Sky) commits to pay a considerable sum of money to Newco in return for the continued production and delivery of a Sky News branded news service. The Newco business plan submitted to the OFT on 3 February 2011 (the **Business Plan**) took into account predicted revenues under the Carriage Agreement of [] in the first year.
- 1.3 News is prepared to commit to these payments in order to ensure that a high quality independent news service continues to be made available to its viewers in the UK under the Sky News brand. Sky News would also continue to be available through a number of other platforms. The continued availability of this news service will ensure that the Secretary of State can be confident that the proposed acquisition of Sky does not reduce the level of plurality of views in the UK.
- 1.4 The Carriage Agreement contains a number of provisions aimed at ensuring that the considerable sums paid by News to Newco are used essentially for the production of this high quality news service under the Sky News brand. Reasonable restrictions are placed on Newco which would prevent it from (for example) using the same broadcast news content, replacing the Sky News logo with a "X" logo and marketing a "X News" news channel with exactly or substantially the same content and minimal additional investment. Such a move would add nothing to media plurality in the UK but it would significantly reduce the value to Sky of the Sky News service. This would not be in the interest of News or Sky but it would not be in the public interest either under the relevant public interest consideration.
- 1.5 Newco remains free to develop additional non Sky News-branded competing news services and those services would potentially add to media plurality in the UK.
- 1.6 The OFT has already expressed a view on Newco's financial viability. It is undisputable that the terms of the Carriage Agreement provide a unique long term financial stability to Newco. The proposed terms of the Carriage Agreement and the Brand Licensing Agreement are designed to ensure that, within the long duration of the contractual terms, both parties have the appropriate protections and financial incentives to continue investing in the development of the high quality service currently provided by Sky News and in protecting the valuable "Sky News" brand.
- 1.7 The numbering in the remainder of this response below corresponds to the numbering used in the OFT/Ofcom questions of 29 March 2011.



Redacted (16 pages)

EX.P. 58

[Redacted]

From: Adam Smith <[Redacted]>
Sent: 27 April 2012 09:57
To: OLDFIELD PAUL
Subject: Fwd: News/Sky - Private and Confidential (0012561-0000367)
Attachments: CO-#13827692-v2-Ltr_to_DCMS_re_Draft_UIL.pdf

Begin forwarded message:

From: "Michel, Frederic" <[Redacted]>
Date: 6 April 2011 15:28:09 GMT+01:00
To: Adam Smith <[Redacted]>
Subject: Fwd: News/Sky - Private and Confidential (0012561-0000367)

FYI

From: [Redacted] @AllenOvery.com]
Sent: 06 April 2011 11:23
To: [Redacted] culture.gsi.gov.uk
Cc: [Redacted]
Subject: News/Sky - Private and Confidential (0012561-0000367)

Dear [Redacted]

Please find attached a letter from [Redacted]

<<CO-#13827692-v2-Ltr_to_DCMS_re_Draft_UIL.pdf>>

Kind Regards

[Redacted Signature]

Allen & Overy LLP

www.allenovery.com/antitrust

One Bishops Square
London
E1 6AD

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

EX.P. 59

From: Adam Smith <[redacted]>
 Sent: 27 April 2012 09:58
 To: OLDFIELD PAUL
 Subject: Fwd: RESTRICTED: Newscorp / BskyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement (0012561-0000367)
 Attachments: CO-#13897938-v6-News_Response_to_OFT_Ofcom_RFI_8_April_2011.pdf; ATT00001..htm; CO-#13912615-v1-Annex_1_to_News_response_to_the_OFT_Ofcom_questions_of_8_April_2011.pdf; ATT00002..htm

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
 Date: 13 April 2011 15:09:56 GMT+01:00
 To: Adam Smith <[redacted]>
 Subject: Fwd: RESTRICTED: Newscorp / BskyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement (0012561-0000367)

As promised

Frederic Michel
 Director, Public Affairs, Europe
 News Corporation

Tel: [redacted]
 Mob: [redacted]

From: [redacted] <[redacted]>
 To: [redacted]
 Cc: [redacted] <AllenOverv.com>

Sent: Tue Apr 12 18:56:27 2011
 Subject: RE: RESTRICTED: Newscorp / BskyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement (0012561-0000367)

[redacted]

With apologies for the delay, please find attached News' response to your

questions of 8 April (including at Annex 1 a revised Newco Business Plan).

Kind regards

[Redacted]

From [Redacted]@oft.gsi.gov.uk [Redacted]

Sent: 08 April 2011 16:42

To: [Redacted]

Cc: [Redacted]

Subject: RESTRICTED: Newscorp / BskyB - OFT/OFCOM Further questions re draft carriage agreement and brand licensing agreement

Dear [Redacted]

Following News Corporation's response of 4 April 2011 to the OFT and Ofcom's questions of 23 March, please find attached a further list of questions (prepared jointly by OFT and Ofcom) in relation to the draft carriage agreement and brand licensing agreement submitted by News Corporation to [Redacted] of the Department for Culture, Media and Sport on 21 March 2011 and the revised business plan dated 4 April 2011.

These questions are designed to assist the OFT and Ofcom in preparing their advice to the Secretary of State under sections 93 and 93A Enterprise Act 2002 respectively.

We request a response to these questions by 5pm on Tuesday 12 April 2011. It may be useful to have a call or meeting later next week once we have had an opportunity to review your response to these questions.

Kind regards

[Redacted]

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EX. P. 60

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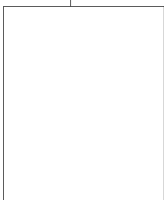
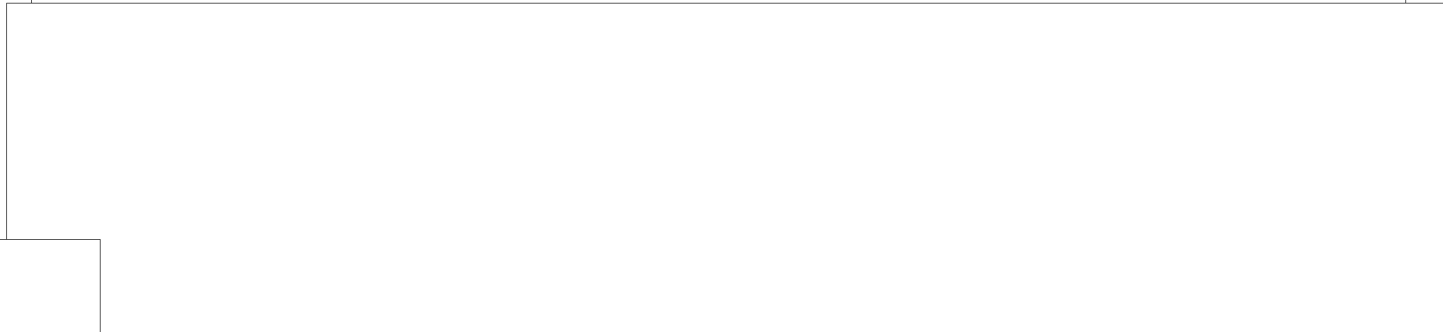
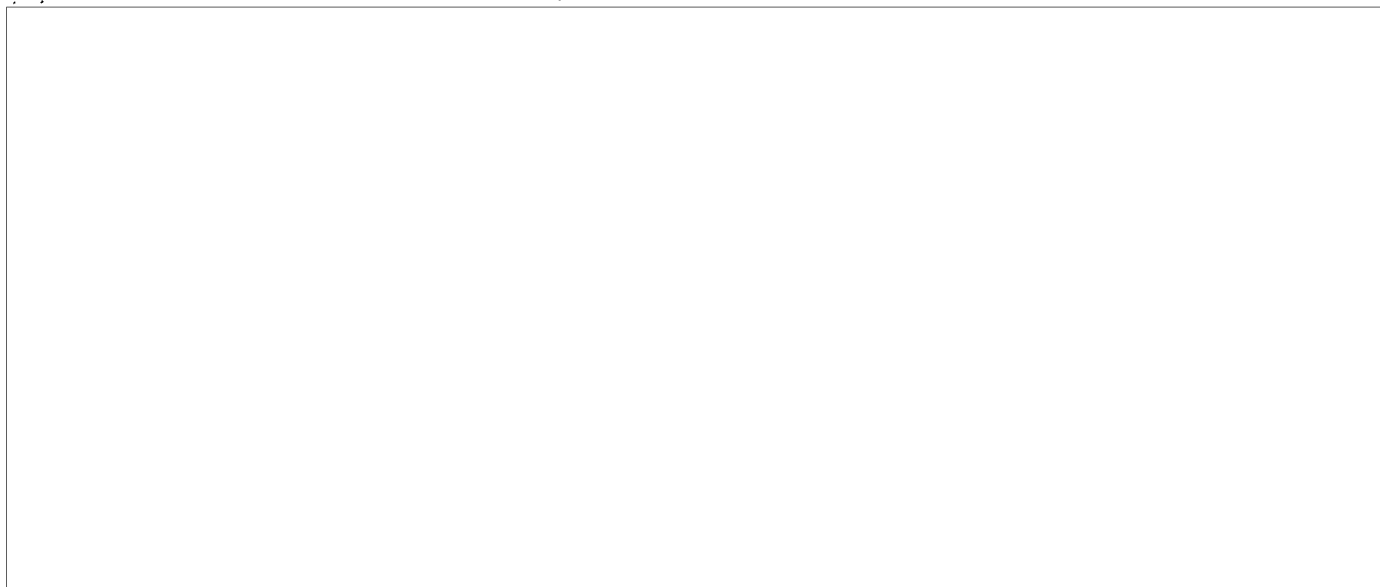
PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 60.9 PER CENT OF BRITISH SKY BROADCASTING GROUP PLC

News' response to the OFT/Ofcom questions of 8 April 2011

1. **Introduction**

This submission is made on behalf of News Corporation (News) in response to the OFT/Ofcom questions of 8 April 2011.

News strongly believes that both the Carriage Agreement and Brand Licensing Agreement are consistent with the spirit of the UIL submitted to the Secretary of State on 1 March 2011, both overall and specifically with respect to securing Newco's independence and financial sustainability.



Redacted (11 pages)

STRICTLY CONFIDENTIAL – CONTAINS BUSINESS SECRETS

Newco plc

Business Plan – REVISED 12th April 2011

Revisions from previous version are highlighted in RED

EX.P.
61



Redacted (25 pages)

EX.P.62

From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:58
To: OLDFIELD PAUL
Subject: Fwd: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL (0012561-0000367)
Attachments: Restricted - PROPOSED ACQUISITION BY NEWS CORP OF BSKYB - Questions 19 April 2011.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" [redacted]
Date: 20 April 2011 10:44:58 GMT+01:00
To: Adam Smith <adamsmith@[redacted]>
Subject: Fwd: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL (0012561-0000367)

Not good at all....

From: [redacted] [mailto:[redacted]@oft.gsi.gov.uk]
Sent: 19 April 2011 21:48
To: [redacted]
Cc: [redacted]

Subject: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL

Dear [redacted]

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

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

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

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

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

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

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

Kind regards,

[Redacted signature box]

[Redacted] Office of Fair Trading |
Fleetbank House | 2-6 Salisbury Square | London |
EC4Y 8JX |

Direct dial [Redacted] | Fax [Redacted]
[Redacted]

Switchboard +44 (0)20 7211 8000

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EX.P 63

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

**OFT / OFCOM QUESTIONS TO NEWS
RE CARRIAGE AGREEMENT, BRAND LICENCE AND
ADDITIONAL QUESTIONS EMERGING FROM THE CONSULTATION RESPONSES**

19 APRIL 2011

1. Introduction

1.1. This document sets out below questions for News Corporation (News) in relation to the undertakings in lieu (UIL) of 1 March 2011 on which the Secretary of State publicly consulted in light of the responses to that public consultation. The questions also relate to the draft carriage agreement and brand licence attached to [redacted] email to [redacted] of 14 April 2011 and the revised business plan received by the OFT and OFCOM on 12 April 2011.

1.2. It is divided into three sections:

1.2.1. section 2 – questions and issues relating to the draft carriage agreement and brand licence;

1.2.2. section 3 – questions arising as a result of responses to DCMS' consultation on the proposed UILs; and

1.2.3. section 4 – questions relating to the mechanics of implementing the UILs and the spin-off of Newco.

1.3. OFT / OFCOM request a response to these questions by 5pm on 27 April 2011. However, to the extent that it is not possible to provide a response in full by this point, they request that as much information as possible is supplied by this date, with the full response to be provided by 4 May 2011.

2. Questions and issues relating to the draft carriage agreement and brand licence

2.1. The questions below relate to News' response of 12 April to the OFT / OFCOM questions of 8 April 2011.

Redacted (8 pages)

EX.P. 64

From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:58
To: OLDFIELD PAUL
Subject: Fwd: Confidential - the latest questions and our views

Begin forwarded message:

From: Adam Smith <[redacted]>
Date: 21 April 2011 18:01:27 GMT+01:00
To: "Michel, Frederic" <[redacted]>
Subject: Re: Confidential - the latest questions and our views

I disagree. They have been working on the complicated carriage arrangements and brand licensing agreement. You need to answer all their questions quickly to allow them to give jeremy advice. The only delay will be if they have to keep going back to you again if they don't get satisfactory answers.

Enjoy the weekend and let's catch up next week.

On 21 Apr 2011, at 17:53, "Michel, Frederic" <[redacted]> wrote:

Adam,

- Although the public consultation on our draft UIL closed on 21 March 2011 it took almost a month, until 19 April 2011 for the OFT/Ofcom to put questions to News. More generally, the OFT/Ofcom have not been as prompt as we would have hoped for in providing feedback on the commercial agreements and in making progress in relation to the response to the consultation. News has responded promptly to all questions put by the regulators.
- The questions contain various points which are not "new" points raised by the consultation but are points of which OFT/Ofcom were very conscious from the outset and which had been discussed in detail and agreed between News and the regulators prior to publication of the draft UIL, e.g.
 - the possibility for the Secretary of State to approve commercial agreements in addition to those already agreed to require pre-approval;
 - the possibility for the Secretary of State to approve the Articles of Association of Newco and
 - the point at which approval will be required.

- The possible need for a Monitoring Trustee has also been raised again even though this wasn't pursued by the OFT in the previous round and draft UIL were agreed on that basis.
- Our feeling is that some of the OFT/Ofcom points are of commercial nature and have no link with plurality or financial viability.
- Because they do not feel under timing pressure, our sense is that the regulators are using the time to re-open second-order points which were not sufficiently important for them to have pursued when advising the Secretary of State in relation to the draft UIL in February/March. We do not believe this to be a reasonable use of the administrative process.
- News will respond to this last round of questions from the regulators but will encourage them on this basis to finalise their advice as we need to bring the process to a close.

Please let me know when we can discuss. Happy Easter!!!!

Best

Fred

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RUTH WYE

EX.P. 65

From: Adam Smith <adamsmithth[redacted]>
Sent: 27 April 2012 09:59
To: OLDFIELD PAUL
Subject: Fwd: 16th June

Begin forwarded message:

From: Adam Smith <[redacted]>
Date: 5 May 2011 17:40:13 GMT+01:00
To: "Michel, Frederic" <[redacted]>
Subject: Re: 16th June

If sue let's us!

On 5 May 2011, at 17:37, "Michel, Frederic" <[redacted]> wrote:

Book the 16th June in your diary for our News Corp summer party! You and JH must be there!

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EX.P. 66

From: Adam Smith [redacted]
Sent: 27 April 2012 09:59
To: OLDFIELD PAUL
Subject: Fwd: Timing - OFT/Ofcom - URGENT
Attachments: CO-#14041856-v1-DV_-_Consultation_UIL-UIL_10_May.pdf; ATT00001..htm

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 12 May 2011 13:18:16 GMT+01:00
To: "adamsmith" <[redacted]>
Subject: Timing - OFT/Ofcom - URGENT

Adam, confidentially,

We have now also spoken also to the OFT. They will speak with Ofcom this evening. Their current expectation is that they will send us by close on Friday a very short (subject to Ofcom's input) list of issues to clarify which [redacted] expects we would be able to address promptly. He said that he did not expect that a call would be necessary to discuss these. We discussed the role of Pinsent. He said that OFT "supported the idea of DCMS seeking legal advice" as they are not commercial law experts. (Another example of an "expert" washing their hands and SoS needing further cover on this.) We said that it was disappointing that this has emerged only now and I hoped that this would not delay the finalisation of advice on the UIL. He replied that their current plan was to advise on both UIL and final agreements at the same time and therefore wait for Pinsent's review.

We made the point strongly that the UIL only envisage approval of the agreements by effective date, the agreements are not consulted upon so there is no reason to delay finalising advice on UIL and starting the 2nd consultation (which, unsurprisingly, both OFT and DCMS legal think will be necessary). If Pinsent's review is a legal one (and cannot be anything but) drafting changes on the 2 agreements (if any) should not have an impact on the text of the UIL to be consulted upon [redacted] said that this is a point for DCMS.

If DCMS instructs OFT to finalise their advice on the UIL (based on the agreements as they stand after the final round with OFT/Ofcom) JH can start the consultation before the 26th.

Even if JH will not start consultation until they have advice on the final agreements at least he should put pressure on Pinsent to finalise their "legal review" as soon as possible.

As a confirmation that the prospect of the UILs requiring a change as a result of a drafting/legal review by Pinsent is remote, please note that the only UIL changes which were made as a result of the nearly 2 month agreements review were (1 [redacted] and (2 [redacted] Neither is a legal point for Pinsent. I enclose a DV between latest set of UILs and Consultation version.

Hope this helps,

Fred

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Redacted (14 pages)

EX.P. 69

From: Adam Smith <[redacted]>
Sent: 27 April 2012 09:59
To: OLDFIELD PAUL
Subject: Fwd: URGENT - 2

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 12 May 2011 22:15:02 GMT+01:00
To: Adam Smith <[redacted]>
Subject: URGENT - 2

Adam,

Further thoughts.

The combination of involving yet again another "advisor" at this late stage and the lack of experience of the advisor chosen is the concern.

Only a handful of firms have the specific expertise on these matters. It is therefore important that the brief to the external counsel is well defined. I assume it would have to be limited to determine whether the agreement is valid and enforceable, which it clearly is. I do not see how Pinsent can express any other view.

What we want to avoid is that a firm with no experience starts playing with drafting which Sky and other industry players use all the time....!!!

If the brief of Pinsent is well defined and they are asked to work within a strict deadline, which a private sector firm should be able to do, one can hope for a quicker solution.

We are keen to start the consultation as quickly as possible because, in any event, the agreements are not subject to the consultation.

Otherwise, we won't be done before mid-June, which will be catastrophic for many important reasons.

Fred.

EX.P. 70

From: Adam Smith <[redacted]>
Sent: 27 April 2012 10:00
To: OLDFIELD PAUL
Subject: Fwd: CONFIDENTIAL

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 29 May 2011 11:12:08 GMT+01:00
To: Adam Smith <[redacted]>
Subject: CONFIDENTIAL

Adam,

Hope you're well.

Update for you :

We are getting some feedback from OFT and MPs that [redacted] is very much in driving seat on the agreements discussion and meeting JH regularly to update him...?

OFT has also mentioned that they hadn't see JH for a while and they were fine with everything on their side.

It would be good to understand the state of play as it does seem the timetable you outlined to me is slipping away massively and we might want to consider our options at this stage.

A decision before the 24th June is in everyone's interest and the idea that the 7-day consultation could be only starting on the w/c 13th or 20th June is not good news at all.

Pinsent is also querying commercial items that should not be in its remit and have been deal with months ago by OFT, or are asking for new commitments... They are not going to get back to us

Before next Thursday....!!

Can you possibly give me some infos on where do you think we are? From where we sit, seems that [redacted] has been given very much a free-ride on this and is doing his best to delay.

Thanks for your help

Have a great week-end

Fred

EX-P. 71

[redacted]
From: Adam Smith <[redacted]>
Sent: 27 April 2012 10:00
To: OLDFIELD PAUL
Subject: Fwd: Update (2)

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 7 June 2011 12:19:53 GMT+01:00
To: "adamsmith" <[redacted]> <[redacted]>
Subject: Update

Adam,

We got the following update from [redacted] today:

They still need to get to the bottom of a couple of "small points". Issues have "narrowed significantly". We will get a further mark up likely to be on both CLA and BA, but not until "early tomorrow" ...!!!

The mark up will come directly from Pinsent. [redacted] does not envisage "a lengthy iteration" and they are working towards closing this by the end of this week. [redacted] envisages that we would interact directly with Pinsent on the issues, keeping her in the loop of course.

We did make the point that, given the delay if there was any scope to hear today it would "help"; she reassured us that they are doing everything they can to close this.

She also said that they will take a "sensible view on drafting" but there may be further points on which they may come back on later but this would not prevent the starting of the consultation.

We said that we were waiting to hear back from Pinsent before closing the circle with OFT so this was holding back that last step too on the OFT/Ofcom process.

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EX.P. 72

From: Adam Smith <[redacted]>
Sent: 27 April 2012 10:00
To: OLDFIELD PAUL
Subject: Fwd: Update

Begin forwarded message:

From: "Michel, Frederic" <[redacted]>
Date: 10 June 2011 17:49:43 GMT+01:00
To: "adamsmith" <[redacted]>
Subject: Update

Adam,

Update for you. Let me know if you would like to discuss.

We spoke to [redacted] Everything was clear to her, she did not have questions and they will now consider whether the position is acceptable.

We have reverted to OFT **this morning** to close off the UIL.

we need to do everything possible to get to a consultation next week – preferably by Thursday – whats your view?

We were led to believe that OFT/Ofcom are nearly ready. The issues open between us and OFT/Ofcom were minor (and we have effectively agreed to everything they asked for).

To finalise the report however they need to have sight of the CA and BLA agreements. In that respect the ball is in DCMS' court. DCMS should close that off asap on Monday (or ideally today). Do you know?

In my view DCMS should also alert OFT and Ofcom today that, on the assumption that the BLA and CA are confirmed to be final to them by Monday, they should be ready to have their reports on his desk by Tuesday.

On that basis an announcement on Wednesday is possible. Obviously if they continue at the pace they have had in recent weeks it could take much longer...>!!!!

Question: do you know what you plan to publish when you start consultation on the revised UIL (in addition to a statement and the UILs themselves - which would be the normal practice)?

Do you plan to publish the new OFT and Ofcom reports now or, on the assumption JH would want to publish the reports at some stage (it is his choice) would you leave this to the time when the final decision is adopted?

If you intend to publish the reports now we will need to consider redactions.

I can check position with [redacted] n Monday as well.

Have a nice week-end. Let's talk

Fred

EX.P. 73

[Redacted]
From: SMITH, Adam
Sent: 12 July 2011 09:10
To: Michel, Frederic
Subject: RE: Letter from Mr Murdoch

Thanks Fred.

From: Michel, Frederic [mailto:[Redacted]]
Sent: 12 July 2011 08:50
To: SMITH, Adam; adamsmith [Redacted]
Subject: Letter from Mr Murdoch

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