
From: Bavasso, Antonio:CO (LN)
Sent: 06 May 2011 15:04
To: 'Sheldon Mills'; Stephen.Unger([REDACTED])
Cc: Nicholas Scola; Jeff.Palker([REDACTED]); Andrea.Appella([REDACTED]) Darbon,erry:CO (LN); Long, Dominic:CO (LN); clive.carter([REDACTED]) 'Jhingan, Anil'
Subject: Restricted - follow up meeting 5 May - MT (0012561-0000367)
Categories: Copied to Virtual File
Attachments: CO-#14002632-v4-Monitoring_Trustee_Rider.pdf
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MatterInformation: MATTER_ID:0000367|CLIENT_ID:0012561
OriginalSubject: Restricted - follow up meeting 5 May - MT
ProfileOnSend: YES
Dear Sheldon and Steve

Thanks for the meeting yesterday which we thought was productive.

I can confirm that News would be willing to undertake to appoint a trustee to monitor compliance with the undertakings in line with the UILs' purpose envisaged by the Secretary of State in his notice of 3 March. This offer would be made on the basis that this further undertaking would give the OFT and Ofcom sufficient comfort that the agreements that require approval post effective date can be monitored appropriately. I enclose a proposal in this respect which would be added to the final text of the UILs before you finalise your advice to the Secretary of State.

I can also confirm that News will submit to you early next week, possibly on Monday, Newco's proposed Articles of Association which incorporate the relevant undertakings (including the clarification on board quorum discussed yesterday).

Finally I can confirm that we will submit the more detailed and final form of the Carriage Agreement as soon as possible. I understand that you will send us later today a list of issues to be clarified which also include points relating to the Carriage Agreement.

Best wishes

A.

ANTONIO BAVASSO
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From: Sheldon Mills [REDACTED]
Sent: Tuesday, April 19, 2011 9:48 PM
To: Bavasso, Antonio:CO (LN)
Cc: Jeff.Palker@ [REDACTED]; Andrea.Appella@ [REDACTED]; Darbon, Cerry:CO (LN); Long, Dominic:CO (LN); Stephen.Unger@ [REDACTED]; Nicholas.Scola; clive.carter@ [REDACTED]
Subject: RESTRICTED: Newscorp/BSkyB - OFT/Ofcom Additional questions re the draft brand licensing and carriage agreements and responses to the DCMS consultation on the UIL

Dear Antonio,

Many thanks for your responses to our earlier questions relating to the draft brand licensing agreements and carriage agreements. I attach a further set of questions which relate to the following specific areas:

(1) further questions relating to the brand licensing and carriage agreements which take account of your responses dated 1 April and 12 April.

(2) questions which arise from third party responses to the consultation launched by DCMS on the UIL. As you will appreciate, the responses to the consultation have been voluminous and have necessitated detailed review in order to ensure that we ask appropriate questions which will serve to enhance the UIL proposal or, in respect of which, it is appropriate to seek your view/comment.

(3) detailed questions relating to the timing and mechanics of the UIL. I would urge you to respond in full to these questions since we wish to understand in some detail how, in practice, you understand the UIL will operate. We also include certain suggestions that we consider (following both responses to the third party consultation and further consideration) will lead to improvements to the UIL and its effective operation.

I anticipate, dependent on your responses, that this should be the final round of detailed questions prior to us providing our advice to the Secretary of State. I will endeavour to discuss with your team tomorrow both the timing for responses to these questions, the background to them and next steps.

In addition, in the interests of time, I would suggest that we schedule a meeting to discuss both your responses to the questions (including those attached to this email) and any issues which are pertinent to our advice to the Secretary of State (or issues which require resolution following receipt of your responses to the attached questions) in the week commencing 2 May. If you are amenable to this, we can arrange a convenient date and time.

Kind regards,

Sheldon

Sheldon Mills

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**POSSIBLE RIDER TO NEWS/SKY UIL
APPOINTMENT OF MONITORING TRUSTEE**

Draft: 6 May 2011

6. APPOINTMENT OF MONITORING TRUSTEE

- 6.1 The Secretary of State may at any point require News to appoint as soon as reasonably practicable and in any event within 20 Working Days of the Secretary of State's request, a Monitoring Trustee nominated by News and approved by the Secretary of State in advance in writing on such terms to be approved by the Secretary of State in advance in writing and remunerated by News.
- 6.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out the Monitoring Trustee's Functions.
- 6.3 The Monitoring Trustee shall be independent of News, its Affiliates and any member of the same Group of Interconnected Bodies Corporate and shall have no conflict of interest in relation to the performance of the Monitoring Trustee's Functions.
- 6.4 In the event that:
- (a) News fails to nominate any person or persons in accordance with the provisions of section [6.1 above] within 20 Working Days of the request from the Secretary of State; or
 - (b) none of the persons nominated by News pursuant to section [6.1 above] is approved by the Secretary of State; or
 - (c) News is unable for any reason to conclude within the time limit stipulated in section [6.1 above] the appointment of any such person following approval by the Secretary of State,

News shall use its best endeavours to appoint from such person or persons nominated by the Secretary of State one person to act as Monitoring Trustee in accordance with such a mandate as is approved in advance in writing by the Secretary of State. News shall use its best endeavours to make such appointment within 7 Working Days of receiving the nominations from the Secretary of State.

- 6.5 In the event that the appointment of a Monitoring Trustee terminates for any reason prior to the fulfilment of the undertakings to the satisfaction of the Secretary of State, including where the Monitoring Trustee has ceased to perform or to be able to perform its functions or for any other good cause (including a conflict of interest or illness), News shall, if directed to do so by the Secretary of State, upon the direction of the Secretary of State, use its best endeavours to propose a replacement within 7 Working Days to be appointed in accordance with sections [6.1 to 6.4 above]. Where required by the Secretary of State, the outgoing Monitoring Trustee shall continue as Monitoring Trustee until a new Monitoring Trustee is in place and a full handover of all relevant information has taken place.
- 6.6 The Monitoring Trustee shall remain in place until spin off.

7. FUNCTIONS OF MONITORING TRUSTEE

7.1 The Monitoring Trustee shall monitor News' compliance with all or any part of these undertakings prior to spin off to ensure the editorial, operational, commercial and financial independence of Newco post spin off.

7.2 The Monitoring Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the Secretary of State and such person nominated by the Secretary of State for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the Secretary of State such information and reports in relation to the carrying out of the Monitoring Trustee Functions as the Secretary of State may reasonably require. The Monitoring Trustee shall promptly report in writing to the Secretary of State if the Monitoring Trustee concludes on reasonable grounds that News is failing to comply with any of its obligations under these undertakings.

7.3 The Monitoring Trustee shall ensure that:

- (a) no arrangements are put in place or completed that affect the ability of News to comply with its obligations under these undertakings; and
- (b) News takes no action or makes no omission that might adversely affect News' compliance with its obligations under these undertakings.

7.4 The Monitoring Trustee shall:

- (a) facilitate the provision of information by News to the Secretary of State in accordance with section [9] of these undertakings; and
- (b) have access to all relevant information and documents which it shall pass to the Secretary of State if so requested.

7.5 In furtherance of the Monitoring Trustee's functions outlined above, the Monitoring Trustee shall take such steps as it reasonably considers necessary including giving such directions to the officers or staff of News, including any person holding such position on a temporary basis, as are reasonably necessary for the fulfilment of the Monitoring Trustee's functions.

8. REMUNERATION OF MONITORING TRUSTEE

8.1 News shall pay the Monitoring Trustee a reasonable remuneration for the services it provides in carrying out the Monitoring Trustee Functions, and shall pay the Monitoring Trustee in a way that does not impede the independent and effective fulfilment of the Monitoring Trustee Functions.

9. OBLIGATIONS OF NEWS FOLLOWING APPOINTMENT OF MONITORING TRUSTEE

9.1 News shall not give any instruction or request to the Monitoring Trustee which conflicts with the Monitoring Trustee Functions.

9.2 News shall take all such steps as are reasonably necessary to enable the Monitoring Trustee to carry out the Monitoring Trustee Functions, including but not limited to:

- (a) complying with such written directions as the Monitoring Trustee may from time to time give pursuant to section [7.5 above]; and

- (b) providing the Monitoring Trustee with all such assistance and information, as it may reasonably require in carrying out the Monitoring Trustee Functions.

[Definitions to be added to the UIL definitions section]

"Monitoring Trustee" means the person appointed pursuant to section [6] to carry out the Monitoring Trustee Functions;

"Monitoring Trustee Functions" means the functions set out in section [7];