
From: KAYE VICTORIA [REDACTED]
Sent: 01 March 2011 17:46
To: Bavasso, Antonio:CO (LN)
Cc: jeff.palker [REDACTED] Andrea.Appella [REDACTED] Darbon, Cerry:CO (LN);
Long, Dominic:CO (LN)
Subject: RE: Restricted - News / Sky - publication of reports / non-confidential versions
(0012561-0000367)
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Dear Antonio,

Thank you for your email.

We understand the concern that News Corp has about the publication of the first reports of OFT and Ofcom but a number of issues arise.

As you will appreciate, the effect of section 106B is that Ofcom must publish its report, and we consider that this will apply both to its first and its final reports. In the circumstances, publishing only the Ofcom first report and not that of the OFT would seem inappropriate since it would provide a distorted view of the process that was followed.

In addition, we have taken the view that it is inevitable that the OFT's first report will be placed in the public domain. That is not least because of the operation of the Freedom of Information Act but, in addition, we consider that those parties which have previously raised concerns about the transaction are likely to press for such material. Indeed, we would anticipate that it would be disclosable in any legal proceedings.

I note that your objection to publication is expressed to be "at this stage", and that your view is that, at this stage, such publication would "harm" the "interests" of your client. I wonder if you could set out in greater detail what interests it would harm, and what the nature of that harm might be, so that the Secretary of State will be in a position to take a reasoned decision on this issue when he decides whether or not to accept UILs following receipt of advice from the OFT and from Ofcom.

As we discussed when we spoke, whilst the Secretary of State is committed to an open and transparent process, which militates in favour of as much information as possible being available as to the background to decisions he has taken, he is sensitive to proper objections to publication on issues of confidentiality and timing. Nonetheless, in order to ensure that any consultation process which might follow from a decision to accept any UILs was effective, the Secretary of State's present thinking is that it will be necessary and appropriate to publish both the first and the final reports of both OFT and Ofcom and to do so at the time of any decision he might make to propose to accept UILs.

More generally in relation to the OFT, the Secretary of State has not sought to specify precisely how the OFT should provide its reports to him (as I said when we discussed on 25 February, we do not think that the Secretary of State can mandate the way in which the OFT reports), and we have left to the OFT the form in which it wants to provide its advice.

Regards,

02/04/2012

Victoria
Victoria Kaye
Legal Advisers to the Department for Culture, Media and Sport
Email: [REDACTED]

From: Antonio.Bavasso [REDACTED]
Sent: 28 February 2011 19:55
To: KAYE VICTORIA
Cc: jeff.palker [REDACTED]; Andrea.Appella [REDACTED]; Cerry.Darbon [REDACTED];
Dominic.Long [REDACTED]
Subject: FW: Restricted - News / Sky - publication of reports / non-confidential versions (0012561-0000367)

CONFIDENTIAL

Dear Victoria

I refer to my email of 24 February and to our telephone conversation the following morning. We have now received from OFT the request below.

As I mentioned in my email (and during our conversation) News Corp would regard the publication of a report disclosing its interim position in the discussion of UIL confidential and would consider that its disclosure at this stage would harm its interests. We do not see how it would be in the public interest to have that interim report public and, indeed, we believe that publication of that report at this stage would generate confusion.

It is now open to the Secretary of State to request that OFT includes in its final advice all issues that are relevant to the decision that the Secretary of State now needs to take based on the final set of Draft UILs and to send the final advice to the Secretary of State in a form that, subject to the customary representations on confidentiality, could be published promptly. I note that this practical solution - that I discussed separately with the OFT and DCMS - does appear to have been adopted.

Given that we are still in time to adopt this course of action I would urge to consult with OFT so that this can be achieved.

I look forward to your response before we revert to the OFT.

Best regards

From: Nicholas Scoia [REDACTED]
Sent: Monday, February 28, 2011 7:20 PM
To: Bavasso, Antonio:CO (LN)
Cc: Sheldon Mills; Emma Verghese; Darbon, Cerry:CO (LN); Long, Dominic:CO (LN);
jpalker [REDACTED]; Andrea.Appella [REDACTED]
Subject: Restricted - News / Sky - publication of reports / non-confidential versions

Dear Antonio,

We spoke earlier this evening about potential publication of the OFT reports to the Secretary of State.

DCMS has not requested, and OFT has not prepared, any form of 'composite' report to the Secretary of State. Rather, there exists:

(1) the OFT advice provided on 11 February (the First Advice) and

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(2) the advice anticipated to be provided to the Secretary of State tomorrow (the Second Advice).

My understanding from DCMS is that, subject to a final decision being taken, they are currently minded to publish both the First Advice and the Second Advice in due course.

I appreciate that you do not, of course, have the Second Advice at this point in time. However, in the interests of time, DCMS has asked us to engage with you in the meantime on the preparation of a non-confidential version of the First Advice for future publication. We will send you tomorrow morning a clean word version of the First Advice to assist with this process. We would be grateful if you could indicate:

- what information is confidential to News such that publication might significantly harm its legitimate business interests; and
- for each category of information, the reason why this is the case.

We understand that you have provided a copy of the First Advice, in full, to Sky. On this basis, we will send a similar request to James Conyers at Sky in respect of information that Sky believes is confidential to it such that it should be removed from the version of the First Advice to be published.

Kind regards

Nick

Nicholas Scola | Assistant Director - Legal, Mergers | Office of Fair Trading
Fleetbank House | 2-6 Salisbury Square | London EC4Y 8JX | [REDACTED]

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The Office of Fair Trading

Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX Switchboard (020) 7211 8000-Web Site: <http://www.oft.gov.uk>

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