News Corporation

PROPOSED ACQUISITION BY NEWS CORP OF BSKYB

UNDERTAKINGS IN LIEU PROPOSAL (1)

RESPONSE TO OFT QUESTIONS OF 1 FEBRUARY 2011

1. **Introduction**

This response is submitted on behalf of News Corporation (**News**) in response to the questions posed by the OFT on the evening of 1 February 2011 and supplements: (i) the undertakings in lieu (**UIL**) proposal made by News to the Secretary of State for Culture, Olympics, Media and Sport (**Secretary of State**) on 18 January 2011 and documented in the draft UIL presented on 24 January 2011 and (ii) the presentation made to the OFT in the meeting of 31 January 2011.

We understand that the OFT is tasked with advising the Secretary of State on whether the UIL proposed by News, in the context of News' proposal to acquire the remaining shares in British Sky Broadcasting Group plc (**Sky**) which it does not already own (the **Transaction**), would be practically and financially viable.

The OFT's role is to advise the Secretary of State in order to inform his decision as to whether or not to exercise his discretion under paragraph 3 of Schedule 2 of the Enterprise Act (Protection of Legitimate Interests) Order 2003 (the **Order**) to accept undertakings. The relevant provision reads:

"*The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the European relevant merger situation concerned accept from such of the parties concerned as [he] considers appropriate undertakings to take such action as [he] considers appropriate.*"

In this case, the relevant public interest consideration (**PIC**) is that set out in section 58 (2C)(a) of the Enterprise Act 2002: "*the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to a be a sufficient plurality of persons with control of the media enterprises serving that audience*".

The context of assessment of the practical and financial viability of the UIL proposed by News is one where a potential adverse effect to the public interest taking account of the PIC has been raised but where there is no concern as to competition being maintained on any relevant market, the Transaction having been unconditionally cleared by the European Commission.

The crucial factor in the UIL proposal is the maintenance of Sky News as a distinct broadcast news voice, contributing to the sufficiency of plurality of news provision in the UK. Maintaining the status quo as regards the continuation of Sky News as a distinct media enterprise with an independent news voice clearly addresses the PIC which is potentially of concern in this case.

News is offering a remedy which is clear-cut, structural, and maintains the existing degree of independence of Sky News.

The Sky News enterprise will be transferred to a new company (NewCo), which will pursue its core business of news provision. NewCo will be established as a separate publicly traded legal entity with corporate governance arrangements reflecting those of Sky. As explained below, this provides a clear-cut and structural remedy which can be implemented unilaterally by News based on the UIL. In fact the UIL is akin to an upfront remedy which does not require that a competition authority subsequently approve a suitable purchaser. It is therefore more clear-cut than a number of other structural remedies that are commonly accepted by regulatory authorities.

Spin-offs which are comparable to the one proposed commonly take place in the context of business restructurings. Relevant examples in similar sectors include Time Warner's spin-off of AOL and Time Warner Cable, Liberty Media's spin-off of DirectTV, Cablevision Systems Corp's proposals to spin off Rainbow Media and Sara Lee's proposed spin-off. Cable and Wireless also split into two separate companies last year.

Indeed we would note that Sky itself was, prior to its listing in 1994, a wholly owned subsidiary of News which founded Sky (and which established its Sky News division). The corporate governance provisions that News is proposing for NewCo replicate Sky's governance structure as a company listed on the London Stock Exchange with a premium listing. The voting arrangements which restrict News' ability to vote its shares to 37.19% of Sky's voting share capital have been in place since September 2005. Neither News nor Sky are new to establishing the proposed corporate structure for NewCo that is simply designed to replicate the existing degree of independence of Sky.

By preserving the pre-Transaction position in relation to news provision, the proposed structure would unequivocally preserve a sufficient degree of media plurality in the UK.

The remainder of this response deals with the specific questions raised by the OFT.

2. Revenue and costs for NewCo

2.1 Over what period are the revenue streams to Sky News likely to build up? Slide 8 states 'NewCo will be profitable from day one' but a comment in the meeting suggested that the income may not be immediately in place?

We attach as Annex 1 a presentation providing further details of NewCo's expected revenue and costs. **References to slides in the responses to the OFT question refer to the slide deck attached at Annex 1.**

[redacted]

2.2 Please clarify how the cost and revenue projections that are detailed in the presentation (slides 9 to 14) have been estimated in more detail. Specifically, supported by evidence:

2.2.1 where comparative figures are available, please provide detailed actual cost and revenue figures for the historic performance of Sky News over the last five years;

Please refer to slides 4 – 17, which provide detailed actual cost and revenue figures for each cost and revenue category. The slides provide three years prior to projections: for FY2011 (latest forecast), FY2010 (actual) and FY2009 (actual).

Note that Sky News has not historically received a carriage fee for DTH distribution.

2.2.2 please provide details for the calculation of the carriage deal revenue;

Please refer to slides 5 – 7.

2.2.3 please provide details of any charges to Sky News that will be renegotiated over the 10- year period;

All charges from Sky to NewCo will be governed by contracts, with no scope to renegotiate charges except following the term or with the consent of both parties.

It is currently intended that only the following agreements will have a duration of less than ten years and will require renegotiation:

- the ad sales agreement;
- the broadcast operations and creative services agreement.

There are several UK providers of each of these services, and the shorter duration will enable NewCo to tender for the renewal of this contract should it wish to do so.

2.2.4 please provide a detailed breakdown of last year's syndication and advertising revenue by component and compare this with previous years;

Please refer to slides 8 – 10.

2.2.5 where some revenue or charges would be newly created by the creation of NewCo, please advise the detailed basis for the calculation;

Please refer to slides 5 – 7 (newly created subscription revenues from the Sky carriage agreement). 8 – 9 (commission and sales margin associated with Sky acting as a sales house for Sky Advertising and Sponsorship), 13 – 14 (incremental costs to NewCo of being a public company, and margin on supply of services from Sky), 15 – 16 (margin on supply of technical and broadcast services from Sky), and 17 (brand license, and incremental marketing costs associated with being an independent news channel).

2.2.6 please provide a more detailed breakdown of costs by category, comparing actual and projected costs;

Please refer to slides 11 – 17.

2.2.7 if some of the actual or projected costs relate to intra-company charges, please explain the nature of the charges and the methodology for determining their size. How will these charges be determined in the future?;

The actual and projected costs where an intra-company charge or allocation has been used are:

– Property and Facilities costs, [redacted]

[redacted]

2.2.8 **where services are provided by Sky, have Sky agreed the bases for the projected costs? Who would be the appropriate contact in Sky to confirm these costs from their perspective?;**

The basis for projected costs have been discussed with Sky. In general, supply contracts will be fixed for FY2011 on a cost plus basis [redacted] with the cost fixed and thereafter subject only to indexation for CPI. Sky will therefore bear the risk of increased costs, and reap the reward of cost savings, and NewCo will be protected from these possible fluctuations.

Sky can be contacted via its General Counsel, James Conyers.

2.2.9 **what proportion of the revenue and costs of NewCo will be determined by News Corp through its ownership of Sky?**

News will not determine the costs or revenues of NewCo; this will be a matter for the Sky board. News has indicated to the OFT the basis on which it would propose to offer a 10 year carriage agreement to NewCo.

The basis for determining costs to be charged under ongoing services agreements between News/Sky and NewCo have been indicated in response to questions 2.2.7 and 2.2.8 above.

3. Risks for NewCo

3.1 **Slide 14 identifies events that could lead to a reduction in profitability through reduced income or increased costs. Please quantify and explain the events identified. Please also clarify the period over which the 5 per cent inflation assumption is made.**

Please refer to slides 21 – 23

3.2 **Please detail any other contracts or agreement renewals that come up for renewal over the period and account for 5 per cent or more of costs or revenue, with a description of the contract, the associated cost or revenue and an indication of the likelihood, in your view, of different financial outcomes.**

[redacted]

3.3 **From a financial perspective, what circumstances could risk a shortfall in income or an increase in costs of £1m or more over the projected period and how big is the risk? We note that five items are identified in your slide 14.**

Please refer to slides 21 – 23, which set out what News regards as being five key risks. Note that the impact of these is substantially higher than £1m per annum.

4. **Financial structure of NewCo – balance sheet perspective**

4.1 **Please clarify the expected balance sheet structure for NewCo when it is floated on AIM.**

Please refer to slide 19.

4.2 **In the meeting, an initial cash injection of £[redacted] was mentioned, but this did not seem to affect shareholders funds. Would the cash be provided as a loan or as an initial capital injection?**

This would be provided as a capital injection as part of the business transfer before spin-off.

4.3 **How would NewCo's balance sheet structure e.g. asset resources provide support for any loans NewCo chose to raise?**

Should NewCo's directors take the decision to raise debt, they may choose to secure this against specific balance sheet assets, or against the company as a whole and hence its very stable and predictable revenue stream. It is likely that the latter would support higher levels of debt, should it be required. Please note that the business plan does not require any debt, and projects very strong levels of cash generation.

5 **Long term viability of NewCo – the carriage agreement**

5.1 **Please provide evidence, by reference to equivalent examples, of why a 10 year carriage agreement will be of sufficient duration for NewCo to be said to be viable in the long term.**

For any information/know-how based business, a 10 year agreement would represent an unusually long term agreement (please also see response 5.4 below). An agreement of such duration offers a significant long term revenue guarantee.

Most broadcasters operate in circumstances where their main revenue streams are secured for periods significantly shorter than 10 years. Even the BBC, which is mainly funded through the licence fee, continues to operate in circumstances where its funding is agreed by the Government for a shorter period than this (six years).

On the basis of the carriage agreement, a business plan that ensures viability for such a long period of time is most certainly, long-term and goes beyond what is standard practice.

5.2 **Please provide relevant evidence on the comparability of the overall value of the envisaged carriage fee agreement, relative to industry norms.**

There is no relevant comparator in the UK as the only other 24 hour news channel is BBC News which is part of the BBC and mainly funded by the licence fee.

Sky has always taken the view that the provision of Sky News (a high quality, Sky-branded news service) is an important part of its offering. It is on that basis that Sky has invested in Sky News over the last two decades and continues to fund the approximately £[redacted] net cost after advertising and syndication revenues of providing the channel.

In these circumstances, the terms offered by Sky to Sky News post spin-off will reflect the continued importance of Sky News as part of Sky's offering to its subscribers.

5.3 Please explain the assumptions for the pspm fees (see slide 11). How does this break down in expected real terms between basic, HD [redacted] over the years projected? How does this compare with other third party channel deals you have entered?

Please see slide 5 in Annex 1.

[redacted]

5.4 Please provide details of the lengths of the carriage agreements that Sky currently has with other providers (see slide 18), including the three longest duration carriage agreements.

News believes that, typically, carriage agreements would last between 3 and 5 years. News is unable to provide specific Sky carriage agreements.

5.5 Please explain how NewCo's business model, viability and commercial position would be impacted by an expiry of the 10 year carriage agreement. In particular, whether the finite nature of the carriage agreement would:

5.5.1 affect NewCo's ability to attract and retain talent;

News believes that NewCo, as an independent company with long term committed revenues, would be an attractive draw for talent in this sector. NewCo will enjoy greater stability/predictability in key elements of its revenue stream and over a longer time period than any other TV news provider, and will have commercial and editorial freedom to develop its business and offerings.

Indeed, it might be considered that the position of NewCo as an employer will be more stable under the proposed structure than it is at present as a division of Sky, which does not generate profits as a stand alone business and which could be closed or scaled back, if this was decided by the board of Sky.

5.5.2 impact on NewCo's borrowing ability; and

News does not foresee any need for NewCo to borrow to finance its activities. The business plan for NewCo predicts cash generation of £[redacted] over the next decade.

If NewCo, as an independent profit maximising entity, wished to borrow, for example to expand its offerings, it should be possible for it to borrow against its revenue streams (e.g. new carriage agreement, advertising).

5.5.3 otherwise impact on NewCo's ability to develop and expand its business.

As indicated in the response to question 5.5.2 above, NewCo should be in a comparatively strong position to invest and expand its activities if it wished to do so. In fact its strong balance sheet position would make it one of the most resilient core provider of news.

News would emphasise however that the key question to be addressed by the UIL is the maintenance of Sky News as a distinct and viable broadcast news voice contributing to media plurality, NOT its ability to develop and expand beyond its core news provision business.

In responding to the questions in this paragraph 5.5, please explain why NewCo's position under the UIL would be as strong as its current position within Sky.

See above.

5.6 What would be the impact for NewCo of Sky developing an alternative supplier of news programming during the carriage agreement?

Neither News nor Sky has any current plans to develop an alternative supplier of news. News anticipates that the revenue stream committed to Sky News under the carriage agreement will ensure that Sky News continues to provide to Sky a quality Sky-branded news service which Sky will be able to offer to its subscribers and will replace Sky's direct investment in news production. Given the level of investment that Sky (under News' full ownership) will continue to commit to Sky News under the carriage agreement, Sky would not have an incentive to provide a service in competition with Sky News.

In any event, if Sky or News found it in their interest to establish an additional news service (something which they have been in a position to do irrespective of the Transaction) this would add a voice to the media landscape thereby contributing to overall plurality.

5.7 Please specify precisely what would constitute a 'material breach' of the carriage agreement (paragraph 4.4(iii) of the UIL and slide 18).

A typical carriage agreement between Sky and a third party would contain provisions enabling Sky to terminate the agreement:

- in the event of a material breach of a warranty or other obligation under the agreement which is not remedied (if capable of remedy) within 30 (thirty) days of receipt of a written notice;
- in the event that the other party loses its licenses, becomes insolvent, enters administration, ceases or threatens to cease to carry on business or is unable to pay its debts.

The concept of material breach would, in particular, typically be linked to commitments relating to the nature and quality of the channel to be provided to Sky. These commitments would cover issues such as:

(i) The description of the channel;

(ii) The branding of the channel;

(iii) Transmission hours;

(iv) Programming commitments, including minimum expenditure in news content;

(v) Quality assurance, including commitments by the channel provider to retain the overall quality and appeal of the channel.

These commitments will not cover editorial content.

5.8 How will any requirements for further supply of Sky News, e.g. to new media channels, be agreed? Are any additional requirements to be included in the contractual arrangements?

The initial carriage agreement between Sky and NewCo will cover the supply by Sky to its subscribers by any transmission means and to any transmission device. Any other form of distribution by Sky would require a further negotiation between Sky and NewCo.

NewCo will be free to licence its content to new media platforms if it chooses to do so. [redacted]

NewCo will also grant Sky an exclusive wholesale right to distribute tablet apps (including apps for iPad and Galaxy tablets and smartphones) in the UK. NewCo will retain the right to distribute tablet apps direct to consumers and to licence distributors outside of the UK.

6. Brand licensing agreement

6.1 Please provide the brand licensing agreement with Sky Deutschland (see slide 19).

Please find attached at **Annex 2** a copy of the requested agreement.

The agreement with NewCo in relation to Sky News is to be based on this agreement.

NewCo will receive a licence of the Sky brand for use in a manner consistent with the pre-Transaction activities of Sky News.

6.2 Please explain why the brand licensing agreement is structured in a 7 year + 7 year + 3 year format given the carriage agreement is for 10 years (see paragraph 4.5 of the UIL).

In relation to the brand licence, News has chosen to replicate the 7 year + 7 year + 3 year structure as this was arrived at following arms' length negotiations between Sky and Sky Deutschland (a listed German associate in which News has a 49% equity interest). The agreement was approved by Sky's Audit Committee comprising independent non-executive directors of Sky, as well as the supervisory board of Sky Deutschland which has a majority of independent directors.

News was therefore confident that this agreement would provide NewCo with a sufficient degree of certainty over its continued ability to use its current brand identity, further enhancing the long term viability of the NewCo business.

6.3 Please specify what would constitute a 'material breach' of the brand licensing agreement (paragraph 4.6(iii) of the UIL and page 19 of the presentation).

News expects that any brand licence agreement would contain clause similar to clause 6.1 of the Sky Deutschland Trade Mark licensing agreement contained in Annex 2 above.

6.4 What specific terms in the brand licensing agreement would allow costs to increase and will any potential increase be capped?

The brand licensing agreement will be offered in exchange for a [redacted] the revenues of NewCo. There will be no cap to the fee but the direct link between the fee and NewCo's financial performance de-risks NewCo's business plan.

7. Existing contracts relating to Sky News

7.1 Please provide a full list of third party consents that are required in relation to the transfer of Sky News to NewCo (see slide 17). Please also confirm the third party consents required for each of the contracts listed in paragraph 4.2 of the UIL.

Given that this section 7 is headed "Existing contracts relating to Sky News", News focuses here on the position under contracts between Sky and third parties. Further information on the transfer of staff, assets and licences to NewCo is provided in response to question 8.3 below.

A table showing the legal position on third party consents required under agreements between Sky and third parties is set out at Annex 3. This is not an exhaustive list at this stage.

(i) Carriage agreements with third parties

The carriage agreements between Sky and third parties for the supply of news content also cover other Sky channels/services. Of these agreements, only the agreement with Virgin Media generates material revenues.

The transfer of the benefit and burden of the relevant agreements from Sky to NewCo, will essentially require that either: (i) subject to any relevant third party consents, Sky enters into a back to back agreement with NewCo for the supply of the Sky News service; or (ii) NewCo enters into a new agreement with the relevant third party covering only the Sky News service. It is likely that some of these agreements will require third party consents, while others will not. We have summarised the position as currently understood in Annex 3.

(ii) DTT capacity

[redacted]

(iii) Channel 5 and IRN contracts

[redacted]

(iv) Contracts for the supply of content to Sky News/fixed newsgathering

The majority of the contracts associated with the provision of fixed newsgathering services to Sky News cover Sky channels in addition to Sky News. Transfer of these contracts would also require the consent of the relevant third parties.

The most likely solution is that these contracts would be split with Sky and NewCo entering into new agreements with the relevant news services. News does not see any reason why this should not be achievable.

7.2 Please confirm what is meant by 'the benefit and burden of all or substantially all contracts to which Sky News is party associated with fixed newsgathering' in paragraph 4.2(iv) of the UIL.

The contracts in question are for the supply of content/services to Sky News by organisations such as Reuters, the Press Association and Getty.

7.3 Please provide the length and remaining duration of each of the contracts listed in paragraph 4.2 of the undertakings.

See Annex 3.

7.4 Please explain how the expiry of the existing capacity agreement with Arqiva in respect of the broadcast of Sky News on Freeview will impact upon the business of NewCo (para 4.2 (ii) UIL).

As explained briefly at paragraph 7.1 above, the Freeview slot currently allocated to Sky News is allocated to Sky by Arqiva under an agreement which will terminate in [redacted] At that point Sky will need to negotiate a new agreement with Arqiva for access to DTT capacity and will pay the commercial going rate for DTT capacity. Sky News will be in a similar position to Sky and will need to negotiate a new agreement with Arqiva on commercial terms.

Sky's internal cost projections as to the likely cost of this capacity in [redacted] have been factored into the business plan of Sky News.

[redacted]

8. Operational agreements

8.1 Please provide details of the staff currently engaged principally in the Sky News business who will not transfer to NewCo (paragraph 4.1(ii) of the UIL).

TUPE will operate to transfer staff employed in the Sky News business to NewCo in any event.

News envisages that the staff principally engaged in the Sky News business will be transferred to NewCo by operation of law.

8.2 Please comment on the absence of a non-solicitation obligation in relation to the staff transferred to Sky News.

Given that neither Sky nor News will be a direct competitor of the spun-off Sky News business and given that Sky will continue to have a vested interest in the continued provision of quality output from Sky News, News does not see that a non-solicitation obligation makes sense in this context.

8.3 Please explain which assets (including personnel, licences, contracts etc.) of the Sky News business will not be transferred to NewCo (paragraph 4.1(i) of the UIL).

(i) Personnel

As explained in 8.1 above, the personnel of Sky News will transfer to NewCo by the operation of law.

News has also committed specifically to procuring that key editorial staff, including the positions of head of Sky News, the Executive Editor of Sky News and head of newsgathering at Sky News will be transferred to NewCo.

(ii) Tangible assets

It is intended that all tangible assets located in the existing Sky News building and other facilities used by Sky News for newsgathering would transfer to NewCo.

The two main exceptions to this principle are:

- The land and buildings at Osterley currently used by Sky News which will be offered to Sky News on a long term lease.
- Shared technical facilities such as data networks, transponder capacity, transmission and uplink and play out facilities. Sky will provide access to the relevant facilities under a service contract to the extent required by NewCo.

(iii) Licences

Sky News operates under two satellite and cable broadcast licences, TLCS License 402 (SD) and TLCS Licence 264 (HD). News anticipates that these licences will be transferred to NewCo (subject to Ofcom consent).

Ofcom's policy is to consent to a transfer/the granting of a licence where it is satisfied that the proposed transferee can comply with the conditions of the licence (e.g. the payment of licence fees and compliance with programme and advertising standards). News anticipates such consents will be secured promptly.

NewCo will also need to apply for new Digital Television Programme Service licence for DTT transmission (as Sky's existing licence also covers Sky 3, Sky3+1 and Challenge and so cannot be directly transferred). News anticipates that relevant licences will be secured promptly.

There may also be other statutory licences/other authorisations, for example in relation to the use of spectrum for wireless equipment in and out of the studio, as well as for the transmission of signals via satellite from the various outside broadcast trucks. News anticipates that the required new licences or authorisations will be secured promptly.

8.4 Please comment on what is meant by 'Arrangements will also be made for NewCo to have the use of assets which are not used exclusively in the Sky News business on normal market terms if so requested by NewCo' (paragraph 4.1(i) of the UIL). Specifically:

8.4.1 what assets are envisaged and how extensive are they?

This was intended to refer to the shared technical facilities such as data networks, transponder capacity, transmission, and uplink and play out facilities referred to in the response to question 8.3 plus other facilities and services to which NewCo might require access while continuing to use the Osterley site.

Sky will offer to NewCo:

- A site support services agreement under which Sky will provide, among other things, canteen/food services, computer/IT services, finance systems, phone services, heating, lighting, security and cleaning, if required by NewCo.
- A broadcast and technical services agreement under which Sky will provide, among other things, services in respect of certain facilities such as the Astra transponder, uplink and playout services, transponder capacity for international feeds, land-lines for feeds in to Sky, satellite capacity for feeds in to Sky, card agreements allowing third parties taking content from Sky News to access Sky's signal.
- Other IP based support services.

To the extent needed by NewCo, Sky will also continue to make available additional services which are in any event available on the open market, including:

- broadcast operations (technical staff, e.g. camera operators)
- creative services (design specialists).

8.4.2 how are 'normal market terms' to be agreed?

News' current intention is that the price paid by NewCo would represent the cost to Sky of providing the services plus a [redacted] margin.

This reflects normal commercial practice in setting up service arrangements between related companies.

8.4.3 what is the position in the event that terms could not be agreed?

These agreements would be in place at the time of the spin-off of Sky News.

NewCo would in any event be free to source services from third parties once its initial service agreements with Sky have expired if it chose to do so or subject to early termination provisions to be agreed in the relevant contracts. This will also give NewCo the ability to market test the terms being offered by Sky.

Sky has successfully negotiated similar broadcast and technical services agreements with a wide variety of third parties who provide content to Sky.

8.5 Please explain what would happen in the event that Sky and NewCo were unable to agree operational agreements as detailed on page 20 of the presentation and paragraph 5.1 of the UIL.

NewCo would be free to source services from third parties once its initial service agreements with Sky have expired if it chose to do so or subject to early termination provisions to be agreed in the relevant contracts. This will also give NewCo the ability to market test the terms being offered by Sky.

8.6 Please explain how, in practical terms, NewCo will be independently viable given its physical proximity to Sky (in terms of the lease of the Sky News land and buildings).

The existing Sky News site, while forming part of Sky's broader Osterley site, is physically separated from Sky's other buildings and facilities.

9. Shareholding structure in NewCo

9.1 Please explain what you believe would be likely to happen to the shareholder profile of NewCo once it was admitted to trading.

9.1.1 Would the existing shareholders of Sky wish to retain shares in NewCo?

As with any demerger News would expect some movement in the share register with some holders seeking to dispose of their holdings and others wishing to increase their exposure.

For example, UK index tracking funds are very likely to sell their positions as AIM traded stock is not eligible for the FTSE All Share. Private/retail investors and institutions with a dedicated small cap focus are likely to increase their positions.

Attached is a table showing the leading investors in the FTSE and AIM:

	Top 20 Holders in AIM	AIM	Ftse100
1	Market Makers	2.90	0.90
2	BlackRock Investment Management	2.42	2.93
3	individuals	2.26	0.06
4	INVESCO Asset Management Limited	1.33	1.11
5	M & G Investment Management Ltd.	1.18	1.42
6	Fidelity	1.15	1.08
7	Standard Life Investments Ltd	1.10	1.10
8	JPMorgan Asset Management	1.06	0.34
9	Schroder Investment Management	0.88	0.64
10	F&C Asset Management plc	0.84	0.41
11	AXA Framlington Investment Management Ltd	0.80	0.13
12	Artemis Investment Management Ltd	0.79	0.03
13	Gartmore Investment Management Limited	0.79	0.09
14	Aviva Investors Global Services Limited	0.75	0.56
15	AEGON Asset Management UK plc	0.59	0.41
16	Legal & General Investment Management	0.58	3.63
17	Qatar Investment Authority	0.56	0.24
18	Capital Research Global Investors	0.56	1.12
19	Henderson Global Investors	0.53	0.17
20	Baillie Gifford & Co	0.50	0.37
		21.57	16.76

Top 20 Holders in the FTSE 100	Ftse100	AIM
Legal & General Investment Management	3.63	0.58
BlackRock Investment Management	2.93	2.42
BlackRock Advisors	2.64	0.06
UK Financial Investments Ltd	2.06	0.00
M & G Investment Management Ltd.	1.42	1.18
Norges Bank Investment Management (NBIM)	1.26	0.11
Scottish Widows Investment Partnership Ltd	1.20	0.40
Capital Research Global Investors	1.12	0.56
INVESCO Asset Management Limited	1.11	1.33
Standard Life Investments Ltd.	1.10	1.10
Fidelity	1.08	1.15
State Street Global Advisors	1.05	0.01
Market Makers	0.90	2.90
AXA Investment Managers	0.83	0.07
Aviva Investors Global Services Limited	0.56	0.75
Capital World Investors	0.68	0.16
UBS Global Asset Management	0.64	0.31
SAFE Investment Company Limited	0.61	0.00
Schroder Investment Management	0.64	0.88
Threadneedle Asset Management Ltd	0.53	0.12
	28.16	14

(Source: Citywatch)

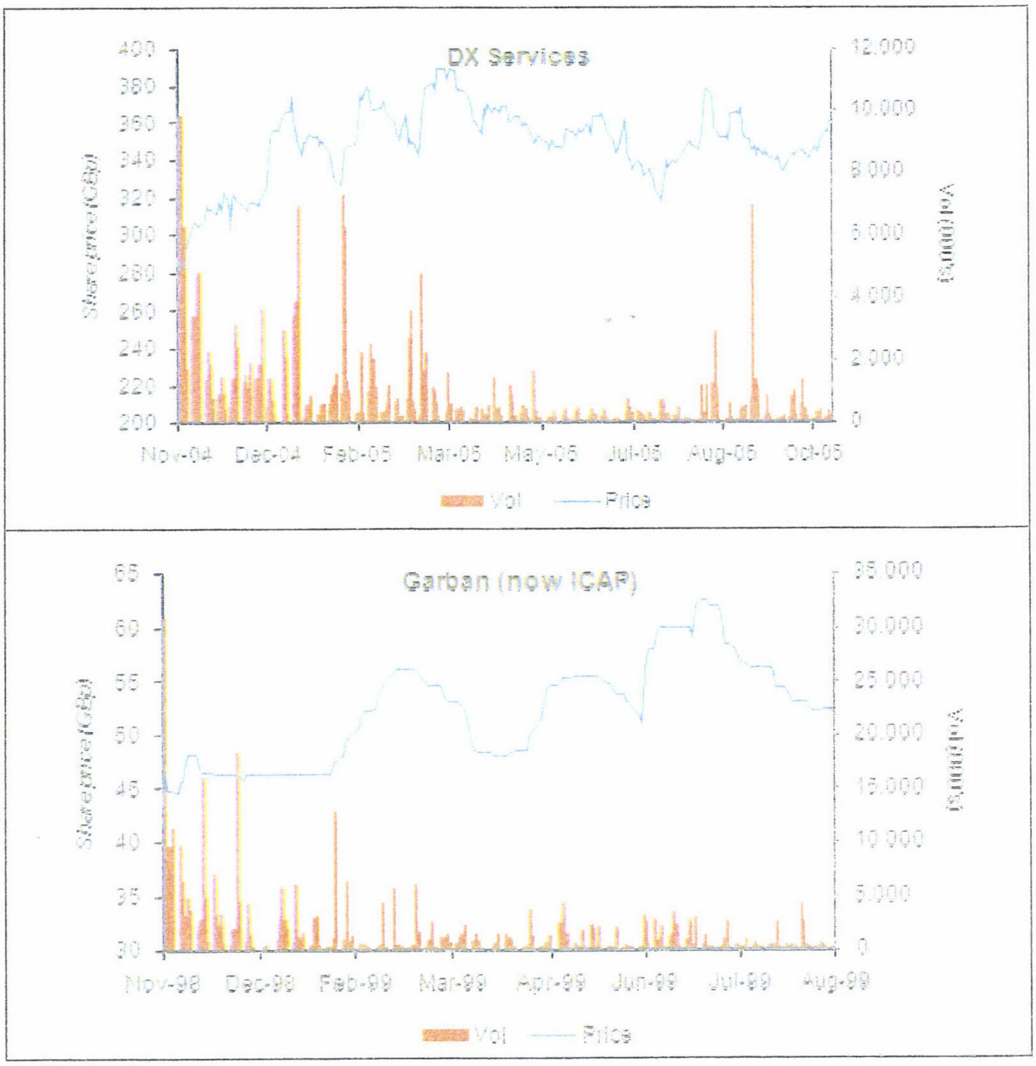
9.1.2 What could the impact be on NewCo of a large number of its shares changing hands soon after admission to trading?

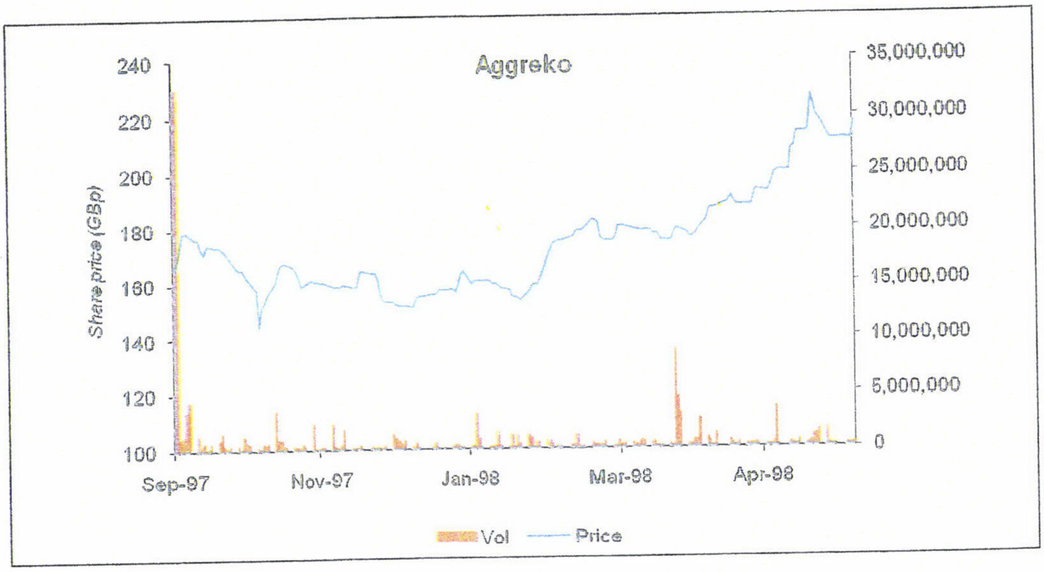
It might well be the case that a reasonably significant proportion of NewCo shares would change hands once such shares are publicly traded. Regardless of the identity of its shareholders, this would have no impact on the continued operation or viability of NewCo as a media enterprise.

So long as NewCo continues to operate as a business and to produce a broadcast news channel which contributes to media plurality, News does not consider that this will have any impact on the issues to be considered by the Secretary of State when addressing the PIC.

News is not aware of any evidence that a large turnover of shares will have any effect on a newly listed company. It is common for elevated levels of volume immediately after an IPO, demerger or other corporate action before reverting to 'normal' levels of activity.

Below are some charts which show this trend in precedent demergers of similar size in the UK market.





9.2 **Please provide the investment bank opinion confirming NewCo would be appropriate for admission to trading on AIM (referred to in slide 25).**

See Annex 4.

9.3 **Please explain what legal form the voting restriction in paragraph 3.1(i) of the UIL would take, other than the restriction in the UIL.**

We attach in Annex 5 copies of the voting agreement which News has entered into with Sky restricting its ability to vote its shares in general meetings of Sky to 37.19% of Sky's share capital except in certain defined circumstances. It is envisaged that News would enter into a similar agreement with NewCo to take effect on the admission to trading of NewCo's shares on AIM.

10. Governance of NewCo

10.1 **Please explain what protection there would be against NewCo amending the protections detailed in page 21 of the presentation intended to be built into its Articles of Association (so as to provide superior corporate governance protections to those required by an AIM listing). (Note: NewCo would not be a signatory to the UIL).**

Any amendments to NewCo's Articles of Association would require the approval of NewCo's ordinary shareholders in general meeting by the passing of a special resolution (which would require 75% of those shareholders who attend and vote at the meeting to vote in favour of the change).

Post-Transaction News will be able to exercise only 37.19% of the voting rights attaching to NewCo ordinary shares.

10.2 **Please comment on how the board of NewCo would be determined and appointed. Please confirm whether NC or Sky would have any representatives on the board.**

As set out in the UIL, the corporate governance structure of NewCo will be established to substantially replicate the effects of the existing corporate governance structure of Sky, in particular a majority of the board of NewCo will comprise non-executive directors determined by the board to be independent.

As is presently the case with Sky, a minority of the board of NewCo will be News representatives, consistent with News' position as a 39.14% shareholder and News will have no entrenched right to board representation (again, as is presently the case with Sky).

Individual directors are appointed by the NewCo board or by shareholders at general meetings. The Corporate Governance and Nominations Committee makes recommendations to the full board which will in turn then appoint any relevant director having regard to those recommendations (in line with Sky's current practice). Any director appointed by the Board is required to stand for re-election by shareholders at the following Annual General Meeting.

11. Implementation of the UIL

11.1 Please explain why a 9 month period would be required in the event that the transaction is not recommended to effect the spin-off of Sky News into a publicly traded company (paragraph 2.1 of the UIL and slide 23). Please explain whether, and if so, why, this is the shortest time that is feasible.

Timing has been designed to ensure a reasonable period for News to achieve the steps which are required to be carried out to comply with the undertakings.

In particular, if the offer is not recommended, News may not be able to obtain board control of Sky immediately after it acquires a majority of the share capital of Sky. Once News acquires such a majority, News would follow the Companies Act 2006 procedure of requisitioning a general meeting of Sky to remove these directors and appoint others in their place. This could take up to two months to implement.

At that point News would proceed with the transfer of assets to NewCo and the entry into the relevant agreements as well as preparation of the necessary documentation for NewCo's listing on AIM. It is estimated that this could take between two and three months to implement.

Following this a general meeting of Sky would be convened to approve the dividend in specie to Sky's shareholders enabling the listing on AIM to proceed.

News will effect the spin off as soon as reasonably practicable but News believes that in these circumstances it would be reasonable for the UIL to allow a period of nine months to effect these arrangements.

11.2 Please explain why, in the event that the transaction is not recommended, no interim protection would be required for the period pending 'spin-off' of Sky News.

As noted above, the UIL are designed to remedy, mitigate or prevent a potential concern in relation to media plurality, not in relation to competition. In media plurality cases (unlike cases that have competition focus) there is no risk that a short period of single ownership that is clearly a step towards the maintenance of the status quo may irremediably damage plurality (as may but not necessarily be the case for competition cases). Continued ownership/control of Sky News for an interim period of less than a year, pending spin-off of that business, would not eliminate or weaken Sky News as a distinct broadcast voice contributing to media plurality in the UK.

On that basis there is no need to provide for interim protection. Ofcom acknowledged that there is, in any event, a culture of independence within broadcast news, this internal plurality will provide a more than sufficient safeguard of the ongoing independence on Sky News in the interim period.

Moreover, News will not be competing with NewCo post spin-off so there can be no concern that it would attempt to use an interim period to inflict long-term damage upon the Sky News business.

Indeed, as a key supplier of news services to the Sky platform post spin-off, News has every commercial incentive to ensure that the Sky News business is protected and maintained throughout any possible interim period.

12. News' future acquisition of shares in NewCo

12.1 Please explain why the fact that further acquisition of shares by News would be subject to the takeover code and could lead to a 'relevant merger situation' (slide 24) means that a non-reacquisition clause is not required to be included in the UIL. In providing your answer, please explain why the standard provision in OFT undertakings in lieu does not, in your view, apply in this situation.

As a UK plc, NewCo will be subject to the Takeover Code. News' level of shareholding in NewCo will be such that any further acquisition of shares by News in NewCo will trigger a mandatory bid under the Takeover Code.

As a consequence, any further acquisition of shares would lead to a "relevant merger situation" with consequent statutory regulatory approvals under the Enterprise Act.

The proposed UIL seeks to preserve the status quo including all the regulatory protections provided for by the Enterprise Act. An outright ban on future acquisitions of shares would be unnecessary and would go beyond what is necessary to protect the sufficiency of plurality creating a discriminatory and unjustifiable regulatory asymmetry against News. This case must be distinguished from the ordinary example of a merger where there is a competition issue for two reasons: (i) News already has a 39.14% shareholding in Sky; and (ii) there would be no competition issue raised by Transaction so that protections ordinarily needed to preserve the commercial freedom of a fully independent competing business need not apply.

As such, any further restriction on subsequent acquisitions by News of NewCo shares would be redundant and not necessary to ensure the sufficiency of plurality of media enterprises.

13. Monitoring

13.1 Please explain your view that the structure of NewCo, and the obligations imposed on it, would reduce the monitoring burden on the OFT in terms of compliance with the UIL.

The UIL provide a structural solution to the plurality concerns identified by Ofcom in its Report. NewCo would be established as a new company with its own shareholders and with a board with a duty to act to promote the success of the company. Moreover extensive corporate governance arrangements will be adopted by NewCo substantially replicate the effect of Sky's corporate governance arrangements. As such, there will be no ongoing monitoring burden on the OFT.

The UIL proposal is akin to a clear-cut upfront solution which also removes the requirement for subsequent approval of buyers, a requirement that is often accepted in structural remedies. This remedy therefore involves less monitoring that typical alternative structural disposals.

13.2 Please explain whether you believe there would be value in having a monitor appointed (potentially with an arbitrator function in relation to the obligation on News to agree further agreements).

For the reasons set out in detail below, the UIL is a clear-cut, structural, solution. There would therefore be no need for the appointment of a monitor to oversee its implementation. Any such appointment would be a waste of resources.

Moreover, it is not clear what is meant by "further agreements". News envisages that all relevant agreements between News (and/or Sky) and NewCo will be entered into as part of the transfer of the Sky News business to NewCo in advance of the spin-off. News considers that the terms on which such agreements will be offered are reasonable and transparent, as detailed in response to questions 5, 6 and 8 above. These arrangements are workable and have already been used in practice.

Any subsequent agreements will be entered into by Newco's board with the corporate governance safeguards set out in the UIL and above.

As such, there is no need for the appointment of a monitor to oversee the entering into of subsequent agreements.

Finally, News notes that since Sky News currently operate as part of Sky, the operation of the business is not subject to direct public scrutiny. NewCo will operate as a separate business whose core business is TV news provision and whose shares are admitted to trading publicly. Therefore Sky News' business performance as the core activity of NewCo will operate under increased transparency compared to the status quo.

14. Clear-cut standard for UIL

14.1 Please explain why you believe the UIL satisfy the 'clear cut' standard that the OFT applies in relation to UIL, in particular with regard to:

As noted above, this remedy is a structural one.

- The Sky News enterprise will be transferred to a new company (**NewCo**), established as a separate legal entity, which will pursue its core business of news provision.
- NewCo will have its own shareholders (initially substantially the same shareholders as in Sky) and will be publicly traded. News will agree to have its voting rights restricted to 37.19% of NewCo's share capital on the same basis as is currently the case for its interest in Sky.
- NewCo will have its own board (comprising a majority of independent directors) which will have a duty to promote the success of the company and it will operate under a corporate governance structure substantially replicating that currently applicable to Sky.

Given its structural nature the UIL does not require ongoing monitoring as NewCo will continue to operate as a distinct, profit maximising enterprise under the direction and supervision of its board, as Sky currently does in relation to its business.

In fact the UIL is in effect an upfront remedy which does not require that a competition authority subsequently approve a suitable purchaser. It is therefore more clear-cut than a number of other structural remedies that are commonly accepted by regulatory authorities.

14.1.1 the dependence of NewCo on Sky for its principal revenue stream, having regard to the finite duration of the carriage agreement and the brand licensing agreement;

The UIL has been structured so as to ensure the continuation of Sky News as a distinct media enterprise with an independent news voice, thereby addressing the relevant PIC. However, this does not require that all the links between Sky and NewCo are entirely severed (as might be the case if competition concerns were at issue and the goal was to establish an ongoing competitor to

News/Sky). The relevant consideration is that the current degree of editorial independence is preserved and that NewCo is financially viable.

NewCo will be established as a separate legal entity, free to pursue its core business of news provision; it will have its own shareholders and will be publicly traded; News will agree to have its voting rights in NewCo restricted to 37.19% of the votes cast in general meeting; NewCo will have its own board (comprising a majority of independent directors) which will have a duty to promote the success of the company; and it will operate under a corporate governance structure substantially replicating that currently applying in the context of Sky. These arrangements preserve the current degree of editorial independence of Sky News,

A 10 year carriage agreement means that NewCo will have a reliable revenue stream for a much longer period than is typical in this sector. Far from increasing NewCo's reliance on News, this will in fact allow NewCo independently to plan for future investment and expansion based on a quantifiable and relatively stable cash flow over the medium to long term.

Similarly, the grant of a licence to use the 'Sky News' brand allows NewCo to generate significant revenue streams from third parties. Again, this clearly does not increase NewCo's reliance on News. Neither the carriage agreement or the brand licence have any impact on editorial content.

14.1.2 the fact that the brand licensing agreement is terminable in the event of a change of control of NewCo; and

Change of control provisions are a standard mechanism in brand licensing agreements to protect the value of the brand built up by the grantor. A change of control provision is also contained in the Sky Deutschland trade mark agreement. There is nothing unusual with respect to the inclusion of such a provision in the proposed licence to NewCo (indeed, it would be highly unusual *not* to include such a provision in this sector).

A change of control provision in no way renders the UIL less clear-cut. Moreover, in the context of the issues addressed by the UIL (i.e. Ofcom's concerns as to the Transaction's impact on the sufficiency of plurality of persons with control of media enterprises), it would seem perverse to suggest that a termination of the brand licensing agreement in the context of an acquisition of the Sky News business by an independent third party could give rise to any plurality-related concern.

14.1.3 the nature and extent of the ongoing links between Sky and NewCo.

As discussed above, the carriage agreement and the brand licence will enable NewCo to take independent investment and strategic decisions with the security of relatively stable and quantifiable revenue streams, thereby making the UIL more clear cut than a number of other structural remedies that are commonly accepted by regulatory authorities.

Other commercial agreements between Sky and NewCo will be entered into on arms' length terms, as detailed above.

Upon expiry of the initial terms of these agreements or subject to early termination provisions to be agreed in the relevant contracts, NewCo will be free to negotiate extended or revised terms with Sky or to enter in alternative agreements with third parties.

15. Other queries on the UIL

15.1 Please explain why post-closing, Sky should be treated as an 'Affiliate' of News for the purposes of paragraph 6.3 of the UIL.

The last sentence of paragraph 6.3 of the UIL should be amended to read as follows: "*Until the Closing Date, Sky shall not be treated as an Affiliate of News for the purposes of this paragraph.*" This is because until Closing Date (as defined in the UIL) News is unable to exercise control over Sky as an independent listed entity.

Allen & Overy LLP on behalf of **News Corporation**

3 February 2011

A

STRICTLY CONFIDENTIAL – CONTAINS BUSINESS SECRETS

Newco plc

Business Plan

3 February 2011

News Corporation

REDACTED

Comprising 23 pages

B

Trade Mark Licence Deed

British Sky Broadcasting Group Plc

And

Sky Deutschland Fernsehen GmbH & Co. KG

2010

REDACTED

Comprising 32 pages

C

REDACTED IN ITS ENTIRETY

D

REDACTED

Comprising 1 page

E

21 September 2005

BRITISH SKY BROADCASTING GROUP plc

and

BSKYB HOLDCO, INC

and

NEWS UK NOMINEES LIMITED

and

NEWS CORPORATION

VOTING AGREEMENT

REDACTED

Comprising 6 pages

F

MEMORANDUM dated 19 OCTOBER, 2005

BETWEEN:

(1) **BRITISH SKY BROADCASTING GROUP** plc a company incorporated in England and Wales with registered number 2247735 and whose registered office is at Grant Way, Isleworth, Middlesex, TW7 5QD;

(2) **BSKYB HOLDCO INC.** a company incorporated in Delaware of 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, USA;

(3) **NEWS UK NOMINEES LIMITED** a company incorporated in England and Wales with registered number 236672 and whose registered office is at One Virginia Street, London E98 1XY;

(4) **NEWS CORPORATION.** a corporation incorporated under the laws of the state of Delaware, United States of America whose principal place of business is at 1211 Avenue of the Americas, New York, NY 10036, USA

We refer to the voting agreement between us dated 21 September, 2005 (the "Voting Agreement"). Words and expressions defined in the Voting Agreement have the same meaning when used in this memorandum.

This memorandum serves to clarify our agreement in respect of certain matters in the Voting Agreement. By this memorandum we hereby agree that clause 3 and 5.1.5 of the Voting Agreement shall be read and construed as if at all times they had respectively stated and will continue to state as follows:-

REDACTED

Comprising 2 pages