

RE: Opportunity to comment in the FT  
LOUVEAUX, Bertrand

to:

Ellison, Jordan, michael.prescott, SPugh, chris.j.wade  
12/01/2011 17:56

Cc:

guy.black, PMiller2, JMcleod, JPhelan, nick.fullagar, sarah.davis, sean.williams  
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) Please see attached as sent by courier this evening.

Bertrand

Pages 2 to 6 of the email chain are redacted.

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12 January 2011

Rt Hon Jeremy Hunt MP  
Secretary of State  
Department for Culture, Media & Sport  
2-4 Cockspur Street  
London SW1 5DH

Your reference

Our reference  
BJFL  
Direct line

Dear Mr Hunt,

**News Corporation/BSkyB**

I write to you on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group (together the "Concerned Parties").

It has been widely reported (most recently in this morning's Financial Times) that News Corporation has received a copy of Ofcom's advice to you (or at least an executive summary of that advice). It has also been suggested that your department may be in discussions with News Corporation over possible remedial undertakings in lieu of reference to the Competition Commission ("CC").

The Concerned Parties have asked me to stress the following:

- (i) The legal threshold for reference to the CC is a low one. You only need to believe that "it is or may be the case that ...[the merger] operates or may be expected to operate against the public interest" (Article 5 EA 2002 (Protection of Legitimate Interests) Order 2003; emphasis added).
- (ii) There is no precedent for accepting remedies in such a case prior to a CC investigation. The legislation envisages that remedies be considered during (and following) a reference to the CC (Articles 6 and 12 EA 2002 (Protection of Legitimate Interests) Order 2003). Consistent with the low threshold for reference, that is the only sensible procedure in cases such as this one where the issues are complex and warrant an in-depth debate and are therefore beyond the scope of the pre-CC procedure. There are clear parallels here with the UK merger regime, under which the OFT's stated position is that undertakings in lieu can only be appropriate where the remedies provide a "clear cut" solution to identified concerns.

CH Saul  
SM Edge  
NPC Boardman  
GW James  
EA Codrington  
RMC Goulding  
CES Seligman  
PJ Bennett  
RM Fox  
RJ Thornhill  
CJAas  
CPWhite  
NJ Archer  
AC Balfour  
CM Horton  
EA Barrett

PP Chappatte  
RIN Cripps  
P Jolliffe  
CD Sandell  
WSM Robinson  
RV Carson  
SI Edwards  
JM Featherly  
F Murphy  
PM Olney  
PH Stacey  
CWY Underhill  
OA Wareham  
RJ Clark  
SJ Cooke  
DL Finkler

CW Harvey-Kelly  
JD Rice  
MA Whelton  
MD Bennett  
RD de Carle  
SP Hall  
WJ Sibree  
RC Stern  
JR Triggs  
ECL Wyllie  
A Beare  
JD Boyce  
MEM Hattrell  
KI Hodgson  
N von Bismarck  
PWH Brien

JM Fenn  
AN Hyman  
AC Johnson  
EF Keeble  
KR Davis  
SR Galbraith  
NDF Cray  
MS Hutchinson  
SRB Powell  
AC Ryde  
JAD Marks  
SD Warna-kula-suriya  
DA Wittmann  
TS Boxell  
SJ Luder  
AJ McClean

JC Twersyman  
CN Eaborn  
HK Griffiths  
STM Lee  
AC Cleaver  
EJD Holden  
KM Hughes  
G Iversen  
DR Johnson  
RE Levitt  
S Middlemiss  
RA Swallow  
DCR Waterfield  
DJ Bicknell  
CS Cameron  
CA Connolly

PJ Cronin  
BPB Louveaux  
MS Rowe  
MST Leung  
R Doughty  
E Michalek  
RR Ogge  
SL Paterson  
PC Snelb  
HL Davies  
JC Putnis  
RA Sumroy  
GP Brown  
JC Cotton  
RJ Tumill  
WNC Watson

MJ Dwyer  
CNR Jeffs  
SR Nicholls  
MJ Tobin  
DG Watkins  
BKR Yu  
EC Brown  
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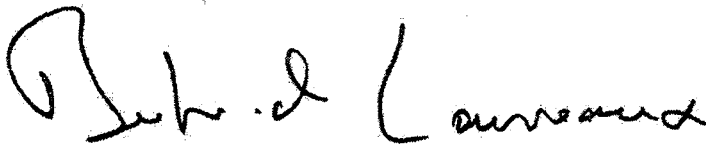
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- (iii) There are no clear remedies here short of outright divestments and any effective remedy would require detailed consideration.
- (iv) In any event, it would be procedurally wrong for remedies to be agreed with News Corporation without those remedies having been the subject to detailed scrutiny – including that of interested third parties (as is provided for in the course of a CC reference). That would also require those third parties to have received a copy of the Ofcom advice. The Concerned Parties therefore request (a) confirmation as to what (if anything) has already been provided to News Corporation and (b) equal access to the Ofcom advice as well as to any correspondence with News Corporation and/or BSkyB on the subject of remedies.

More generally, the Concerned Parties remain available to meet with you and to provide such further assistance as you would find helpful.

Yours sincerely,



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cc. Stuart Brand