

Annex A

**Q.4** The Inquiry would also be grateful if you could provide a detailed chronology of your involvement in the proposed acquisition, with cross references to the relevant material provided above.

**Q.7** Whom did you consult in relation to the proposed acquisition? Please include full details of any formal and informal consultation and responses thereto, and please also detail any unsolicited representations received, including from third parties, politicians or lobbyists.

Responsibility for this matter transferred from the Business Secretary to me in December 2010. Below is a detailed chronology of my involvement from this point onwards.

Since there would be much repetition in my answers these questions, I have produced a single chronology, but have put in *italic* answers which relate to Q.7.

21 Dec 2010: I took over conduct of the merger considerations.

30 Dec 2010: The European intervention notice from the Secretary of State for Business, Innovation and Skills had also asked the Office for Trade and Industry (OFT) to investigate whether it believed that the proposed merger would create a European relevant merger situation within the meaning of section 68(2) of the Enterprise Act. *The OFT advised me on 30 December 2010 (Doc 012)* that it believed that if the transaction proceeded that it would result in the creation of a European relevant merger situation for the purposes of section 68(2) of the Act. Therefore, the OFT believed that I had jurisdiction to make a reference to the Competition Commission (CC) under Article 5(3) of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 so that the CC could report to me on whether action should be taken to remedy, mitigate or prevent the effects of the merger adverse to the public interest concerns identified by me.

31 Dec 2010: *Ofcom's report (Doc 013)* concluded that it believed "that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences." They recommended that that "there is therefore a need for a fuller.....review....by the Competition Commission."

- 6 Jan 2011 *As provided by in section 104 of the Enterprise Act 2002, I consulted News Corporation to set out the process I was following and to outline Ofcom's advice. (Doc 018)*
- 7 Jan 2011: *I wrote to News Corporation (Doc 021) explaining that I was minded to refer the case to the CC, but gave them the opportunity to make representations to me.*
- 18 Jan 2011: *Following that consultation, News Corporation offered undertakings in lieu (UILs) of a reference to the CC (Doc 030). The main feature of the UILs was the establishment of a new company (Newco) as an independent and distinct owner of Sky News. The financial viability of Newco (and therefore the continued operation of Sky News) was dependent on a carriage agreement which would be between News Corporation and Newco, without which Newco would be significantly loss-making.*
- 20 Jan 2011: *These UILs were discussed at a meeting I had with News Corporation (Doc 031). I made it clear that I would consider the UILs very carefully, and would be seeking the views of both the OFT and Ofcom.*
- 24 Jan 2011: *Following the meeting News Corporation submitted revised undertakings that provided more detail and proposed that this agreement should last for 10 years. (Doc 033)*
- 25 Jan 2011: *I then issued a statement (Doc 039) which explained that after considering Ofcom's report and subsequent submissions from News Corporation and Sky that I intended to refer the merger to the CC. However, before doing so I said I would consider if the UILs which News Corporation proposed to meet my concerns to the extent that I should accept the undertakings instead of making a reference. In considering the UILs, I asked the OFT under section 93 of the Enterprise Act 2002 as an expert public body with experience of negotiating UILs to be involved in the process. I also asked Ofcom under section 106B for advice whether the UILs address the potential impact on media plurality.*
- 11 Feb 2011: *Both the OFT and Ofcom provided advice to me on the substance of the UILs submitted on 24 January (Docs 048 and 049), which had been developed further in discussion with News Corporation. Specifically, Ofcom's view was that the Board of Newco should consist of a majority of independent directors, who had a combination of both senior editorial and business experience/expertise, the Chair should be an independent non-*

executive and there should be a sub-committee to oversee editorial independence and integrity of Newco's services. They advised that the UILs as currently drafted did not meet these concerns, but that a further period of negotiation might reach that point. The OFT recommended a number of changes to the UILs, namely around areas such as: interim protection; non-reacquisition commitment; prior review of key agreements (brand and licensing agreements); inclusion of an arbitration/dispute resolution mechanism; and restrictions on termination of the key agreements.

15 Feb 2011: *I explained to News Corporation in a letter (Doc 054) that, although progress had been made, the UILs still contained some issues which I felt would still mean that I was minded to refer the merger to the CC. I forwarded the advice from the OFT and Ofcom and said there were 4 critical areas which News Corporation needed to be resolved if I was to consider accepting the UILs. These were:*

- The Board of Newco would need to be independently chaired;
- There needed to be a non-reacquisition commitment as set out by the OFT;
- The key contracts would need to be approved by the me; and
- There needed to be more clarity around the definition of "material transactions" and the assets to be transferred.

16 Feb 2011: *News Corporation offered some further revisions to the UILs (Doc 057). These changes were in line with the 4 points above I requested.*

17 Feb 2011: *I sought further advice from Ofcom and the OFT on the revised UILs (Docs 058 and 059)*

1 March 2011: *Ofcom's further advice (Doc 063) concluded that the revised UILs would address the plurality concerns identified in their report dated 31 December. In particular they recognised that "a carriage agreement of a 10-year term in the context of market dynamics in this sector is long term". The OFT's further advice (Doc 062) concluded the UILs were practically and financially viable in the short and medium term, but not the longer term (over 10 years). However, they felt it would be appropriate for me to test further the viability and robustness of the commitments offered during the statutory public consultation.*

3 Mar 2011: *I issued a statement (Doc 065) explaining that "following advice from Ofcom and the OFT, I intend to accept undertakings from News Corporation on their proposed merger with BSkyB in lieu of a referral to the CC". In coming to this decision, I was required to*

look at the specific issues of media plurality related to the merger and issues of plurality with a focus on the provision of news. I explained in the statement that, informed by advice from the regulators, I believed the UILs addressed concerns about media plurality should the proposed merger go ahead. As required by the legislation, *I would seek views via a public consultation on the UILs offered by News Corporation as to whether they are sufficient to remedy, mitigate or prevent the public interest concerns in relation to media plurality raised by this merger. (The consultation took place pursuant to Schedule 10 of the Enterprise Act 2002, which applied to this merger by virtue of article 15 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003).*

- 18 Mar 2011: *I sought advice from Ofcom and the OFT (Docs 077, 078, 079) on whether responses to the consultation from Slaughter and May (representing an alliance of media groups), BT and BECTU should cause the UILs to be amended in any respect. Further responses were forwarded to Ofcom and OFT by DCMS officials once the consultation had closed. My letter also asked OFT and Ofcom to advise me on the detailed provisions on Carriage, Brand Licensing and certain operation agreements which were set out in the UILs.*
- 21 Mar 2011: *The consultation launched on March 3<sup>rd</sup> closed and received over 40,000 responses. This was made up of:-*
- *about 20 from organisations, lobbying groups, unions and academic and industry observers; (Docs 080-090, 092-095)*
  - *over 300 from individuals;*
  - *nearly 100 from MPs;*
  - *over 40,000 from individuals via an online campaign organised by Avaaz.*
- 24 Mar 2011: *I met representatives from Trinity Mirror, Guardian Media Group, Telegraph Media Group, Associated News and Media, and Slaughter and May (Doc 096)*
- 15 April 2011: *I met representatives from the lobby group Avaaz on 15 April.*
- 22 June 2011: *Ofcom and OFT submitted advice to me along with the carriage and brand licence agreements (Docs 118 and 119). Both advised that they had engaged with News Corporation extensively in relation to both the UILs and the draft carriage agreement and brand licensing agreement. This process led to the submission on 14 June of revised UILs and revised forms of the carriage agreement and brand licensing agreement. The OFT advised that the revised carriage agreement and revised brand licensing*

agreement were consistent with the further revised UILs and the OFT's previous advice with regard to their practical and financial viability. Ofcom also advised that the revised carriage agreement and revised brand licensing agreement were consistent with the proposed UILs as amended, and their previous advice with regard to media plurality, and that the revised UILs "would address the plurality concerns identified in our report of 31 December 2010."

30 June 2011: I announced that the consultation had led to a number of suggestions being made which could further strengthen the undertakings, but no new information was provided that caused Ofcom or the OFT to change their earlier advice that the UILs addressed Ofcom's media plurality concerns and were viable for 10 years (**Doc 125**). The changes to the revised UILs included:

- The need for Sky News board meetings to include an independent director with senior editorial and/or journalistic expertise if decisions on editorial matters are to be made;
- The appointment of a monitoring trustee whose main role is to ensure that News Corp complies with the UILs in the run up to spin-off;
- A requirement for Sky to continue to cross-promote Sky News on its channels; and
- A requirement for Sky News' Articles of Association to be approved by me, as the Secretary of State.

*I published an analysis of the responses to the consultation that ran from 3 March to 21 March (**Doc 124**).*

*I announced that a further consultation was to be held on the revised undertakings, and that this would close on 8 July. In announcing the consultation I said that "The regulators have confirmed that the proposed undertakings are still sufficient to ensure media plurality. I could have decided to accept the original undertakings but a number of suggestions were made in response to the consultation which could further strengthen the undertakings, particularly around editorial independence, business viability and the articles of association. I am therefore proposing some changes to the undertakings and I will now hold a further public consultation." Over 156,000 responses to the consultation were received.*

8 July 2011: *The consultation closed. Over 156,000 responses were received. The number of responses is broken down as follows:*

*Organisations 19*

*Individuals 1412  
Campaigns over 154,000*

*Additionally 860 representations were received from MPs and members of the public during the time of the consultation. These were considered as responses to the consultation.*

*In addition, a paper petition was received from "38 degrees" which they advised contained 100,000 signatories.*

11 July 2011: *I wrote to OFT and Ofcom asking them whether the responses to the second consultation led them to reconsider any part of their advice (Docs 131 and 132).*

However, News Corporation later that day withdrew the UILs. I then made a statement explaining that, following the withdrawal of the UILs, I was referring the proposed merger to the CC (Doc 129).

13 July 2011: DCMS formally referred the proposed merger to the CC. News Corporation withdrew its bid to buy the remaining shares it did not already own (Doc 135).

25 July The CC cancelled the referral (Doc 137).

#### Specifically in relation to Q.7:

The following unsolicited documents were received:

Weber Shandwick and solicitors Slaughter and May wrote to me a number of times over the duration of the proposed acquisition, sometimes including attachments to their representations. These documents are provided in the attached files but included:

- From Weber Shandwick, a copy of the Media Alliance's submission to Ofcom dated 26 December 2010 (Doc 010 – Enterprise Act).
- From Weber Shandwick, results of ICM Poll dated 27 December 2010 (Doc 011)
- Letters from Slaughter and May on behalf of the Media Alliance on: 12 January 2011 (Doc 025); 20 January 2011 (Doc 032); 27 January 2011 (Doc 044); 09 February 2011 (Doc 046); 1 March 2011 (Doc 064);

I responded to letters from Tom Watson MP and Lord Prescott, details are set out below:-

#### **Tom Watson MP:**

- Letter from Tom Watson to me dated 24 January 2011 [Doc 037]

- Letter from me to Tom Watson dated 8 February 2011[Doc 045]
- Letter from Tom Watson to me dated 19 April 2011[Doc 108]
- Letter from Tom Watson to me dated 10 May 2011[Doc 109]
- Letter from me to Tom Watson dated 17 May 2011[Doc 112]

**Lord Prescott:**

Letter from Lord Prescott to me dated 15 March 2011[Doc 070]

Letter from Lord Prescott to me dated 11 April 2011[Doc 102]

Letter from me to Lord Prescott dated 12 April 2011[Doc 103]

Letter from Lord Prescott to me dated 24 May 2011[Doc 113]

Letter from me to Lord Prescott dated 27 June 2011[Doc 121]