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Your Ref BJFL
Our Ref

11 February 2011

By email only

Dear Mr Louveaux

News Corporation/BSkyB

Thank you for sending me a copy of your letter addressed to the Secretary of State and dated 9 February 2011. As I asked in my letter of 1 February, it would be very helpful if could you please address correspondence to me rather than to the Secretary of State himself.

As the Secretary of State set out in his statement to Parliament on 25 January, taking account of the Ofcom report he received, he was minded to refer the transaction to the Competition Commission. However, as he also indicated, he was willing to consider undertakings being offered in lieu of a reference. In considering whether any proposals from the merging parties might be such as to mean that the Secretary of State would propose to accept such undertakings in lieu of reference, he has called upon the assistance of Ofcom and OFT. Ofcom is the specialist regulator in the field with a good deal of knowledge of the media industry and the dynamics of it. The OFT has a great deal of experience in merger matters and, in particular, in dealing with the practicability of any proposed undertakings in lieu of reference put forward in the competition context.

If, after considering input from Ofcom and OFT, the Secretary of State were to reach a position where he would propose to accept undertakings in lieu of a reference, he will consult on those proposed undertakings. That process will ensure that your clients will have a full opportunity to comment upon and make any relevant representations in relation to the proposed undertakings. Of course, if the Secretary of State does not reach the view that he would propose to accept undertakings in lieu, there will be no need for such a consultation.

You suggest in your letter that the process which the Secretary of State is following is unfair and fails to meet normal procedural standards of merger control and public law. The Secretary of State does not agree. He has made absolutely clear that your clients will be able to comment upon any undertakings the Secretary of State might propose to accept. Any objections your clients might have to any such putative undertakings can be put forward. They will have a full and fair opportunity to comment. It is unclear what the benefit would be of introducing a prior stage of comment for your clients on proposals in relation to which the Secretary of State has not reached a view and which may be subject to modification in the course of consideration.



Department for Culture, Media and Sport

Proper and, as you put it, meaningful consultation does not require multiple iterations of comment throughout a decision making process such as this one. The important point is that you and your clients are given an opportunity properly to comment on any proposal to accept undertakings in lieu of a reference. You will have that opportunity.

Finally, I cannot but emphasise that if, and I stress if, the Secretary of State does reach a view that he proposes to accept undertakings in lieu of a reference, he will carefully consider any observations you and your clients may have about those proposed undertakings.

Yours sincerely,

