

J R J Murdoch
Exhibit JRJM 1
16 April 2012

**IN THE MATTER OF THE LEVESON INQUIRY INTO THE CULTURE,
PRACTICES AND ETHICS OF THE PRESS**

EXHIBIT JRJM 1

**This is the exhibit marked "JRJM 1" referred to in the witness statement of James
Rupert Jacob Murdoch dated the 16th day of April 2012**

NEWSCORP ACQUISITION OF REMAINING SHARES IN BSKYB: SCOPE TO INTERVENE ON PUBLIC INTEREST GROUNDS

Jurisdiction/process issues

1. The parties plan to notify the transaction to the EU Commission (DG Competition) for consideration under the EC Merger Regulation (ECMR). In theory, the UK's competition authority (the OFT) could ask DG Competition to refer the merger to it to deal with instead. However, there seems no reason why the OFT would make such a request and it is not clear DG Competition would agree to it even if they did. Once the transaction has been formally notified to it, DG Competition has an initial 25 working days to decide whether to clear the merger or initiate a more in depth second phase investigation.
2. The Secretary of State could issue a European Intervention Notice (EIN) under Section 67 of the Enterprise Act at any time if he considered the merger gave rise to issues relevant to a public interest consideration specified in Section 58 of that Act. The legislation does not define precisely by when such an intervention must be made in an ECMR case. In view of this, as a matter of practice, our approach has been to adopt a timetable for intervening equivalent to that which applies in domestic cases. Accordingly, if an intervention was to be made in this case, we would want it to issue quickly and at least before DG Competition reaches its decision on whether or not to go to a Phase Two competition investigation.
3. This transaction involves an enterprise involved in broadcasting and an enterprise involved in newspapers. Any argument for a public interest intervention is likely to relate to a potential impact on the cross media public interest consideration concerned with the need to ensure there is a sufficient plurality of persons with control of media enterprises.
4. If the Secretary of State were to issue an EIN, this would mean Ofcom would produce a report considering the merger's impact on plurality. On receipt of the report from Ofcom, the Secretary of State must decide whether to refer the merger to the Competition Commission for a more detailed investigation of the impact on media plurality. If such a reference was made, the Competition Commission would report to the Secretary of State within 24 weeks. He would then need to take final decisions on what action to take (if any) within 30 days.
5. Meanwhile DG Competition would take its own separate decision on whether to undertake a Phase Two competition investigation. The outcome of this does not affect the outcome of any public interest investigation the UK might undertake. It is possible for DG Competition to clear the merger at Phase I on competition grounds and for the Secretary of State nevertheless to refer it to the Competition Commission on public interest grounds and subsequently take decisions to impose conditions on the merger or block it altogether if appropriate.

Does the proposed transaction give rise to public interest concerns?

6. The reason the sufficiency of plurality of persons with control of media enterprises is a matter of public interest relates to the need to ensure people have access to a wide range of viewpoints and opinions and that no one person has unacceptable degree of control over what information people receive. In

considering whether this transaction may significantly affect this interest, it may be noted that NewsCorp already has a large shareholding in BskyB (39.1%), has directors on its board and a close relationship with the company. While it clearly is the case that the transaction would increase NewsCorp's current scope to exert influence over BskyB's output, the cautious view would be that NewsCorp already has the scope to exert influence over BskyB's output.

7. The nature of NewsCorp's relationship with BskyB has already been considered in the context of this question of the sufficiency of plurality of persons with control of media enterprises. A public interest intervention was made in January 2007 in respect of BskyB's acquisition of a 17.9% shareholding in ITV plc. During that investigation, the argument was made and largely accepted that the scope for NewsCorp to exert influence over the content of BskyB's output (particularly the presentation of news) meant that the two enterprises should be deemed to be under common control for the purposes of assessing media plurality – meaning that NewsCorp's various newspaper enterprises were taken into account in considering whether BskyB's ownership of a large stake in ITV might reduce such plurality.
8. In view of this, for the purposes of assessing whether an intervention may be appropriate in respect of NewsCorp's acquiring 100% of the shares in BskyB, it is necessary to consider whether any increased degree of control NewsCorp might acquire over BskyB's editorial policy and output would make any substantive difference to the state of the sufficiency of plurality.
9. Our initial view is that there is no reason to make a public interest intervention in this proposed transaction since it appears to involve no change in practice to the extent to which people have access to a wide range of views and opinions. Nevertheless, interested parties may put forward a case for intervention and we will need to consider carefully any arguments that may be put forward on the matter. Accordingly, in any public statements BIS makes on the matter, it is important to reserve the Secretary of State's position and not appear to have already reached a conclusive decision.
10. We have spoken about the transaction with colleagues at Ofcom, DCMS and the OFT. Ofcom indicate that while the transaction may give NewsCorp increased influence over BskyB's output, they already treat NewsCorp and BskyB as one entity for the purposes of the media ownership rules provided under the Communications Act 2003. DCMS officials had no points to make relevant to the decision on whether or not an intervention might be appropriate – a decision that falls to be taken solely by the BIS Secretary of State. The OFT indicated they did not consider the transaction likely to raise substantive competition concerns.