

Note of a Meeting with Media Organisations re News Corp Bid for BSkyB – 24 March 2011

Attendees

DCMS

1. Secretary of State (SoS), Paul Oldfield (Private Secretary), Sue Beeby (Special Advisor), [redacted] (Special Advisor), [redacted] (Directors Media), [redacted] (Media Team), [redacted] (Legal), Daniel Beard (Counsel),

Others

2. Steve Unger (OFCOM), Clive Maxwell (OFT), Sheldon Mills (OFT), Bertrand Louveaux (Slaughter and May), Sly Bailey (Trinity Mirror), Andrew Miller (Guardian Media Group), Lord Black (Telegraph Media Group), Ian Hanson (Associated News and Media).

Points Discussed

3. The Secretary of State met with Slaughter and May and a selection of the media organisations they represent, as part of the consultation process following the SoS' decision not to refer the proposed News Corp acquisition of BSkyB to the Competition Commission.
4. The media organisations and their lawyers made the following points in discussion:
 - i. The importance of a diverse strong media industry and the dangers of reduced diversity in the market place. Fundamentally the group of companies represented at the meeting did not believe that the proposed News Corp. takeover deal for BSkyB – including the UILs – would preserve the independence of Sky News.
 - ii. As Sky News was beholden to BSkyB for revenue, distribution, advertising and cross promotion, Sky News would heavily fall under the influence of News Corp – whose shareholding in BSkyB would increase from 39% to 100% under the proposed deal.
 - iii. Experience from other (newspaper) takeovers by News Corp. suggested that behavioural remedies had not preserved editorial independence for those publications.
 - iv. Whether Sky would continue to cross-promote Sky News as heavily once it was spun off.
 - v. The solution was not clear cut so the merger should therefore be referred to the Competition Commission.
 - vi. Consistent with OFT/Competition Commission procedures, the proposed solution should be in place indefinitely until circumstances require a change, rather than it being in place only for 10 years, after which point it is reviewed. The media organisations also argued that in acting this way the SoS had put risk on the public, rather than the parties to the agreement.
5. In responding to these concerns the SoS made the following points in discussion:
 - i. SoS stressed that his decision was not, and could not be based on market power, and that his decision was based on media plurality in relation to this specific transaction. He explained that he took some elements of competition law best practice in reaching his decision – ie taking advice of experts and publishing that advice, but this was not a decision made under competition law.
 - ii. SoS said that the UILs were offered by News Corp to protect media plurality, and that OFCOM had confirmed that they met its concerns. They did in his view make

Sky News more independent and less subject to influence from News Corp. Enshrining that Sky News was subject to the principle of editorial independence and integrity, as well as the Broadcasting Code in the Mem & Arts was also an important step in ensuring the viability of Sky News as an independent news provider. SoS said that both the proposed carriage agreement and brand agreement would provide protection and certainty of funding and exposure for Sky News. SoS also said that the proposed corporate governance changes (including independent Directors etc) were legally binding, and were structural rather than behavioural remedies.

- iii. SoS said that, if News Corp wanted to reacquire Sky news after 10 years, this could trigger a further media plurality public interest test.
- iv. SoS also made clear he could only consider the UILs that News Corp. presented, rather than suggesting different remedies or solutions. OFCOM made clear that they did not believe that the UILs would be effective in perpetuity – given rapidly changing media landscape and therefore 10 years was sufficient to meet concerns over plurality.