

V Cable
First
30.4.2012
"VC 1" & "VC 2"

IN THE MATTER OF THE LEVESON INQUIRY

WITNESS STATEMENT OF VINCE CABLE

I, Vince Cable, of 1 Victoria Street, London, SW1H 0ET will say:

1. I am the Secretary of State for Business, Innovation & Skills. I have held this office since 12 May 2010. I make this statement to assist the Inquiry and to address the matters which have been raised with me in specific questions from the Inquiry.
2. Except where otherwise stated, the facts and matters set out in this statement are within my own personal knowledge and are true. Where they are not, they are true to the best of my knowledge and belief.

Question 1: A brief summary of my career history

3. I worked as Treasury Finance Officer for the Kenyan Government between 1966 and 1968. From 1968 to 1974 I lectured in Economics at Glasgow University. I worked as a First Secretary in the Diplomatic Service in the Foreign and Commonwealth Office from 1974 to 1976. I was then Deputy Director of the Overseas Development Institute, which included a period working as a Special Adviser to the then Secretary of State for Trade and Industry, John Smith MP. From 1983 to 1989, I worked as Special Adviser on Economic Affairs for the Commonwealth Secretary General, Sir Sonny Ramphal.
4. From 1989, I worked for Shell International and in 1995 became the company's Chief Economist. I was also appointed head of the economics programme at Chatham House from 1993 to 1995. Since becoming an MP in 1997, I was appointed a fellow of Nuffield College, Oxford.
5. I joined the Liberal Democrat Shadow Cabinet in October 1999 as spokesman on Trade and Industry after a spell as a junior shadow Treasury spokesman. Prior to my appointment to the Coalition Government as Business Secretary in May 2010, I had been the Liberal Democrat Shadow Chancellor from November 2003 and also from March 2006 Deputy Leader of the Liberal Democrats.

Question 2: Please explain the role you had between 12 May 2010 and 20 December 2010 as to media ownership. This should include a brief overview of the policy considerations underlying that role, the relevant legislative powers you held, and an account of all occasions on which you had cause to consider or exercise these powers.

Question 3. The Inquiry notes in particular that in November 2010 you became responsible for the government's handling of News Corporation's proposed acquisition of BSkyB. The Inquiry would be grateful if you could provide all relevant documentary material relating to your responsibility for the proposed acquisition. This should include minutes of relevant meetings, briefing notes, representations by News Corporation, reports or representations by other parties and any other material which would assist the Inquiry in understanding your consideration of the proposed acquisition.

Question 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.

Question 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.

Question 11: Please set out the basis on which you made the decision to 'block' the proposed acquisition in this way. In particular, please explain the extent if any to which you were concerned that Murdoch media holdings had become too dominant in the share of media voice in the United Kingdom. Did you have any other concerns about the influence of Murdoch interests or, specifically, the allegations about the behaviours used by his newspapers? If so are these views you continue to hold? Please set out your views in full.

Regulatory context

6. In my capacity as Business Secretary, I hold certain reserve powers under the Enterprise Act 2002 ("the Act") which enable me to intervene in mergers on public interest grounds if I believe a public interest consideration that has been specified in the Act (or which I believe should be specified) is relevant to a consideration of the merger. It is the responsibility of the competition regulators, the Office of Fair Trading and the Competition Commission to regulate mergers on the basis of their impact on competition. Larger mergers which meet the thresholds to fall under European merger law (the EU Merger Regulation) are regulated by the European Commission (DG Competition). These competition authorities are responsible for regulating mergers across all sectors of the economy, including the media.

7. The Act places a duty on the OFT to take a decision about whether or not there is a relevant merger situation that requires consideration under the Act, and whether to refer the merger to the Competition Commission for a full investigation of its impact on competition. A relevant merger situation is defined under Section 23 of the Act by reference to the turnover of the enterprise being taken over or the merged enterprise's share of the market. Thus a relevant merger situation is one where the turnover of the enterprise being taken over exceeds £70 million or the merged entity will account for at least 25% of the market for a particular good or service.
8. My role under the Act as it relates to intervening in mergers on the basis of the media public interest considerations ceased on 21 December 2010 when responsibility for this role passed to the Secretary of State for Culture, Media and Sport. I retain the power to intervene in mergers on other, non-media considerations.
9. I will deal with the legislative powers that I hold (and that I held until December 2010), followed by information on the policy considerations underlying the merger regime as I believe doing it in that order will assist the Inquiry's understanding of my role. In producing the detail on the legislative powers I have refreshed my knowledge by taking advice from BIS officials and lawyers.

Legislative powers

10. European law recognises that Member States may need to protect legitimate public interests other than competition. The EU Merger Regulation includes media plurality as a legitimate interest for these purposes. The Act allows the Secretary of State to intervene in a relevant merger situation if he believes it is or may be the case that one or more public interest considerations specified in the Act, or which he believes should be specified, is relevant to a consideration of the merger. Intervention Notices can be given under Section 42 of the Act, or Section 67 in the case of European mergers.
11. Intervention is possible in a number of contexts which are set out under Section 58 of the Act, most of which relate to media ownership. Section 58 states these to be:
 - National security;
 - Maintaining the stability of the UK financial system;
 - The need for accurate presentation of news and free expression of opinion in newspapers
 - The need (to the extent reasonable and practicable) for a sufficient plurality of views in newspapers in each market in the UK or a part of the UK;

- The need, in relation to every different audience in the UK, or in a particular area or locality of the UK, for a sufficient plurality of persons with control of media enterprises serving that audience;
- The need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
- The need for persons carrying on media enterprises and those controlling such enterprises to have genuine commitment to the broadcasting standards objectives (which are set out in Section 319 of the Communications Act 2003)

Further public interest considerations can be added as necessary (though these must be approved by Parliament).

12. Initially, the only public interest consideration specified in the Enterprise Act 2002 was National Security. The media public interest considerations were added as a result of amendments made to the Bill that resulted in the Communications Act 2003 during the course of its passage through Parliament. The Communications Act sought to remove unnecessarily burdensome features of what had been the Fair Trading Act regime (first applied by the Monopolies and Mergers Act 1965) in relation to newspaper mergers and to focus the scope to take regulatory action on those particular newspaper transfers that appeared actually to raise competition or plurality concerns. During the course of the passage of the Communications Bill, Parliament approved the repeal of a number of statutory media ownership rules that were no longer considered appropriate but made this decision subject to requiring the Government to introduce the new media public interest considerations into the Enterprise Act to provide a fall back power for the Secretary of State to take action if necessary in cases where the relevant rules would previously have applied.

13. The intervention power can be used in both UK mergers and mergers falling under the EU Merger Regulation. When a public interest intervention is made, the OFT, and Ofcom in media mergers, report on the matter to the Secretary of State. The Secretary of State then has to decide whether to refer the merger to the Competition Commission for a full investigation - this can be done either on both competition and public interest grounds or just on public interest grounds. If the Secretary of State decides that the merger is not in fact likely to raise concerns affecting the public interest, he can just refer the case back to the OFT. At this point the public interest element of the case falls away and the OFT resumes responsibility for the decision on whether to make a reference to the Competition Commission relying only on the competition issues raised by the merger.

14. In reaching the decision to issue an intervention notice under the Act, the Secretary of State must have reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created (or will be created as a result of arrangements in progress or contemplation). He must also believe

that it is or may be the case that one or more public interest considerations is relevant to a consideration of the relevant merger situation concerned. These thresholds are low - there only needs to be a reasonable basis to suspect that a merger situation may exist to which a specified public interest consideration may be relevant. It gives the Secretary of State the ability to intervene where it seems to him that there might be a genuine case for examining the public interest. There is guidance published by BIS (formerly DTI) on the exercise by the Secretary of State of his intervention powers in media mergers ("the Guidance"). Although available on the BIS website, I have provided a copy in the bundle of documents exhibited to this statement at "VC 1".

15. Having decided that an intervention is merited, there is then an initial, relatively brief investigation by the OFT on whether a relevant merger situation exists, any competition issues raised and on those public interest issues specified in the intervention notice, who then reports to the Secretary of State. In cases where intervention is made on the basis of a media public interest consideration, Ofcom provides the report on public interest issues. It then falls to the Secretary of State to decide whether to refer the merger to the Competition Commission. When deciding whether to make a reference on public interest grounds, the threshold is a little higher in that the Secretary of State must believe it is or may be the case that:

- a relevant merger situation has been created (or will be created);
- the public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and
- the creation of that situation operates or may be expected to operate against the public interest (taking account only of the mentioned public interest consideration).

16. If the Secretary of State decides there are grounds to refer a merger to the Competition Commission, it becomes possible to accept statutory undertakings in lieu of making such a reference. This is possible if the Secretary of State believes that accepting such undertakings would adequately address the public interest issues raised by the merger. I understand that this has been the outcome in all the cases where the Secretary of State has intervened on national security grounds in mergers within the defence sector. The only time a Secretary of State has referred a merger to the Competition Commission for a full investigation of the public interest issues raised was in the case of BSkyB's purchase of a major shareholding in ITV in 2007.

17. Where the Secretary of State decides to make a reference, the Competition Commission investigates and provides a report to the Secretary of State who

must then take a final decision under Section 54 of the Act on whether or not to make an adverse public interest finding. This is the final stage and the threshold for this decision is much higher than the threshold required for an intervention and a reference as it involves making a finding upon the evidence that the relevant merger situation operates against the public interest.

18. If he makes an adverse public interest finding, the Secretary of State has the power to take such action as he considers reasonable and practicable to remedy, mitigate or prevent any of the effects that are adverse to the public interest. This includes accepting undertakings or making orders which can cover a wide range of matters relating to the merger. This includes the ability to block the merger. Each stage of the process for considering a merger is carried out in a transparent way with all decisions published, along with reasoned arguments.

19. My role in the merger control regime (including as it affects media ownership) is a quasi-judicial role, as the Inquiry has recognised. This means the decision to intervene must be taken with an independent mind, taking account of all relevant information and submissions by interested and affected parties. Each case is considered on its own merits - there are no specific criteria against which to measure whether or not a merger may be considered to operate against the public interest. In trying to identify whether a merger might operate against the public interest, discretion and judgement are required. The statutory framework recognises that those are things that are better done by an elected representative of the people rather than by a regulator. In making the decision advice is of course taken from officials and legal advisers.

Policy considerations

20. The Inquiry has asked for a brief overview of the policy considerations underlying my role as it related to media ownership.

21. The decision to intervene under the Act is a decision that has to be taken with an independent mind. Each case is considered on its own merits and according to its own facts and is taken for the purpose of protecting the public interest, as set out in the Act. The decisions do not take into account broader matters of Government policy. Intervention is an exception to the principle that mergers are regulated according to their impact on competition. Therefore this exceptional action must be fully justifiable and proportionate. All competition aspects are left to the regulators.

22. There is Guidance (to which I have referred above) published in 2004 (so under the previous administration) which seeks to provide clarity to market participants about how the power to intervene in media mergers is likely to be exercised. While the guidance is not legally binding, in considering whether or not to

intervene in a media merger, the Secretary of State should have regard to this guidance which sets out the factors that may be expected to be taken into account. The guidance also reinforces the need to consider each case on its own merits.

23. The proposed merger between News Corporation and BSkyB was a cross media merger involving both a broadcaster and a newspaper enterprise. The Guidance states that, save in exceptional circumstances, the power to intervene in a broadcasting or cross media merger would only be used in cases where media ownership rules had previously applied before they were removed by the Communications Act 2003. Paragraph 8.2 of the guidance sets out these rules. It may be noted that neither the proposed acquisition of BSkyB by News Corporation, nor the acquisition by Northern and Shell of Channel 5, another media takeover which arose around the same time, would have been prevented by the media ownership rules that were removed by the Communications Act 2003. As such, it was necessary to consider the extent to which exceptional circumstances applied that meant intervention would nevertheless be appropriate. Paragraph 8.8 of the Guidance provides illustrative examples of what exceptional circumstances might be.

The occasions on which I have considered or exercised the power

24. I considered exercising my powers to intervene in media merger cases on two occasions between 12 May 2010 and 20 December 2010. The first occasion was in relation to News Corporation's proposed acquisition of 100% of BSkyB. The second was in relation to Northern & Shell's acquisition of Channel 5 from RTL. I shall deal with the News Corporation/BSkyB merger first.
25. I am providing in the form of an exhibit ("VC 1") all relevant documentary material relating to my responsibility for considering the proposed News Corporation/BSkyB acquisition as requested by the Inquiry in question 3.
26. I am also providing as an exhibit ("VC 2") a detailed chronology of my involvement prior to the transfer of responsibility to Jeremy Hunt on 21 December 2010, as requested in question 4.

Proposed acquisition by News Corporation of 100% of BSkyB

27. At the time the Coalition was formed News Corporation owned 39.1% of the shares in BSkyB. On 15 June 2010 News Corporation announced that it intended to purchase all the remaining shares in BSkyB. This proposed merger met the thresholds for consideration by the European Commission under the EU Merger Regulation. As a result all parties (i.e. News Corporation and BSkyB) were required to notify the proposed transaction to the European Commission for clearance and my power to intervene on public interest grounds was triggered.

28. In reaching a decision to intervene in the proposed acquisition I took into account the submissions and information received, the advice of my officials and the advice of external Counsel. I did this during the period prior to the formal notification of the merger to the European Commission by News Corporation and BSkyB on 3 November 2010. I issued the intervention notice the following day and requested Ofcom to report to me by 31 December 2010.
29. There is no statutory duty to consult in relation to a decision on whether to intervene on public interest grounds but I received many representations in the weeks following the announcement. I also received detailed submissions from Hogan Lovells the legal advisors to News Corporation and BSkyB,, arguing against intervention. The vast majority of representations I received urged me to use the powers available to me under the Act to intervene on public interest grounds.
30. Representations started coming in virtually as soon as the bid was announced and I continued to receive representations right up until the day before I issued the Intervention Notice on 4 November 2010. The submissions and information which I received and took into account were not solicited in any formal sense, although I did inform people that it was in order to send me substantive submissions. My officials informally consulted officials at Ofcom and DCMS with regard to media ownership policy in connection with the preparation of their advice to me and Counsel's advice was taken.
31. I recall that I actively sought the views of Liberal Democrat colleagues who had acted as spokespersons in this area of policy (Don Foster MP and Baroness Bonham Carter) and the then Chair of my Business Advisory Group, Lord Oakeshott. The former two are spokespersons for the Liberal Democrats on media issues and were involved with the passing of the legislation in this area. I sought their views on the concept of plurality and what it meant in the context of the News Corporation/BSkyB bid. The Business Advisory Group had the remit to advise me on broader business and economic issues, and met once on 16 September 2010, prior to Liberal Democrat Autumn conference (18-22 September 2010), where we discussed competition issues more generally covering a wider range of sectors, including audit, accountancy, law and banking.
32. I was approached by numerous people during this period who wanted to discuss the bid, but I always maintained the view that I could not discuss it further and asked them to put their views in writing.
33. Although a merger was plainly in contemplation from 15 June onwards, it would not have made sense to take a final decision about intervention before the transaction had been formally notified to the European Commission. Waiting until this stage was reached would not introduce any delay into the regulatory process

and would also ensure we avoided the risk of initiating a public interest investigation into the merger only for the parties to decide not to proceed. In the end, the parties only reached the stage of formal notification of the merger to the European Commission on 3 November 2010.

34. One of the earliest representations I received was from the TUC. The TUC urged me to use my powers to intervene so that the acquisition would be scrutinised by the UK competition authorities, rather than the European Commission. I also had representations from MPs on behalf of their constituents and members of the public. Either I, or my officials, replied to all these representations, explaining the circumstances in which I had the power to refer the proposed acquisition to the UK competition authorities and directing them to consult the Guidance on my department's website which I was required to take into account in reaching a decision on whether to intervene. They were advised that they could submit arguments to me if, having taken into account the Guidance, they had substantive reasons for believing that the transaction could have effects detrimental to the public interest which would justify my intervention.
35. I received substantive representations from :
- Hogan Lovells, the solicitors acting for News Corporation/BSkyB;
 - Enders Analysis;
 - BT;
 - The Guardian Media Group;
 - Trinity Mirror;
 - The BBC;
 - A group of media enterprises, comprising the BBC, BT, The Guardian Media Group, Associated Newspapers, Trinity Mirror, Northcliffe Media, Channel 4 and the Telegraph Media Group, who jointly submitted a legal opinion from Slaughter & May solicitors; and
 - Capital Research and Management.
36. Their submissions are included in the documents supplied in exhibit "VC1". Hogan Lovells sent me a number of detailed submissions including representations on the arguments set out by Enders Analysis after this was published in the media and a response to points made in the legal opinion by Slaughter & May.
37. I also received a number of representations from private individuals and MPs on behalf of their constituents urging me to intervene. Such representations tended to raise quite broad concerns about the potential impact of the proposed acquisition. I was advised by my officials that although they expressed strongly held views they did not raise additional substantive points that I needed to take into account in considering whether or not the proposed acquisition could result in a loss of sufficient plurality of persons with control of media enterprises and whether a public interest intervention might be appropriate. For this reason, I have not included any of these representations in the documents supplied to the Inquiry.

38. Initially, the advice I received from my officials was that an intervention appeared unlikely to be appropriate in this case. I was advised that because News Corporation already had a large shareholding in BSkyB (39.1 %), directors on the board and a close relationship with the company, News Corporation already had the scope to exert influence over BSkyB's output. There was scepticism on the part of officials whether any increased degree of control over BSkyB's editorial policy and output would make any substantive difference to the sufficiency of plurality. Nevertheless, I was advised that interested parties might put forward arguments for intervention and such arguments must be carefully considered. I considered it was important to keep an open mind and I was keen to consider any representations that might be received. In the light of the more substantive representations which started to come in, I began to believe that there were genuine substantive concerns about the merger and that the case for intervention should be explored very thoroughly before reaching conclusions on the matter.
39. The detail of the substantive representations I received is complex and in order to assist the Inquiry I have provided the submissions in full. I seek to summarise the substantive issues here.
40. The arguments put forward as to why the merger might be considered to operate against the public interest reflected two primary concerns – both relating to the sufficiency of plurality in the media. The key concerns expressed were:
- a. an increased scope for Sky News and News International newspapers to reflect the same news agenda and editorial position. BSkyB is governed by a board that answers to a number of different shareholders. If it was a wholly owned subsidiary of News Corporation, the fear was that decisions about editorial content could be taken solely on the basis of the best interests of News Corporation and it might make commercial sense for News Corporation to consolidate certain editorial and news gathering functions; and
 - b. News Corporation owned enterprises gaining increased market share at the expense of competitors with the result that a greater number of people than would otherwise have been the case would read News Corporation owned newspapers and would also receive their broadcast news from Sky News – effectively the same person. While such concerns may be considered separately in the European Commission's assessment of the merger's impact on competition, this did not remove the need to consider the same concerns from the standpoint of a potential impact on media plurality. A finding that the merger did not substantially lessen competition in the market would not necessarily mean it could not adversely affect plurality.
41. Arguments as to why the merger was not likely to result in a loss of sufficient plurality in the media and why intervention would not be appropriate reflected the

fact that News Corporation already exercised 39.1% voting rights in BSkyB (and so could already materially influence the latter's policies) and therefore, that acquiring the remaining shares would have no material effect on media plurality, particularly having regard to the range and diversity of news sources and also to the various safeguards in the regulatory framework. The point was made that the legal threshold for making an adverse public interest finding is high, implying that it would not be appropriate to issue an intervention notice if there was no prospect that the transaction would in fact give rise to concerns which might be likely to meet such a high threshold.

42. Over the following weeks all the respective arguments were carefully considered and the advice of external Counsel was sought. I was advised the threshold for a decision to issue an intervention was low. The advice was that I need only believe that it is or may be the case that sufficiency of plurality is relevant to a consideration of the merger. The advice of Counsel was sought in particular as to the prospects of a successful judicial review challenge to a decision to issue an intervention notice and whether this merger could be considered to fall within the scope of the exceptional circumstances set out in the Guidance. The advice confirmed my discretion to intervene and that the circumstances in this case whereby one enterprise was obtaining total control over a large number of news outlets fell within the scope of exceptional circumstances as set out in the Guidance. In particular Counsel advised that the prospects of a successful legal challenge were higher in the event that I did not intervene than if I did. In this regard it was relevant that a decision not to intervene was determinative and would preclude further investigation, whereas a decision to intervene was not and would lead to the further stages I have already described before any final determination as to whether the merger could go ahead.
43. While there was uncertainty as to the extent to which the merger may be expected to have substantive consequences for the sufficiency of media plurality, it did not appear feasible to conclude determinatively at this stage that concerns about this matter were not even relevant to a consideration of the merger. In the light of the information and arguments available, it would be more reasonable to conclude that an initial investigation by Ofcom would provide for a more in depth assessment of the arguments and would thereby enable me to make a properly informed decision about whether there was a case for referring the merger to the Competition Commission for a full investigation of the merger's potential impact on media plurality.
44. The case for believing that News Corporation's acquisition of BSkyB could affect the public interest relating to the sufficiency of plurality of persons with control of media enterprises reflected the fact that BSkyB is one of the three major providers of news content in the UK (along with the BBC and ITN). Sky News also provides news content to Channel 5 and news to most of the UK's most significant commercial radio stations. News Corp subsidiary News International operates the Times, the Sun, the Sunday Times and, at that time, the News of

the World – representing then approximately 37% share of the national newspaper market. Credible concerns were raised about how the combined enterprise might have a dominant – or at least very prominent - position in the provision of news and opinion in the UK. As a result of the merger, News Corporation would have been the only shareholder whose interest BSKyB would have needed to consider and News Corporation would have had total control of BSKyB.

45. Having regard to the Guidance, my view was that as the merger involved a situation where several significant sources of news would be coming under common control the situation was at least akin to examples given in the Guidance as to when such exceptional circumstances might arise. As such my intervention in this case represented a reasonable and appropriate use of my power to intervene.
46. I took a decision to intervene which was on the basis of my belief that there was or may have been a public interest consideration specified in Section 58 (2C) (a) of the Enterprise Act relevant to the consideration of the merger, namely to ensure that there is sufficient plurality of persons with control of media enterprises in the UK. This decision was one for me, and me alone, to take on the information before me. The decision I took was that it was appropriate to require Ofcom to undertake an initial investigation to enable the substantive arguments to be explored more fully.
47. Having considered all the evidence and submissions, it seemed clear to me that the proposed merger did raise genuine concerns affecting the public interest and that these should be properly considered. In my opinion as a politician, I also believed that the Murdochs' political influence exercised through their newspapers had become disproportionate. The accusation that leading political figures in the Conservative Party and the Labour Party had offered disproportionate access to the Murdoch's was widely made, as was the preception that both parties had shown excessive deference to their views (as expressed through News International newspapers). But in both respects I recognised that I could only act within the constraints of the legislation as described above.

Acquisition of Channel 5 by Northern & Shell

48. The only other media merger case where I considered the case for intervention was Northern & Shell's acquisition of Channel 5 from RTL. This transaction completed on 23 July 2010, without prior notification to the OFT which was normal under the UK merger regime. OFT has the power to call in any completed merger for a competition assessment but had not done so in this case. I received submissions on the matter from the Guardian Media Group and Enders Analysis. These were included as supplementary representations in the context of representations those parties made to me about the case for intervening in the

News Corporation/BSkyB case. They suggested that I should also consider intervening on public interest grounds in the Channel 5 case for largely the same reasons.

49. Officials and legal advisers considered the merits of the case for intervention in the Northern & Shell/Channel 5 case. I received comprehensive advice on this matter in September 2010.
50. The case had a number of similarities with the News Corporation/BSkyB case. Both involved a major UK newspaper group acquiring control of a broadcast channel. However, for a number of reasons, this transaction appeared considerably less capable of affecting the sufficiency of plurality of persons with control of media enterprises.
51. In my view, a less robust case for intervention existed in relation to Channel 5 and Northern & Shell. Channel 5 is substantively different to BSkyB in that it is not a source of news - the news programmes that are broadcast on Channel 5 are provided by Sky News. Channel 5 is not central to news provision in the UK. In addition, Northern & Shell newspaper titles (the Daily Star, Daily Express and the Sunday Express) have a significantly lower market share – in the region of 10 to 14%, compared to 37% for News International titles. On an assumption that there was only a limited prospect that Channel 5 would develop the capability to provide news to other broadcasters in a similar way to ITN and Sky news, the prospect of a negative impact on plurality turned on the extent to which plurality might be damaged by a possible closer alignment between news broadcast by Channel 5 and news as covered by the Northern & Shell titles.
52. I considered advice in this matter and decided that, while it was open to me to intervene in this case, I should not do so. Bearing in mind the nature of the enterprises involved, and taking into account the Guidance, I did not consider this was an exceptional case in respect of which intervention on public interest grounds was appropriate. There were insufficiently strong grounds for believing the merger would actually reduce the number of sources of news available to people in a way that was detrimental to the public interest.
53. These two cases illustrate the wide discretion given to the Secretary of State in the Act to intervene in mergers on public interest grounds. The case for intervention is not neatly defined. Judgement must be applied to arrive at a rational and justifiable conclusion, taking into account the merits of each individual case.

Question 5: The Inquiry is also interested to know whether at any time, whether before or after your appointment as business secretary, you had any other conversations or meetings, or attended any gatherings, informal or formal, with executives or lawyers from News Corporation (for example, James Murdoch, Frederic Michel, Matthew Anderson, Jeff Palker or any others) which touched on issues relevant to media ownership in relation either to the rules

governing media ownership or to specific or potential transactions? Please describe the purpose of these gatherings or meetings and provide the Inquiry with any minutes which may exist in relation to any such meetings. The Inquiry would also find it useful to know whether you ever expressed a view on any of these matters whilst in opposition.

54. The only conversation I had with anyone from News Corporation relating to this acquisition was a very brief phone call with James Murdoch on the morning of 15 June 2010, the day that News Corporation announced its bid for the remaining shares in BSkyB. He called me to inform me of the proposed acquisition. He explained that News Corporation's first offer had been rejected and that negotiations were on going, but once there was an agreed deal they would file with the European Commission for regulatory approval. I treated the conversation as a courtesy call minuted by civil servants and I gave no indication of my views on the bid one way or another. I had no other meetings or conversations with executives from News Corporation of any kind either prior to or after my appointment as Business Secretary. I was invited to a News International drinks reception the following night but, as it was after the proposed acquisition had been announced, I decided on reflection that it would not be appropriate for me to attend. Also I understand that Frederic Michel's office called my private secretary on a number of occasions to try to arrange a meeting but after considering advice I decided to decline any meeting.
55. I had a one-to-one meeting with the Editor of The Times, James Harding, in my office on 9 December 2010. This meeting was arranged as part of my routine political media engagement (as is the case with all media outlets) which go hand in hand with the effective communication of government business. I have regular such meetings and they are a matter for the public record. Mr Harding introduced the meeting by saying that he was not representing News Corporation and that any coverage of my actions as Secretary of State was editorially independent. We had a brief conversation about my intervention into the News Corporation acquisition and I explained why I had asked Ofcom to investigate. We mainly discussed matters other than the proposed merger.
56. I am aware that in his evidence to the Leveson Inquiry, James Murdoch has dealt with the fact that he asked for a direct meeting with me but that this was declined. He gives the impression that this denied him the opportunity to make News Corporation's case. However, as my statement and the documentary material exhibited demonstrates very clearly, News Corporation did make its case fully and forcefully in a number of submissions made by their lawyers Hogan Lovells which were considered in great detail. Furthermore, there was entirely appropriate liaison about the proposed acquisition between my officials and Hogan Lovells. In addition, Mr Murdoch goes on to say that he had been told that I had met personally with the coalition of media interests who wanted to stop the acquisition. This was categorically not the case. I did not agree to or set up any meetings with anyone who made representations to me regarding the acquisition.

57. As I have explained earlier in my statement I was approached many times by people who wanted to discuss the acquisition, and on every occasion I explained that they must write in formally. I have regular quarterly meetings with the TUC and the matter was raised at my meeting with them on 25 August 2010 but I declined to discuss the matter further. At the Liberal Democrat conference in September 2010 I attended a dinner hosted by the Telegraph Group and the acquisition was raised as a topic, but I declined to discuss the matter further. I was also unexpectedly approached by Claire Enders at London City airport shortly after she had sent her substantive submission to me. I said I would give it careful consideration but did not discuss the matter further.
58. In all my interactions I sought to uphold the principle and perception of an impartial and fair process. When it came to my attention that News Corporation had approached and arranged meetings with the Liberal Democrat Spokesmen in the Lords, including one at the request of James Murdoch and Fred Michel with Lord Oakeshott in the House of Lords on 26 November, I asked for the Business Advisory Group that he chaired to be disbanded to avoid any perception that my impartiality could be in any way compromised. The group was subsequently formally disbanded on 20 December 2010.
59. I expressed no views on these matters while in Opposition, that I recall. I was my Party's Shadow Chancellor and my responsibilities did not include competition or media policy. I dealt with News Corporation newspapers and Sky TV and their journalists in a purely political capacity as an MP and Shadow Chancellor, as I continue to do today as a Secretary of State. I was broadly aware of the hostility of some News Corporation papers to my Party but my own experience was no worse, or better, than any other leading Liberal Democrat. Like many Liberal Democrats I was concerned about the unhealthy political influence of some newspaper proprietors including the Murdochs; but this was not a view about the particular circumstances of the BSkyB takeover.
60. I had not, before the acquisition arose, any personal or policy view beyond a general scepticism about the economic value of takeovers and a general concern about high concentrations of ownership. At my Party's Annual Conference in September 2010 I said in my Conference speech: "Capitalism takes no prisoners and kills competition where it can as Adam Smith explained 200 years ago". The examples I gave were auditing, legal services and investment banking.

Question 6: The Inquiry understands the role you played in the proposed acquisition to be a quasi-judicial role, and that the decisions taken therefore had to be taken with an open mind. Prior to your having responsibility for this case, did you hold any personal or policy view on the merits of the proposed acquisition which had to be set aside in that context?

61. As the question acknowledges, my statutory role under the Act is a quasi-judicial one. I was well aware that this requires me to conduct an examination of the merits of the case with an open mind. Before intervening in a merger case on public interest grounds, I had to consider how far the threat to the public interest was genuine and sufficiently serious and to ensure that any remedial action was proportionate to that threat. I was also aware that the process was highly transparent, that any intervention must be based on robust evidence, and that all public interest decisions had to be published with detailed reasons and are open to legal challenge. It is thus highly unlikely that I would have run the risk of legal challenge by ignoring evidence and acting in a prejudicial manner, whatever my views.

Question 8: The Inquiry is interested to understand the precise basis on which you made the key decisions relating to the proposed acquisition. The Inquiry notes that on 21 December 2010, following the publication by *The Daily Telegraph* of comments you made to undercover reporters posing as constituents, a Downing Street spokesman confirmed in a statement that: “*All responsibility for competition and policy issues relating to media, broadcasting, digital and telecoms sectors*”, including responsibility for the decision over News Corporation’s proposed takeover of BSkyB, would be transferred to the Secretary of State for Culture, Media and Sport. You are quoted as having said to the undercover reporters as follows:

“*You may wonder what is happening with the Murdoch press ... I have declared war on Mr. Murdoch and I think we’re going to win*” and “*I didn’t politicise it, because it is a legal question, but he [Mr. Murdoch] is trying to take over BSkyB, you probably know that ... He has minority shares ... And he wants a majority. And a majority-control would give him a massive stake. I have blocked it, using the powers that I have got. And they are legal powers that I have got. I can’t politicise it, but for the people who know what is happening, this is a big thing. His whole empire is now under attack. So there are things like that, that being in Government ... All we can do in opposition is protest*”. Following publication of the comments, it is understood that you apologised for them, and stated that you accepted the decision of the Prime Minister regarding the transfer of your duties. On this basis, can it be concluded that you accept that you did in fact make the comments attributed to you? Is there anything you would wish to add about the context in which they were made? In particular, it has been alleged that you raised the issue of the BSkyB bid independently, without any prompting from the reporters. Is this correct?

62. I do not dispute that I made the comments reported in *The Daily Telegraph*.

63. Those comments were made on the evening of Friday 3 December 2010 at my constituency surgery, in a private conversation with two individuals claiming to be constituents and local mothers concerned about the impact of proposed Child Benefit changes on their families. More broadly they then sought and actively

questioned me about my views on the coalition Government. The two individuals were not who they claimed to be, but were, as I now understand, Daily Telegraph journalists

64. My comments were influenced by two factors.

a. First, on that evening there were high levels of tension in the office due to disturbances outside caused by a group of protestors who had tried to force entry, and were verbally threatening staff and residents. They were later confronted by the police. I had invited in a small group of protestors and had just finished a highly confrontational discussion with them. My own lack of concentration in the subsequent interview had a lot to do with this abnormal and tense environment. I volunteered strong views on the BSKyB takeover since that, together with university finance, was the issue uppermost in my mind. I should also draw attention to other comments that were made, recorded and reported by the journalists which caused me some embarrassment but do illustrate this factor further. I talked about a "big battle" going on over immigration caps, and "big arguments" on banks, tax thresholds, and civil liberties. I used the word "war" several times. These comments show how this high level of tension had spilled over into the language I used throughout the conversation, and not just when discussing one particular topic.

b. Second, the confrontational way in which my personal views of News Corporation were expressed was due to reports coming back to me of how News Corporation representatives had been approaching several of my Liberal Democrat colleagues in a way I judged to be inappropriate. The reports suggested that News Corporation representatives were either trying to influence my views or seeking material which might be used to challenge any adverse ruling I might make, following the completion of the Ofcom report. These colleagues expressed some alarm about whether this whole affair was going to lead to retribution against the Liberal Democrats through News International newspapers. As it happens evidence of these reports was later borne out in an article by Toby Helm in the Observer on 23 July 2011 (which I have included in exhibit "VC 1"). This added a sense of being under siege from a well organised operation. Coming from a party that had hitherto been at best ignored by News International, this was a new and somewhat unsettling experience. I could not help contrast this behaviour with that of other parties to the case who were content to make written submissions or other cases (like Northern & Shell).

65. My references to a 'War on Murdoch' were making the point, no doubt rather hyperbolically, that I had no intention of being intimidated. Clearly, I should not have volunteered my unprompted opinion, even in a private, confidential conversation in a constituency surgery. I subsequently apologised.

Question 9: When you said, of the proposed acquisition, “*I have blocked it, using the [legal] powers that I have got*”, were you referring to any or all of the following decisions:

- (a) The decision of 4 November to issue a European Intervention Notice in relation to the proposed acquisition, specifying the public interest consideration contained in Section 58 of the Enterprise Act 2002; and/or**
- (b) The decision to ask Ofcom to investigate and report to you by 31 December 2010, providing advice and recommendations on the specified public interest consideration (which might be relevant to the further decision as to whether to refer the case to the Competition Commission)?**

In making that particular comment, were you intending to refer to any other decisions or legal powers, and if so, which ones?

66. I was referring both to my decision of 4 November to issue a European Intervention Notice and also to my decision to ask Ofcom to report to me. I was not referring to any other decisions or legal powers.

Question 10: Can you recall why you used the phrase “*I have blocked it*” when referring to the proposed acquisition? Was it your expectation that the acts of issuing a European Intervention Notice and asking Ofcom for a public interest report would of themselves be sufficient to ensure that the proposed transaction did not go ahead? What else did you have in mind when using this phrase?

67. I was making the point that I had intervened by referring the matter to Ofcom. I had been able to exercise discretion in the matter despite strong representations and, some advice from my officials that the case for doing so was not strong. As a matter of fact if I had not referred it, it would now have been a fait accompli.

68. I was well aware that the intervention notice was not in itself sufficient to prevent a merger; but on the strength of what I had seen in the representations and submissions made to me I believed it was now quite possible that Ofcom might recommend a full Competition Commission investigation, and that could well prevent the merger.

Question 12: As set out above, you are quoted saying that you had “declared war on Murdoch” and that this was a war which you thought you would “win”. Please comment on these words, explaining in particular the extent, if any, to which they should be taken to refer to a position wider than the proposed acquisition of BSkyB.

69. As I acknowledged earlier, the language was excessive and reflected the context of that private conversation. I did however consider that by intervening I had acted in a way that might ultimately prove significant in halting the takeover (as indeed proved to be the case, albeit in ways which I did not anticipate).

Question 13: The Daily Telegraph clearly spoke to you, and recorded your comments, without informing you that the people you were conversing with were journalists. Do you consider their actions to have been in the public interest? Please explain your views in full.

70. The exchange with the two women from the Daily Telegraph was conducted in private in what was assumed to be a confidential conversation between an MP and his constituents (I hold such surgeries weekly). For my part, I would never disclose anything said to me in a confidential exchange with a constituent, unless specifically authorised to do so. The journalists gained access to me by falsifying their names, addresses, and telephone numbers, and pretending to be aggrieved constituents. Several of my Liberal Democrat colleagues had a similar experience to mine and made a number of strong comments about the coalition and its policies. As a result of the sting operation by the Daily Telegraph, the Liberal Democrat Party made a formal complaint to the Press Complaints Commission which upheld the complaint (but acknowledged that there was a public interest in publishing my comments on Mr Murdoch). The report is included in exhibit "VC 1".

71. I do not believe the newspaper's behaviour to have been justified, and, indeed believe that it has seriously undermined trust between MPs and their constituents. I feel strongly that frank and confidential discussions in the constituency office are an essential aspect of how our democracy works. Constituents – no matter which party they voted for – deserve the strong advocacy that is fundamental to what representative democracy means. This dual role and the tension that can arise from it is recognised in the Ministerial Code when it states that Ministers should 'keep separate their role as a Minister and a constituency Member'. For example, if a constituent is facing difficulties because of what they see as an unfair new benefits policy, they should not feel that their MP can't help them because of his or her role as a Cabinet Minister.

Question 14: What lessons did you learn from the experience of dealing with this proposed acquisition? Did you identify any problems with your role, or limitations of your power? With the benefit of hindsight, would you make the same decisions in relation to the proposed acquisition now?

72. I would have undoubtedly made the same decision again on the Intervention Notice. Ofcom did conclude that the merger raised substantive concerns meriting

a reference to the Competition Commission. I believe that this shows that my decision was soundly based.

73. The problem with the Secretary of State's role is that of assessing 'public interest'. The merger control regime is designed primarily to enable mergers to be assessed on the basis of their impact on competition in markets. The legislation provides that the power to intervene on public interest grounds is an exceptional one. This inevitably means there is a less clear cut process for taking decisions. The public interest regime did, however, work effectively in this case. I was able to obtain appropriate substantive information on which to base decisions about the case for intervention. It was helpful in this regard that extensive arguments were submitted both by the parties to the proposed merger and also by interested third parties. In a less high profile case, I might not have had quite the same amount of information and argumentation to consider. I would have been more reliant on internal Government sources to identify both that a case for using the power to intervene might have arisen and the key points to be taken into account in reaching decisions on the matter.

Question 15: Do you have any recommendations as to whether, and if so how, such a process can and should work differently in future? In your view, is the role currently allocated to the Secretary of State within this process the best way of dealing with these issues?

74. It is widely accepted as being very important that there should be a means of regulating mergers to prevent an unacceptable reduction in competition. Effective competition in markets drives competitiveness, innovation, efficiency and productivity. It ensures businesses offer their customers the best quality at the most competitive prices. It is also Government policy that almost all decisions about merger cases should lie with the UK's independent, professional competition authorities, based on detailed economic analysis and the application of clear statutory tests. This means business has a predictable and transparent regime in which market participants can invest and operate with confidence. However, there will always be cases which raise public interest issues which go beyond competition. It is well established that a Secretary of State should have the discretion to intervene in such cases, where the law allows. These powers should be used only where necessary to maintain business confidence and to protect the integrity of the competition regime as a whole. This said, the 'backstop' role allocated to the Secretary of State is essential. In a democratic system there has to be a role for Ministers, accountable to Parliament, to intervene in the 'public interest'.

75. I disagree with those who believe Ministers should be removed from the process on the grounds that their motives would be questioned (as were mine) whatever the decision reached. But this would be true of other public interest matters: e.g. relating to financial stability since the Minister may have a banking background (or previously strongly held views about banks) or in relation to national security, since the Minister may have a Forces or a defence industry or security services

background (or previously strongly held views about these matters). Precisely the same suspicions and accusations could fall on civil servants or agency heads but without the safeguard of accountability to Parliament. The fact is that this process requires someone to weigh very different considerations, such as a threat to security or media plurality versus other commercial considerations. Such a judgment is inevitably political, and it is right that politicians have some role.

Question 16: Do you consider that the present competition arrangements applicable to media ownership are sufficient? If not, what improvements do you consider should be implemented or explored?

76. DCMS is planning to publish a consultation document which includes questions about possible changes to the way public interest concerns relating to media ownership are regulated.

77. I believe the plurality test is necessary but currently too imprecise and therefore easily open to challenge. It would help, I believe, if it were possible to give greater precision to the concerns (which surfaced in both the BSkyB and Channel 5 takeovers) over cross-media ownership. For example, legislation or Ministerial guidance could specify a percentage - perhaps 25% - of combined media markets beyond which a test of plurality (and, indeed, competition) should be applied. However, a narrow definition of media (the written press; TV) may not capture fully the degree of influence exerted, and the true lack of plurality, in, say, news and associated commentary. There are bound to be definitional issues (whether, for example social media or Twitter are included - in my view probably not) but some guidance, however imperfect, would be better than none.

78. Regulators are currently responsible for making recommendations and measures required to deal with issues of insufficient competition and plurality. I believe that remains right – I would not be comfortable with politicians making the actual decision about who owns which newspaper, which would if anything worsen the potential for the excessive closeness that this Inquiry was set up to investigate. Having an objective arms length body like Ofcom is important.

Question 17: Ofcom has argued that the current provisions for its involvement in issues of media plurality are inadequate, in that they bite on dominant positions that may arise from mergers and takeovers but not with dominant positions that arise from organic growth. What is your perspective on this issue?

79. There may be a case for looking again at whether there should be rules governing concentrations of ownership which do not necessarily raise competition issues, or which do not stem from a merger or acquisition. I am

broadly sympathetic to Ofcom's concern over organic growth, which would be met if there were a specified threshold for cross media ownership.

80. In looking at ideas like these, it would be important to protect the integrity of the competition regime and its central role in tackling competition problems and also to preserve the discretion to intervene in mergers that raise other public interest considerations such as national security.

Question 18: How would you describe the nature of the public interest in media ownership policy? How in your view is that public interest best safeguarded for the future? Do you consider that the influence of the media on politicians is such that different, or special, provision is desirable to safeguard the public interest in relation to that influence, particularly on the question of the plurality of media ownership?

81. The concept of public interest in media ownership is captured by the concept of plurality. Although not defined precisely in legislation I take it to mean a diversity of sources of information and comment on them, sufficient for the public to reach informed opinions. I apply the concept to news and current affairs primarily. There is an argument for a diversity of provision of sport, comedy, drama, religious affairs and other items and these issues are covered in significant measure by the public service obligation of terrestrial channels. But news and current affairs are different since they are of direct concern not just to the consuming public but to the functioning of democracy and the choice of governments. There are safeguards on impartial news broadcasting but media plurality, including cross ownership provisions, is an essential safeguard too.

Question 19: At the opening of the Inquiry in November 2011, Lord Justice Leveson said:

“The press provides an essential check on all aspects of public life. That is why any failure within the media affects all of us. At the heart of this Inquiry, therefore, may be one simple question: who guards the guardians?”

In your view, what are the specific benefits to the public of a relationship between politicians and the media? What are the risks to the public inherent in such a relationship? In your view, how is the former maximised, and the latter minimised and managed?

82. As long as there is plenty of diversity and competition the scope for unhealthy relationships between politicians (and other public officials) and the owners of the media is diminished. That is why the emphasis of the Inquiry should not, in my view, be on creating regulatory controls but on ensuring that genuine plurality is maintained in ways I have described above.

Question 20: Are there any differences between the media generally and the press in this regard?

83. The press is distinct in two main ways: the greater degree of freedom to express a biased opinion, freed from the impartiality constraints of broadcasting. The second is that it is declining in importance as newspaper readership falls relative to new media.
84. Whatever personal frustrations or difficulties we may have with newspaper coverage I would not argue for weakening the freedom of the press. The Press Complaints Commission has been often criticised but in the one instance I have sought to use it, it was fair and efficient. The Liberal Democrats have argued for self-regulation within a statutory framework as the best way of reconciling the maintenance of standards with press freedom.

STATEMENT OF TRUTH

I believe that the facts which I have stated in this witness statement are true.

Signature

Dated..... 30 April 2012